

## Tipu muslihat mengenai shareholder approval pada proses tender dan pengikatan perjanjian pelaksanaan proyek = Fraud of shareholder approval on tender process and project implementation agreements

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### Abstrak

Tujuan penelitian yang hendak dicapai dalam penulisan tesis ini adalah untuk mengetahui secara merinci mengenai shareholder approval, concession, and transfer of assets dengan berdasarkan ketentuan perundang-undangan. Bagaimanakah hukum positif mengatur mengenai shareholder approval, concession right, and transfer of assets beserta hal-hal lain yang berkaitan dengan itu. Penulis menggunakan spesifikasi penelitian deskriptif analitis, yaitu menggambarkan kedudukan Menteri Keuangan, PT. PLN, dan PT. Pertamina dihubungkan dengan teori mengenai shareholder approval, concession right, and transfer of assets, untuk selanjutnya menganalisis bagaimana praktek-praktek kontrak pengadaan barang/jasa terutama dalam konteks privatisasi serta aturan-aturan hukum yang mengaturnya. Pada tahun 2008, terdapat perkara khusus arbitrase antara PT. Bumigas Energi melawan PT. Geo Dipa Energi, yang berkaitan dengan perjanjian proyek pengembangan panas bumi Dieng Patuha Nomor KTR 001/GDE/11/2005 tanggal 1 Februari 2005. PT. Geo Dipa Energi sebagai sebuah perseroan yang didirikan berdasarkan perjanjian patungan Antara PT. PLN dengan PT. Pertamina (Persero), harus memegang dan memiliki Concession Right and Transfer of Assets dari pemerintah melalui PT. PLN dan PT. Pertamina (Persero). PT. Geo Dipa Energi / Termohon sebagai Perseroan yang didirikan berdasar perjanjian patungan antara PT PLN dengan PT Pertamina, harus memiliki Concession Right and Transfer of Assets dari Pemerintah Melalui PLN dan Pertamina. Concession right and transfer of assets diharapkan dapat diberikan dengan baik dengan tanpa mengulur waktu dalam hal pemberiannya. Perusahaan yang akan melaksanakan proyek pemerintah mengalami kesulitan dalam mendapatkan pendanaan dengan pihak ketiga, disebabkan keterlambatan pemberian shareholder approval dan tidak adanya concession right and transfer of assets.

.....The research objective to be achieved in this thesis is to find out the details on shareholder approval, concession, and the transfer of assets by virtue of statutory provisions. How positive law governing shareholder approval, concession right, and the transfer of assets as well as other matters related to it. The author uses descriptive analytical specifications, which describe the position of the Minister of Finance, PT. PLN and PT. Pertamina is connected with the theory regarding shareholder approval, concession right, and the transfer of assets, to further analyze how the practices of procurement contracts of goods/services, especially in the context of privatization and the legal rules that govern them. In 2008, there were special arbitration case between PT. Energy Bumigas against PT. Geo Dipa Energi, which is associated with geothermal development project agreement Dieng Patuha KTR No. 001/GDE/11/2005 dated February 1, 2005. PT. Geo Dipa Energi as a company incorporated under the joint venture agreement between PT. PLN and PT. Pertamina (Persero), must hold and have a Concession Right and Transfer of Assets of government through PT. PLN and PT. Pertamina (Persero). PT. Geo Dipa Energi / Respondent as Company established based on a joint agreement between PT PLN and PT Pertamina, must have a Concession Right and Transfer of Assets of the Government Through PLN and Pertamina. Concession rights and the transfer of assets is expected to be given a well with no stalling in terms of administration. The Company will implement

government projects have difficulties in getting financing with a third party, caused delay in the provision of shareholder approval and the absence of concession rights and the transfer of assets.