

Norma nir-pertanggungjawaban direksi menurut putusan Mahkamah Agung Republik Indonesia Nomor 102 PK/PID/2013 = The norm of non responsibility of the directors according to decision of the supreme court of the republic of indonesia number 102/PK/PID/2013

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Abstrak

ABSTRAK

Direksi sebagai organ Perseroan wajib melaksanakan pengurusan Perseroan dengan itikad baik dan penuh tanggung jawab. Permasalahan timbul apabila keputusan Direksi dalam pengurusan Perseroan membawa kerugian bagi Perseroan. Sistem korporasi common law mengenal norma nir-pertanggungjawaban Direksi yang menetapkan bahwa Direksi tidak bertanggungjawab atas kerugian yang timbul dari suatu tindakan pengambilan keputusan dalam pengurusan, apabila tindakan Direksi tersebut didasari atas itikad baik dan sifat hati-hati. Pokok permasalahan dalam penelitian ini adalah norma nir-pertanggungjawaban Direksi menurut pendapat para ahli dan dalam peraturan perundang-undangan Republik Indonesia dan pengimplementasian norma nir-pertanggungjawaban Direksi pada Putusan Mahkamah Agung Republik Indonesia Nomor 102 PK/Pid/2013. Penelitian ini menggunakan metode penelitian hukum yuridis normatif dengan tipologi penelitian adalah deskriptif. Dalam penelitian ini, bahan pustaka merupakan data dasar sebagai data sekunder. Metode pengumpulan data sekunder melalui studi kepustakaan. Alat pengumpulan data dilakukan dengan studi dokumen yaitu penelusuran literatur. Metode analisis data dilakukan secara kualitatif. Hasil penelitian menunjukkan bahwa Pasal 97 ayat 5 UU No. 40 Tahun 2007 tentang Perseroan Terbatas, Pasal 55 ayat 3 UU No. 19 Tahun 2003 tentang BUMN, dan Keputusan Ketua BAPEPAM No. Kep-45/PM/2004 tentang Peraturan Nomor IX.I.6 mengenai Direksi dan Komisaris Emiten dan Perusahaan Publik angka 5 telah mengakui norma nir-pertanggungjawaban Direksi. Dalam kasus PT. Jasa Alam Sejahtera, Majelis Hakim Mahkamah Agung mempertimbangkan bahwa keputusan Direktur Utama PT. Jasa Alam Sejahtera menggunakan rekening pribadinya Direktur Utama sementara waktu untuk menerima uang pembayaran sewa kios milik Perseroan sesuai dengan Pasal 97 ayat 5 UU No. 40 Tahun 2007 tentang Perseroan Terbatas sehingga secara yuridis Direktur Utama tidak dapat dimintakan pertanggungjawaban secara pribadi. Kata Kunci: Norma Nir-Pertanggungjawaban Direksi, Putusan Mahkamah Agung Republik Indonesia No. 102/PK/Pid/2013

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ABSTRACT

Directors as organ of the Company shall perform the maintenance of Company in good faith and responsible. The problem arises if the decision of Directors in the management of Company brings loss to the Company. The common law corporate system recognizes the norm of non responsibility of the Directors which stipulates that the Directors shall not be liable for damages arising from a decision making action in the management, if the actions of Directors are based on good faith and due care. The subject matter of this study are opinion of experts about the norm of non responsibility of the Directors and in laws and regulations of Republic of Indonesia and implementation of the norm of non responsibility of Directors in Decision of the Supreme Court of the Republic of Indonesia Number 102 PK Pid 2013. This research uses

normative juridical research method and research typology is descriptive. In this research, library material is the basic data as secondary data. Secondary data collection method through literature study. The data is collected by document study that is literature tracking. Data analysis method is done qualitatively. The results showed that Article 97 paragraph 5 of Law Number 40 of 2007 on Limited Liability Companies, Article 55 paragraph 3 of Law Number 19 of 2003 on BUMN, and Decision of the Chairman of BAPEPAM Number Kep 45 PM 2004 on Rule Number IX.I.6 regarding the Directors and Commissioners of Issuers and Public Companies Number 5 has acknowledged the norm of non responsibility of the Directors. In the case of PT. Jasa Alam Sejahtera, the Judges of the Supreme Court considers that the decision of President Director of that company uses his personal account President Director to receive the lease payment of the Company in accordance with Article 97 paragraph 5 of Law Number 40 of 2007 on Limited Liability Companies so that the Director can not be held personally accountable. Keywords The Norm of Non Responsibility of The Directors, Decision of The Supreme Court of The Republic of Indonesia Number 102 PK Pid 2013