

Urgensi pengaturan transparansi beneficial owner untuk mengurangi penyalahgunaan perseroan terbatas = The urgency of regulating beneficial owner transparency to reduce misuse of limited liability companies

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Abstrak

ABSTRACT

Penyalahgunaan Perseroan Terbatas untuk melakukan tindakan kejahatan keuangan di Indonesia cenderung meningkat belakangan ini. Penyalahgunaan tersebut dilakukan dengan menerapkan konsep beneficial ownership, suatu konsep kepemilikan properti yang berasal dari sistem hukum common law, yaitu konsep yang membedakan antara pemilik secara hukum legal owner dan pemilik sebenarnya beneficial owner. Skripsi ini membahas konsepsi beneficial ownership dan pengaturannya di Indonesia, urgensi pengaturan transparansi beneficial ownership untuk Perseroan Terbatas di Indonesia, dan bagaimana sebaiknya materi pengaturan tentang transparansi beneficial ownership untuk Perseroan Terbatas di Indonesia. Dengan menggunakan metode penelitian yuridis normatif yang mengutamakan data sekunder, penelitian ini menyimpulkan bahwa konsep beneficial ownership tidak dikenal dalam sistem hukum perdata di Indonesia, khususnya hukum tentang kebendaan. Namun, dalam praktik, konsep ini digunakan karena adanya pengaruh sistem hukum common law melalui peraturan perundang-undangan khususnya Undang-undang Perseroan Terbatas, Undang-undang Pasar Modal, Undang-undang Perbankan, dan pelaksanaan dari asas kebebasan berkontrak yang diatur dalam Buku Ketiga Kitab Undang-Undang Hukum Perdata melalui berbagai jenis perjanjian. Terdapat setidaknya dua urgensi pengaturan transparansi beneficial ownership untuk Perseroan Terbatas di Indonesia yaitu untuk mengurangi kejahatan atau pelanggaran keuangan yang dilakukan Perseroan Terbatas dengan menggunakan konsep beneficial ownership dan meningkatkan kepercayaan investor terhadap iklim investasi dan perekonomian Indonesia. Adapun materi pengaturan tentang transparansi beneficial ownership setidaknya merumuskan empat hal, yaitu definisi beneficial owner, kewajiban pencatatan beneficial ownership, sistem basis data pengumpulan informasi beneficial ownership yang terpadu dan adanya sanksi terhadap pelanggaran kewajiban pencatatan beneficial owner.

ABSTRACT

The trend to misuse Limited Liability Companies for illicit financial activities has increased in recent years. Such misuse has been done through the framework of the beneficial owner concept, an ownership concept property which stems from the common law system, which differentiates the legal owner and the beneficial owner. This thesis discusses the beneficial ownership concept and its current regulation in Indonesia, the urgency to regulate transparency of beneficial ownership for Limited Liability Companies in Indonesia, and the scope of issues that should be regulated concerning transparency of beneficial ownership in Indonesia. Using a juridical normative research method which utilizes secondary data, this thesis concludes that the concept of beneficial ownership is not recognized in the civil law tradition of Indonesia, particularly its property law. However, in practice, this concept can be found, due to significant influence from the common law system, manifested in existing regulations such as the Limited Liability Companies Law, the Capital

Markets Law, the Banking Law, and through the application of the freedom of contract norm which is governed in the Third Book of the Indonesian Civil Code and implemented through various agreements. As for the urgency of regulating the transparency of beneficial ownership, there are at least two reasons, which are to reduce financial crime or violations committed through Limited Liability Companies using the beneficial ownership concept and to increase investor trust in the investment climate and economy of Indonesia. Regarding the scope of issues to be governed, there should be at least four points, which are the definition of beneficial owner, registration of beneficial ownership, an integrated database to collect beneficial ownership information, and sanctions arising from a violation of the obligation to register.