

Studi Perbandingan Konsep Trust, Beneficial Ownership, dan Nominee Agreement terhadap Peraturan Perusahaan di Indonesia, Singapura, dan Belanda = A Comparative Study on the Concepts of Trust, Beneficial Ownership, and Nominee Agreement on Company Regulations in Indonesia, Singapore, and the Netherlands

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Abstrak

Kasus Panama Papers yang baru-baru ini dan meningkatnya kekhawatiran terhadap penyalahgunaan badan hukum di Indonesia telah menarik perhatian akhir-akhir ini. Hal ini terkait dengan penerapan konsep beneficial owner yang berasal dari konsep trust, yang pengertiannya berbeda di tiap negara. Oleh sebab itu, penting untuk mempelajari konsep-konsep tersebut karena pengertian yang berbeda dapat berujung kepada ketidakpastian hukum, terutama ketika konsep-konsep tersebut dapat ditemukan di beberapa bidang hukum. Penelitian ini membahas tentang pengertian konsep trust, beneficial ownership, dan nominee agreement di Singapura, Belanda dan Indonesia, dan bagaimana konsep-konsep ini berkaitan dengan Company Regulations. Penelitian ini kemudian membahas tentang pelajaran yang diperoleh dari hasil perbandingan. Dengan menerapkan penelitian hukum normatif dan menganalisa data sekunder melalui penelitian kepustakaan, penelitian ini menyimpulkan bahwa walaupun trust hanya umum di negara-negara common law seperti Singapura, ternyata ada lembaga seperti trust di negara-negara civil law, termasuk Belanda dan Indonesia. Namun, daripada melalui instrumen trust dalam hukum benda yang diadopsi di negara-negara common law, lembaga-lembaga yang seperti trust ini dibentuk oleh sebuah perjanjian, berdasarkan prinsip kebebasan berkontrak. Penelitian ini juga menyimpulkan bahwa implikasi konsep trust, beneficial ownership, dan nominee agreement sama antara ketiga negara terkait dengan hukum investasi, pasar modal dan perbankan. Namun, ada perbedaan antara negara-negara yang terkait dengan undang-undang perusahaan karena hanya Singapura yang mengharuskan perusahaan untuk menyimpan daftar beneficial owner di perusahaan mereka.

<hr />The recent case of Panama Papers and rising concern for misuse of legal entities in Indonesia has attracted attention lately. This is related to the application of beneficial ownership concept, stemming from trust concept, which understanding varies in different countries. Hence, it is important to learn about these concepts as different understanding may lead to legal uncertainty, especially as the concepts can be found in several areas of law. This thesis discusses about the concepts of trust, beneficial ownership, and nominee agreement in Singapore, the Netherlands and Indonesia, and how these concepts are implicated in Company Regulations. By applying normative legal research and analyzing secondary data through library research, this thesis concludes that although trust is only common in common law countries such as Singapore, it turns out that there are trust like institutions in civil law countries, including the Netherlands and Indonesia. However, rather than through a trust instrument in property law adopted in common law countries, these trust like institutions are established by an agreement, pursuant to the freedom of contract principle. This thesis also concludes that the implication of the concepts of trust, beneficial ownership, and nominee agreement are similar between the three countries with regards to investment, capital market and banking law. However, there is a difference between the countries with regards to company law as it is only

Singapore who has required that companies should maintain a register of beneficial owners in their companies.