

Implikasi hukum penyelenggaraan rapat umum pemegang saham berdasarkan perjanjian nominee (analisis putusan Mahkamah Agung Republik Indonesia Nomor putusan: 56 K/TUN/2017) = Legal impact of the general meeting of the shareholders based on nominee arrangement review of Indonesian supreme court s stipulation number 56 K/TUN/2017

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Abstrak

ABSTRAK

Tesis ini membahas implikasi hukum penyelenggaraan Rapat Umum Pemegang Saham RUPS yang dilakukan berdasarkan perjanjian nominee. Permasalahan tesis ini adalah membahas Surat Penerimaan Pemberitahuan Perubahan Data Perseroan sebagai Objek Tata Usaha Negara dan tanggung jawab Notaris dalam RUPS yang tidak memenuhi kuorum akibat perjanjian nominee tersebut. Metode penelitian yang digunakan merupakan metode penelitian hukum normatif dengan studi kepustakaan serta menggunakan data sekunder, baik dari bahan hukum primer, bahan hukum sekunder, dan bahan hukum tersier. Perjanjian nominee merupakan perjanjian yang dilarang dalam penanaman modal di Indonesia, oleh karenanya apabila terdapat perjanjian nominee dalam perseroan penanaman modal asing di Indonesia, perjanjian tersebut batal demi hukum. Perjanjian nominee lazim digunakan untuk menghindari peraturan yang membatasi kepemilikan saham asing dalam Perseroan Terbatas PT di Indonesia. Tentunya sebagaimana diketahui bahwa PT wajib mengadakan RUPS minimal satu tahun sekali, yang mana telah ditentukan batas kuorum yang harus dicapai agar RUPS tersebut dapat diselenggarakan. Batalnya perjanjian nominee tersebut membuat Notaris perlu memperhatikan kembali ketentuan kuorum yang ada. Apabila kuorumnya tidak memenuhi ketentuan peraturan perundangan, maka Notaris sebaiknya menggunakan mekanisme RUPS kedua atau mekanisme lainnya. Dalam Putusan Mahkamah Agung Nomor: 56 K/TUN/2017, Notaris lalai dalam menerapkan mekanisme tersebut sehingga atas Surat Penerimaan Pemberitahuan Perubahan Data Perseroan akibat RUPS yang tidak sah tersebut diajukan gugatan ke Pengadilan Tata Usaha Negara. Pengadilan menolak dengan dalil kompetensi absolut. Pada dasarnya Surat Penerimaan Pemberitahuan bukan merupakan Keputusan Tata Usaha Negara karena sifatnya hanya administratif semata dan perbuatan hukum tersebut berlaku mengikat saat RUPS ditutup atau pada saat tanggal yang ditentukan dalam RUPS.

ABSTRACT

This thesis analyze the legal implications of the General Meeting of Shareholders GMS that are based on nominee agreement. The legal questions in this thesis are whether the Receipt of Notice Letter of the Company's Data Amendment is fall within the Object of State Administration and the liability of Notary in the GMS that has no quorum due to nominee arrangement. This thesis uses the juridical normative methods along with literature study which is based on the secondary data, from many sources such as primary, secondary, and tertiary sources. In the context of investment in Indonesia, nominee arrangement basically is an unforceable agreement, thus if there was a nominee arrangement in foreign direct investment company in Indonesia, the agreement itself is void by law. The nominee arrangement is commonly made in

order to avoid the regulation that limits the foreign owned shares percentage in limited liability companies in Indonesia. It is a well known fact that limited liability companies in Indonesia shall hold the General Meeting of Shareholders hereinafter referred to as "GMS" minimum once a year, which in the GMS itself contains various type of quorum requirements that shall be fulfilled. The nominee arrangement is void by law, so the Notary shall take account of the provisions of the quorum. If the quorum does not meet the regulations requirements, then the Notary shall take the second GMS mechanism or any other way. In the Supreme Court Stipulation Number 56 K TUN 2017, the Notary defaulted because he did not apply the second GMS mechanism, so the Receipt of Notice Letter of the Company's Data Amendment which was caused by non quorum GMS was sued to the State Administrative Court by the plaintiffs. The Court finally overruled and argued on the basis on absolute jurisdiction argument. Basically the Receipt of Notice Letter of the Company's Data Amendment is not an object of State Administrative Decree because of its administrative only nature and the legal action itself was already legally binding when the GMS was closed or the pointed date in the GMS.