

Penerapan Doktrin Corporate Law Dalam Badan Usaha Milik Negara Studi Kasus Putusan Perkara Garuda Indonesia = Application of the Doctrine of Corporate Law in State-Owned Enterprises Case Study of the Decision on the Garuda Indonesia Case

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Abstrak

Penelitian tesis ini difokuskan pada penilaian penyalahgunaan kewenangan serta penerapan Doktrin Corporate Law dalam menganalisis kasus Badan Usaha Milik Negara. Bentuk peneliitian yang digunakan adalah yuridis-normatif dan menggunakan tipologi penelitian eksplanatoris. Hasil penelitiannya adalah dalam menjalankan Perusahaan Direktur Badan Usaha Milik Negara telah terikat dalam berbagai aturan melalui Undang-Undang No. 40 Tahun 2007 Tentang Perseroan Terbatas juga diatur dalam Undang-Undang No. 19 Tahun 2003 Tentang Badan Usaha Milik Negara. Direksi dalam menjalankan pengurusan di Perseroan wajib melaksanakan dengan penuh itikad baik dan tanggung jawab sesuai tujuan Perseroan. Doktrin-Doktrin Corporate Law telah memberikan pengaturan yang menjadi kewajiban dan larangan atas kepengurusan Perseroan. Penyimpangan terhadap penerapan Doktrin Corporate Law dalam Perseoran BUMN menjadi parameter dalam menentukan kesalahan Direksi yang bisa diukur dari, Doktrin Fiduciary duty, Doktrin businnes judgment rule, Doktrin ultra vires dan Doktrin Piercing the Corporate Veil. Disamping itu juga bahwa perlu diperjelas kedudukan dan status kekayaan BUMN itu terpisah dari kekayaan Negara dalam UU yang terkait satu dengan yang lain, kemudian penilaian atas kerugian harus dilakukan sepropotional mungkin guna menghindari disorder of law dan memastika keadilan bisa tercapai sesuai dengan yang semestinya serta penting kedepanya doktrin-doktrin tersebut harus diperkuat dan diadopsi dalam setiap sendi-sendi aturan hukum Negara untuk dijadikan dasar paradigmatic untuk menyelesaikan persoalan dalam pengelolaan perusahaan

.....This thesis research is focused on the assessment of abuse of authority and the application of Corporate Law Doctrine in analyzing the case of State-Owned Enterprises. The form of research used is juridical-normative and uses an explanatory research typology. The result of the research is that in running the Company the Director of State-Owned Enterprises has been bound by various rules through Law no. 40 of 2007 concerning Limited Liability Companies is also regulated in Law no. 19 of 2003 concerning State-Owned Enterprises. The Board of Directors in carrying out management in the Company is required to carry out in full good faith and responsibility in accordance with the objectives of the Company. The doctrines of Corporate Law have provided regulations that are obligations and prohibitions on the management of the Company. Deviations from the application of the Corporate Law Doctrine in SOEs are a parameter in determining the errors of the Board of Directors which can be measured from the Fiduciary dutyDoctrine, the Business Judgment Rule Doctrine, Ultra Vires Doctrine and the Piercing the Corporate Veil Doctrine. Besides that, it is also necessary to clarify the position and status of BUMN assets separately from state assets in laws that are related to one another, then an assessment of losses must be carried out as proportionally as possible in order to avoid disorder of law and ensure justice can be achieved in accordance with what should be and is important in the future. these doctrines must be strengthened and adopted in every joint of the rule of state law to be used as a paradigmatic basis for solving problems in company

management