

Legal analysis regarding the double role of the sole shareholder acted as the sole director in single member limited liability company: a comparative study between Indonesia, Singapore, Hong Kong, and Australia = Analisis hukum mengenai peran ganda pemegang saham tunggal bertindak sebagai direktur tunggal pada Perseroan Perorangan: studi banding antara Indonesia, Singapura, Hong Kong, dan Australia

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Abstrak

Dengan berlakunya Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja, beberapa peraturan yang ada telah diubah termasuk Undang-Undang Nomor 40 Tahun 2007, dimana sekarang definisi Perseroan Terbatas diubah dan konsep Single Member Limited Liability Company atau Perseroan Perorangan diperkenalkan. Oleh karena itu, timbul beberapa permasalahan diantaranya sekarang Perseroan Terbatas kini dapat didirikan oleh satu orang, yang mengarah pada kemungkinan perubahan organ perusahaan dan peran ganda antara pendiri Single Member LLC, yang merupakan pemegang saham tunggal bertindak sebagai direktur tunggal. Selain itu, ditemukan persoalan lain adalah peran dan kewajiban yang dibebankan kepada pemegang saham tunggal yang merangkap jabatan sebagai direktur tunggal, proses pengambilan keputusan, dan dimana kedua organ perusahaan tersebut melakukan perbuatan melawan hukum yang mengakibatkan tidak adanya kedua organ perusahaan tersebut. Dengan menerapkan pendekatan yuridis-normatif, tesis ini akan mengkaji peraturan-peraturan yang mengatur tentang Single Member LLC di Indonesia, Singapura, Hong Kong, dan Australia. Berdasarkan penelitian, tesis ini dapat disimpulkan bahwa masih terdapat kekurangan ketentuan yang jelas mengatur tentang rangkap jabatan antara pemegang saham tunggal dan direktur tunggal dalam Undang-Undang Perseroan Terbatas di Indonesia serta peran dan kewajibannya untuk menjalankan dua organ perusahaan sekaligus. Selain itu, masih adanya keterbatasan informasi yang mengatur mengenai organ perusahaan Single Member LLC dan masih belum ada regulasi yang jelas yang mengatur terkait masalah ketidakhadiran pemegang saham tunggal dan direktur tunggal karena perbuatan melawan hukum. Dari hal yang dapat kita pelajari dari Singapura, Hong Kong, dan Australia adalah negara-negara tersebut mengatur dengan jelas ketentuan tentang peran ganda antara pemegang saham tunggal dan direktur tunggal dan langkah hukum yang dapat diambil oleh Perseroan ketika terjadinya ketidakhadiran direktur dalam menjalankan jabatannya.

.....With the enactment of Law Number 11 Year 2020 concerning Job Creation, several existing regulations have been amended including Law Number 40 Year 2007, in which now the definition of Limited Liability Company was changed and the concept of Single Member Limited Liability Company or Perseroan Perorangan was introduced. In consequence, several issues has arised including now the Limited Liability can now be established by one person, leading to the possibility of the changes of the company organs and the double role between the the founder of the single member LLC, which is the sole shareholder can also act as the sole director. Moreover, another issue that is found is the role and obligation imposed on the sole shareholder who also serves as the sole director, the decision-making process within the two company organs, and where both company organs are conducting unlawful act resulting in the absence of the two company organs. By implementing juridical-normative approach, this thesis will examine the regulations

governing the single member LLC in Indonesia, Singapore, Hong Kong, and Australia. Based on the research, this thesis can conclude that there is still a lack of clear provision that governs the dual role between the concurrent position of the sole shareholder and sole director in Indonesia's company law and its role and obligation to perform two company organs at all once. In addition, there is still also limited information that regulates regarding the company organs of the single member LLC. On the issues of the absence of the sole shareholder and the sole director due to conducting unlawful act, there is still no clear regulation that governs in this matter. From what we can learn from Singapore, Hong Kong, and Australia is that these countries clearly regulate the double role between the sole shareholder and the sole director and on what steps should be taken when there is an absence of director from carrying out their duty.