

Potensi dan Tantangan Gugatan Derivatif Sebagai Strategi Penanggulangan Dampak Perubahan Iklim oleh Perseroan Terbatas di Indonesia = Potential and Challenges of Derivative Lawsuit as a Strategy to Mitigate Climate Change Impacts by Limited Liability Companies in Indonesia

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Abstrak

Penelitian ini membahas mengenai potensi dan tantangan pelaksanaan gugatan derivatif sebagai strategi penanggulangan dampak perubahan iklim oleh Perseroan Terbatas di Indonesia. Pemegang saham melalui hak derivatifnya memiliki wewenang untuk menggugat Direksi apabila terjadi penyelewengan dari fiduciary duty yang dimilikinya, termasuk kewajibannya atas risiko perubahan iklim. Terdapat tiga pokok permasalahan dalam penelitian ini, yakni tanggung jawab korporasi terhadap penanggulangan dampak perubahan, hak derivatif yang dimiliki oleh pemegang saham yang diimplementasikan dalam kasus gugatan derivatif berbasis perubahan iklim dalam berbagai yurisdiksi, dan potensi pelaksanaan gugatan derivatif berbasis perubahan iklim melalui gugatan perbuatan melawan hukum. Penelitian ini merupakan penelitian doktrinal yang memaparkan peraturan terkait suatu kategori hukum tertentu secara sistematis, menganalisis hubungan antar peraturan, dan mengidentifikasi hambatan dan potensi dari peraturan tersebut di masa depan. Adapun hasil dari penelitian ini menyatakan bahwa pertanggungjawaban korporasi atas dampak perubahan iklim dapat dilihat dari tiga bentuk, yakni pengaturan wajib oleh instrumen hukum domestik, pengatusan secara sukarela, dan litigasi perubahan iklim. Selanjutnya, terdapat perkembangan positif terkait dengan gugatan derivatif berdasarkan perubahan iklim di berbagai yurisdiksi. Terakhir, pengajuan gugatan derivatif dalam konteks perubahan iklim berdasarkan hukum Indonesia pada dasarnya dapat dilaksanakan dan didukung dengan kedudukan hukum yang jelas, tetapi masih terdapat beberapa hambatan.

.....This research discusses the potential and challenges of implementing derivative lawsuits as a strategy to mitigate the impacts of climate change by Limited Liability Companies in Indonesia. Shareholders through their derivative rights have the authority to sue the Board of Directors if there is a misappropriation of their fiduciary duty, including their obligations for climate change risks. There are three main issues in this research, namely corporate responsibility for mitigating the impacts of change, derivative rights owned by shareholders implemented in climate change-based derivative lawsuit cases in various jurisdictions, and the potential implementation of climate change-based derivative lawsuits through tort lawsuits. This research is a doctrinal research that systematically describes regulations related to a certain legal category, analyzes the relationship between regulations, and identifies the obstacles and potential of these regulations in the future. The results of this study state that corporate liability for climate change impacts can be seen in three forms, namely mandatory regulation by domestic legal instruments, voluntary attribution, and climate change litigation. Furthermore, there are positive developments related to derivative lawsuits based on climate change in various jurisdictions. Finally, the pursuit of derivative claims in the context of climate change under Indonesian law is possible and supported by a clear legal position, but there are still some obstacles to be observed.