

Pilihan Hukum dan Pilihan Forum dalam Perjanjian Trust antara Badan Hukum Indonesia dengan Badan Hukum Asing Ditinjau dari Hukum Perdata Internasional = Choice of Law and Choice of Forum in Trust Agreement Between Indonesian Legal Entity and Foreign Legal Entity in Aspect of Indonesian Private International Law

Pasaribu, David Walin, author

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Abstrak

Sebelum berlakunya Peraturan Bank Indonesia No. 14/17/PBI/2012 tentang Kegiatan Usaha Bank Berupa Penitipan dengan Pengelolaan (Trust), perjanjian trust antara badan hukum Indonesia dengan badan hukum asing kerap digugat ke peradilan Indonesia atas dasar penyelundupan hukum. Akibatnya, pilihan hukum dan pilihan forum dalam perjanjian tersebut diabaikan oleh hakim dalam peradilan Indonesia, sehingga peradilan Indonesia mengadili perkara perjanjian trust dengan mengacu pada hukum Indonesia yang pada saat itu belum mengenal lembaga hukum trust. Setelah berlakunya Peraturan Bank Indonesia No. 14/17/PBI/2012 tentang Kegiatan Usaha Bank Berupa Penitipan dengan Pengelolaan (Trust), perjanjian trust tidak lagi dapat dianggap sebagai penyelundupan hukum.

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Prior to the enactment of the Bank Indonesia Regulation No. 14/17/PBI/2012 concerning Trust as Bank Business Activities, trust agreements between Indonesian legal entity and foreign legal entity were often considered as fraudulent creation of point of contacts and be sued to the Indonesian civil court. As a result, the choice of law and the choice of forum that had be made in the agreement was ignored by the Indonesian civil court's judges. Therefore, the judges adjudicated the case of a trust agreement with reference to the Indonesian law which at that time has not regulated about trust. After the enactment of the Bank Indonesia Regulation No. 14/17/PBI/2012 concerning Trust as Bank Business Activities, trust agreements shall no longer be considered as fraudulent creation of point of contacts.