

Konsep Shadow Director: Kedudukan dan Tanggung Jawab Hukum Pemilik Manfaat Perseroan Terbatas sebagai Shadow Director di Indonesia = Shadow Director Concept: Position and Legal Responsibilities of the Beneficial Owner of a Limited Liability Company as Shadow Director in Indonesia

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Abstrak

Perseroan Terbatas merupakan badan hukum yang dijalankan oleh pengurus atau direksi yang secara resmi ditunjuk dan diangkat oleh pemegang saham. Namun terdapat praktek pengurusan serta pengendalian Perseroan Terbatas melalui pihak lain di luar kedudukan resminya sebagai direksi, yakni oleh shadow director. Shadow director merupakan konsep hukum korporasi yang berkembang di Inggris dimana pengendalian korporasi dilakukan oleh pihak lain selain direksi resmi. Menurut hukum Inggris melalui Companies Act diatur bahwa kedudukan shadow director sama dengan direktur resmi sehingga pertanggungjawaban hukum yang sama juga melekat padanya. Adapun di Indonesia juga terjadi praktik pengendalian korporasi oleh pihak yang teridentifikasi sebagai shadow director, namun yang membedakan adalah tidak adanya aturan yang jelas dan tegas mengenai kedudukan dan tanggung jawab shadow director dalam hukum Indonesia. Oleh karena itu, penelitian ini selain dimaksudkan untuk mempromosikan konsep hukum shadow director ke Indonesia, juga untuk mengidentifikasi kedudukan dan tanggung jawab pemilik manfaat sebagai shadow director berdasarkan teori fiduciary duty, mengingat keberadaan direktur dalam kegiatan pengurusan perseroan terbatas sangat penting terutama dalam konteks good corporate governance (GCG). Penelitian ini dilakukan dengan metode penelitian doktrinal yang menganalisis konsep hukum shadow director di Inggris dan di Indonesia. Menurut hasil penelitian ini, Indonesia belum memiliki peraturan yang mengatur tentang shadow director, namun demikian, ditemukan peraturan di Indonesia yang setelah diidentifikasi, mengatur serupa dengan shadow director di Inggris, yakni kebijakan transparansi pemilik manfaat perseroan terbatas. Penelitian ini menunjukkan adanya kesamaan antara pemilik manfaat dengan shadow director, tetapi karena tidak adanya peraturan mengenai shadow director di Indonesia maka Pemerintah perlu untuk mengatur kedudukan dan tanggung jawab shadow director.

.....A Limited Liability Company is a legal entity run by management or directors who are officially appointed by the shareholders. In practice, there is managing and controlling Limited Liability Companies through other parties outside their official position as directors, namely by shadow directors. Shadow director is a concept in corporate law that developed in England where corporate control is carried out by parties other than the official directors. According to English law, through the Companies Act, it is regulated that the position of a shadow director is the same as that of an official director so that the same legal responsibilities are also attached to him. Meanwhile, in Indonesia there is also the practice of corporate control by parties identified as shadow directors, but what is different is that there are no clear and firm regulations regarding the position and responsibilities of shadow directors under Indonesian law. Therefore, this research is not only intended to promote the legal concept of shadow directors to Indonesia, but also to identify the position and responsibilities of beneficial owners as shadow directors based on fiduciary duty theory, considering that the presence of directors in limited liability company management activities is very

important, especially in the context of good corporate governance (GCG). This research was conducted using a doctrinal research method that analyzes the legal concept of shadow directors in England and Indonesia. According to the results of this research, Indonesia does not yet have regulations governing shadow directors, however, regulations were found in Indonesia which, after being identified, regulate similar regulations to shadow directors in England, namely the policy of transparency of beneficial owners of limited liability companies. This research shows that there are similarities between beneficial owners and shadow directors, but because there are no regulations regarding shadow directors in Indonesia, the Government needs to regulate the position and responsibilities of shadow directors.