

Analisis yuridis terhadap pemegang saham pinjam nama dalam perseroan terbatas tertutup: Sehubungan dengan penanaman modal asing studi kasus PT. Indo = Juridical analysis of the nominee shareholder in limited company: In regards to foreign investment on PT. Indo study case.

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Abstrak

[ABSTRAK

Indonesia merupakan salah satu negara yang strategis bagi penanam modal asing untuk melakukan kegiatan penanaman modal, di mana telah membawa pengaruh yang cukup signifikan terhadap pelaksanaan hukum dalam bidang perusahaan. Hal ini dibuktikan dengan keberadaan pemegang saham pinjam nama atau nominee shareholder dalam Perseroan Terbatas di Indonesia, khususnya dalam PT Indo. Pemegang saham pinjam nama merupakan bentuk nyata daripada konsep nominee yang dikenal dalam sistem hukum negara-negara Common Law, di mana Indonesia yang menganut sistem hukum Civil Law tidak mengenal konsep tersebut dalam peraturan perundang-undangannya. Metode penelitian yang digunakan adalah penelitian yuridis normatif. Konsep nominee tersebut dilakukan antara warga negara asing yang melakukan kegiatan penanaman modal di Indonesia dengan warga negara Indonesia yang hanya dipinjam namanya sebagai pemegang saham terdaftar berdasarkan hukum formil Indonesia dan Anggaran Dasar perseroan. Warga negara asing tersebut hanya bertindak sebagai beneficiary, yaitu, pihak yang menerima kenikmatan atau kemanfaatan dari nominee shareholder yang tercatat namanya sebagai pemegang saham perseroan. Lahirnya konsep tersebut di Indonesia adalah salah satunya dilatarbelakangi untuk menghindar dari pengaturan suatu perusahaan yang dikategorikan sebagai perusahaan asing. Konsep nominee tidak dikenal dalam hukum Indonesia, tetapi ada larangan terhadapnya yang dimuat dalam ketentuan Pasal 33 ayat (1) Undang- Undang No. 25 Tahun 2007 tentang Penanaman Modal.

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ABSTRACT

Indonesia is one of the most strategic nations for foreign investors to perform indirect investment activities, in which has affected some legal aspects within the nation's company law. This effect is evidenced by the existence of nominee shareholder within Limited Company in Indonesia, especially within PT Indo. Nominee shareholder is commonly known and used in nations which has Common Law legal system. Indonesia has Civil Law legal system that does not recognize the use of nominee shareholder in its laws and regulations. Based on this problem, a normative juridical approach is used as a method to analyse this research accordingly. The use of nominee shareholder was conducted among foreign nationals who simply borrowed Indonesian nationals' name as a registered shareholders in Limited Company regulated by formal laws of Indonesia and the company's article. Foreign nationals are acting as a beneficiary, that is, those who receive pleasure or usefulness of nominee registered shareholders as shareholders of the company. The existence of the nominee shareholder in Indonesia is caused by foreign nationals who wants to avoid foreign companies classification. The use of nominee shareholder is not recognized in Indonesian law, but there is a prohibition against the provision regulated in Article 33 paragraph (1) of Indonesian Capital Investment Law

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