

Kedudukan hukum letter of undertaking dalam hukum positif di Indonesia = Legal standing of letter of undertaking in prevailing law in Indonesia

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Abstrak

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Dalam suatu perikatan yang dibuat oleh para pihak, pada umumnya pihak yang memiliki hak tagih/ piutang kepada pihak lainnya meminta untuk diberikan jaminan pemenuhan haknya kepada pihak yang berutang. Pada praktek yang terjadi, terdapat suatu bentuk pemberian jaminan yang dinamakan Letter of Undertaking/ surat sanggup, di mana Letter of Undertaking ini merupakan salah satu bentuk surat pernyataan yang diberikan oleh pihak ketiga yang menyatakan kesanggupannya untuk mengambil alih tanggung jawab untuk memenuhi kewajiban dari pihak yang berutang sekaligus risiko yang mungkin timbul akibat dilaksanakannya kewajiban tersebut oleh pihak penerbit Letter of Undertaking. Letter of Undertaking ini berbeda dengan perjanjian penanggungan. Keberadaan Letter of Undertaking sebagai bentuk dari surat pernyataan tidak diatur secara khusus, sehingga sejauh mana kekuatan hukum mengikatnya terhadap pihak penerbit Letter of Undertaking dan bagaimana pemberian perlindungan atas pelaksanaan pemenuhan haknya bagi pihak yang menerima Letter of Undertaking tersebut masih menjadi pertanyaan. Hal inilah yang diangkat sebagai pokok permasalahan oleh penulis. Oleh karena tidak ada pengaturan terhadap Letter of Undertaking, maka metode penelitian yang digunakan oleh penulis adalah dengan menggunakan pendekatan konseptual (conceptual approach), di mana pendekatan konseptual dilakukan manakala penulis tidak beranjak dari aturan hukum yang ada. Hal ini dilakukan karena memang belum atau tidak ada aturan hukum untuk masalah yang dihadapi. Dengan menggunakan pendekatan konseptual, maka penulis bermaksud untuk menemukan kedudukan hukum dari Letter of Undertaking dalam hukum positif yang berlaku di Indonesia, khususnya yang berlaku dalam hukum perikatan.

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ABSTRACT

In an agreement, practically, those who have the right to claim to other parties ask for a guarantee for the fulfillment of its rights to those who have the obligation to such party. In the practice that occurs, there is a form of a guarantee is called Letter of Undertaking, in which the Letter of Undertaking is one form of an affidavit given by a third party who state his readiness to take over the responsibility for fulfilling the obligations of party that owe and any risks might be occurs because of obligations fulfillment of such third party. Letter of Undertaking is different from the underwriting agreement. The existence of a Letter of Undertaking is not specifically regulated, so the extent to which legal force to the issuer of Letter of Undertaking and how to provide protection for the implementation of rights to the party receiving the Letter of Undertaking is the subject matters by the authors. Because there

is no regulation of the Letter of Undertaking, the research methods used by the author is conceptual approach, in which the conceptual approach is used when the author did not begin from the existing law. Such approach is used because it is not yet or there is no rule of law to the matters encountered. By using the conceptual approach, the author intends to find the legal standing of the Letter of Undertaking in the positive law in Indonesia, especially as it applies in the law of contract., In an agreement, practically, those who have the right to claim to other parties ask for a

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