

Tanggung jawab direksi dalam kepailitan perseroan terbatas (studi komparatif prinsip safe harbor protection on insolvent trading dalam hukum kepailitan di Australia) = Director liability on bankruptcy of limited liability company (comparative study of safe harbor protection principal on insolvent trading in Australian corporate insolvency law)

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Abstrak

Penelitian ini ditujukan untuk menganalisis pengaturan mengenai tanggung jawab Direksi dan kaitannya dengan pelaksanaan doktrin business judgment rule dalam kepailitan Perseroan Terbatas menurut hukum positif di Indonesia, dan melakukan identifikasi serta analisa mengenai kemungkinan penerapan tanggung jawab pribadi Direksi dalam konsep perlindungan Safe Harbor on Insolvent Trading di Australia dalam praktik kepailitan perseroan di Indonesia. Bentuk penelitian yang akan Penulis gunakan dalam penelitian ini adalah penelitian yuridis-normatif, dan dengan tipe penelitian deskriptif. Hasil penelitian ini menunjukkan bahwa terdapat kemungkinan penerapan ketentuan dalam pengaturan hukum kepailitan di Indonesia, yaitu dengan menambahkan unsur pembuktian pembebanan tanggung jawab pribadi Direksi atas kepailitan Perseroan yang diatur dalam Pasal 104 ayat (4) UU No. 40 Tahun 2007 tentang Perseroan Terbatas, dan dengan menambahkan ketentuan mengenai perlindungan terhadap beban tanggung jawab pribadi Direksi atas perbuatan Direksi tanpa persetujuan pengurus yang menimbulkan kewajiban setelah dimulainya penundaan kewajiban pembayaran utang sebagaimana yang diatur dalam Pasal 240 ayat (3) UUK-PKPU No. 37 Tahun 2004. Adanya kemungkinan penerapan tersebut merupakan bentuk perwujudan asas undang-undang kepailitan, bahwa undang-undang seyogyanya memberikan kesempatan restrukturisasi utang sebelum diambil putusan pernyataan pailit kepada Debitor yang masih memiliki usaha yang prospektif, dan untuk mendorong Direksi bertekad baik melaksanakan dengan sebaik-baiknya, tanpa dibayangi kekhawatiran harus bertanggung jawab secara pribadi atas kerugian Perseroan.

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This thesis is aimed to analyze the regulations regarding Director's liability and the implementation of business judgment rule doctrine in Bankruptcy of Limited Liability Company according to Indonesian positive law. This research is also aimed to identify the possibility of implementing Australian Corporate Insolvency Law regarding Safe Harbor Protection Principal on Insolvent Trading in practice of Indonesia Corporate Bankruptcy. The form of research used in this study is normative judicial research with typology of descriptive research. This thesis shown there's a possibility on protecting Director's personal liability from insolvent trading practice in Australian Corporate Insolvency Law to be applied in the regulation of Indonesian Bankruptcy Law, by to issue an additional regulation regarding element of proof on exception of Director's liability on Bankruptcy of Limited Liability Company in accordance with Limited Liability Company Law No. 40/2007 (âCompany Lawâ), and to issue an additional regulation regarding protection of Director's liability for exercise Director's powers without approval of administrator when Limited Liability Company in a state of Suspension of Payment in accordance with Bankruptcy and Suspension of Payment Law No. 37/2004 (âBankruptcy and Suspension of Payment Lawâ). The possibility of implementing Safe Harbor Protection makes it necessary to issue an adequate regulation as an application of principal of

Indonesian Bankruptcy Law that Bankruptcy Law supposedly providing company's director a chance to take a reasonable steps to restructure and face the financial difficulties while the business of the company is still prospective, before put into state of bankruptcy, with purpose to encourage directors with good faith remain exercise their fiduciary duties in their absolute best without fear of personal liability.