

Kajian Transaksi Derivatif Jenis Contract For Difference Menurut Perjanjian Jual Beli = Analysis on Derivative Transaction of Contract For Difference According to Sale and Purchase Agreement

Pranata Rahajie Putranto, author

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Abstrak

Maraknya perdagangan Transaksi Derivatif jenis Contract For Difference dengan underlying asset Mata Uang Asing, Nilai Indeks Komoditi, dan Nilai Indeks Saham mempengaruhi iklim bisnis dalam aspek ekonomi global, khususnya pada Sistem Perdagangan Alternatif. Contract for Difference pada dasarnya adalah perdagangan, sehingga jenis kontrak ini perlu dikaji menurut perjanjian jual beli sebagaimana secara umum diatur dalam Kitab Undang-Undang Hukum Perdata. Penelitian ini akan membahas dua pokok permasalahan. Pertama, bagaimana analisis transaksi derivatif Contract For Difference yang diatur di dalam Surat Keputusan Kepala Bappebti No.109/BAPPEBTI/Per/01/2014 berdasarkan Pasal 1457 Kitab Undang-Undang Hukum Perdata. Kedua, Bagaimana akibat hukum yang dapat ditimbulkan dari Contract For Difference yang diatur di dalam Surat Keputusan Kepala Bappebti No.109/BAPPEBTI/Per/01/2014 berdasarkan Pasal 1457 Kitab Undang-Undang Hukum Perdata. Penelitian ini merupakan penelitian yuridis normatif, dengan pendekatan perundang-undangan (statute approach). Penelitian ini menemukan bahwa penentuan selisih harga yang menjadi unsur contract for difference berbeda dengan unsur-unsur perjanjian jual beli, sehingga bukan merupakan perjanjian jual beli.

Increasing volume of trading on derivative transaction of contract for difference which underlying asset are foreign exchange, commodity index, and shares index have impacted the global business environment, particularly in Over The Counter market sector. Contract for Difference is basically trade, then should be analyzed by sale and purchase agreement which is generally regulated by Kitab Undang-Undang Hukum Perdata. This research discuss two legal issues concerning contract for difference based on Indonesian private law. The first issue is how derivative transaction of contract for difference in Surat Keputusan Kepala Bappebti No.109/BAPPEBTI/Per/01/2014 reviewed based on Kitab Undang-Undang Hukum Perdata. Another issue is about the legal consequences arising from it. Those legal issues will be solved by conducting normative juridical research with statute approach. The end of this research found out that price difference determination which essential in this kind of contract is different from essentials in sale and purchase agreement, therefore that is not a sale and purchase agreement.