

Pengurusan Piutang Bank Badan Usaha Milik Negara Pasca Putusan Mahkamah konstitusi NO 77/PUU-IX/2011 dan Putusan Mahkamah Konstitusi NO 48/PUU-XI/2013-2022 = Management of State-Owned Enterprise Bank Receivables After Constitutional Court Decision NO 77/PUU-IX/2011 and Constitutional Court Decision NO 48/PUU-XI/2013-2022

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Abstrak

Penelitian ini dilatarbelakangi oleh adanya kontradiksi antara dua putusan Mahkamah Konstitusi yakni putusan nomor 77/PUU-IX/2011 dan putusan nomor 43/PUU-XI/2013 terkait status kekayaan pada BUMN yang berasal dari modal negara. Pada putusan pertama, Mahkamah Konstitusi mengeluarkan piutang Bank BUMN dari piutang negara karena kekayaan BUMN dianggap sebagai kekayaan perseroan. Namun pada putusan kedua, Mahkamah Konstitusi berpendapat bahwa kekayaan BUMN bukan semata kekayaan perseroan melainkan termasuk kekayaan negara. Tesis ini akan mengulas lebih dalam mengenai ratio decidendi Putusan Mahkamah Konstitusi No 77/PUU-IX/2011 dan Putusan Mahkamah Konstitusi No 48/PUU-XI/2013 tentang status hukum keuangan BUMN serta implikasi hukum dari kedua putusan tersebut terhadap pengurusan piutang Bank BUMN. Tesis ini disusun menggunakan metode penelitian yuridis normatif yang menjadikan peraturan perundang-undangan sebagai sumber hukum primer dan kepustakaan sebagai bahan sekunder. Hasil dari tesis ini menunjukkan dua temuan utama, yaitu; Pertama, Perbedaan ratio decidendi antara Putusan Mahkamah Konstitusi Nomor 77/PUU-IX/2011 dan Putusan Mahkamah Konstitusi Nomor 48/PUU-XI/2013 terletak pada perbedaan politik hukum yang mendasari masing-masing judicial review tersebut. Kedua, dikeluarkannya Putusan Mahkamah Konstitusi Nomor 77/PUU-IX/2011 menyebabkan Bank BUMN dapat mengurus sendiri piutang yang dimilikinya. Adapun Putusan Mahkamah Konstitusi Nomor 48/PUU-XI/2013 tidak memberikan implikasi terhadap pengurusan piutang Bank BUMN yang telah diserahkan oleh PUPN kepada Bank BUMN untuk diselesaikan berdasarkan hukum perseroan.

.....This research is motivated by the contradiction between the two decisions of the Constitutional Court, namely the decision number 77/PUU-IX/2011 and the decision number 43/PUU-XI/2013 regarding the status of wealth in SOEs originating from state capital. In the first decision, the Constitutional Court excluded BUMN Bank's receivables from state receivables because BUMN assets were considered as company assets. However, in the second decision, the Constitutional Court is of the opinion that the wealth of SOEs is not only company assets but includes state assets. This thesis will review in more detail the ratio decidendi of the Constitutional Court Decision No. 77/PUU-IX/2011 and the Constitutional Court Decision No. 48/PUU-XI/2013 regarding the legal status of SOEs' finances and the legal implications of these two decisions on the management of state-owned banks' receivables. This thesis is prepared based on normative juridical research that uses laws and regulations as the primary source of law and literature as secondary material. The results of this thesis show two main findings, namely; First, the difference in the ratio decidendi between the Constitutional Court's Decision Number 77/PUU-IX/2011 and the Constitutional Court's Decision Number 48/PUU-XI/2013 lies in the differences in the legal politics underlying each of

these judicial reviews. Second, the issuance of the Constitutional Court Decision Number 77/PUU-IX/2011 caused state-owned banks to be able to manage their own receivables. The Constitutional Court's Decision Number 48/PUU-XI/2013 does not have any implications for the management of state-owned bank receivables that have been submitted by PUPN to state-owned banks to be settled based on company law.