

# Analisis Penerapan Tag-Along Rights dan Drag-Along Rights Terhadap Perlindungan Pemegang Saham = Analysis of the Application of Tag-Along Rights and Drag-Along Rights to Shareholder Protection

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## Abstrak

Skripsi ini membahas hasil penelitian atas penerapan tag-along rights dan drag-along rights kepada para pemegang saham perusahaan ditinjau dari hukum perseroan terbatas di Indonesia dan membandingkannya dengan penerapan di yurisdiksi Inggris dan Amerika Serikat. Analisis yang mendalam pada penerapan di Indonesia dilakukan oleh PT. A yang menempatkan klausul drag-along rights dan tag-along rights mulai dari rencana perdamaian dan kemudian berhasil ditempatkan dalam Anggaran Dasar perusahaan, setelah PT. A dinyatakan dalam Penundaan Kewajiban Pembayaran Utang Sementara (PKPU). Penelitian pada skripsi ini menunjukkan bahwa para pemegang saham, sebagai pemilik hak atas saham di perusahaan, memiliki hak dan kewajiban yang dapat dan harus diterapkan. Hak pemegang saham yang dibahas secara mendalam pada skripsi ini, yang dimiliki oleh pemegang saham guna melindungi mereka dalam pengalihan saham yaitu merupakan tag-along rights dan drag-along rights. Ditemukan bahwa penerapan drag-along rights di Inggris telah diuji dengan banyak kasus yang telah ditetapkan oleh pengadilan diantaranya pada kasus, yang terkenal yaitu Kasus *Arbuthnott v Bonnyman and others*. Kasus lain yaitu pada negara bagian Delaware, Amerika Serikat, adalah Kasus *Manti v. Authentix*. Keputusan pengadilan di Inggris dan Amerika Serikat pada kedua kasus tersebut, menolak permohonan pemegang saham minoritas untuk membatalkan drag-along rights karena persyaratan-persyaratan untuk sahnya pembuatan perjanjian pemegang saham atau anggaran dasar yang memuat drag-along rights telah terpenuhi menurut hakim. Penerapan drag-along rights dan tag-along rights akan banyak dibutuhkan dan telah dilakukan di Indonesia pada perusahaan-perusahaan rintisan, modal ventura, joint venture, dan lain-lain. Untuk itu, peraturan perundangan dan pedoman dasar di Indonesia menjadi penting diatur, maupun sebab-akibat digunakannya, sehingga dapat memberikan kepastian hukum bagi para pihak dan menumbuhkan iklim usaha yang kondusif.

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This thesis discusses the results of research on the implementation of tag-along rights and drag-along rights to shareholders in the company in the context of limited liability company law in Indonesia and, then also, compares them with the implementation in the jurisdictions of the United Kingdom and the United States. An in-depth analysis of the implementation in Indonesia was carried out as to PT A which put drag-along rights and tag-along rights clauses first in the reconciliation plan and, then articles of association after PT. A was declared in Temporary Suspension of Debt Payment Obligations (PKPU). Research in this thesis show that the shareholders who own rights based on their shares in the company, has a regulatory and proprietary rights to be implemented. The rights deeply discussed in this thesis in relation to transfer of shares or in case of acquisition are tag-along and drag-along rights. It was found that the application of drag-along rights in the UK has been trialed with many cases that have been affirmed by the court, including on the famous case of *Arbuthnott v Bonnyman and others*. Another case that became a milestone in Delaware, United States, was the *Manti v. Authentix* case. The court decisions, in the UK and the United States in both cases were the same, rejected the petition of minority shareholders to rectificate drag-along rights of the major shareholders

for the reasons that the requirements for the validity of making the shareholders agreement and/or articles of association in which the drag-along rights hold had been fulfilled. The implementation of drag-along and tag-along rights will be much needed and has been carried out in Indonesia for start-up companies, venture capital, joint ventures, etc. For this reason, it is important to regulate the laws and regulations to serve as the basis and guidelines for the rights in Indonesia, as well as the cause and effect of its use so as to provide legal certainty for the parties and foster a conducive business climate.