

Doktrin Equitable Subordination sebelum Debt Recharacterization dalam Proses Kepailitan Perusahaan di Indonesia: Studi Hukum Indonesia dan Amerika Serikat = The Equitable Subordination Doctrine Prior to the Debt Recharacterization Doctrine in the Corporate Bankruptcy Process in Indonesia: A Study of Indonesian and United States Law

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Abstrak

Amerika Serikat mengenal equitable subordination dan debt recharacterization sebagai doktrin yang bertujuan memastikan perlindungan bagi para kreditor dari tindakan tidak adil yang dilakukan oleh kreditor (terutama pemegang saham kreditor) lainnya. Di sisi lain, Indonesia tidak mengenal doktrin-doktrin ini. Namun, Mahkamah Agung dalam Putusan No. 1038 K/Pdt.Sus/2010 telah menerapkan doktrin debt recharacterization terhadap pinjaman pemegang saham dengan mengacu pada UU KPKPU dan, khususnya, Pasal 3 ayat (2) UU PT. Walaupun demikian, kedua instrumen hukum tersebut tidak mengatur secara eksplisit mengenai penerapan doktrin debt recharacterization. Oleh karena itu, penelitian ini akan menganalisis (1) pengaturan dan penerapan doktrin debt recharacterization di Indonesia; (2) pengaturan dan penerapan doktrin equitable subordination dan debt recharacterization di Amerika Serikat; serta (3) perbandingan pengaturan dan penerapan kedua doktrin tersebut di Indonesia dan Amerika Serikat. Melalui penelitian dengan metode yuridis normatif dan pendekatan kualitatif, dapat disimpulkan sebagai berikut. Pertama, hukum kepailitan di Indonesia memberikan perlindungan bagi para kreditor dalam memperoleh hak mereka dan pencegahan tindakan debitur yang merugikan kreditor. Dalam hal ini, penerapan doktrin debt recharacterization memberikan dimensi perlindungan tambahan, yakni pencegahan tindakan pemegang saham kreditor yang merugikan kreditor lainnya. Kedua, hukum kepailitan Indonesia tidak mengatur secara eksplisit mengenai doktrin debt recharacterization, tetapi Mahkamah Agung telah memastikan keberadaan doktrin tersebut dalam Putusan No. 1038 K/Pdt.Sus/2010. Adapun hukum kepailitan Amerika Serikat hanya mengandung pengaturan yang eksplisit mengenai doktrin equitable subordination, tetapi tidak mengenai doktrin debt recharacterization. Walaupun demikian, kedua doktrin tersebut telah dikembangkan oleh berbagai pengadilan di Amerika Serikat. Ketiga, pengaturan dan penerapan doktrin equitable subordination dan debt recharacterization di Amerika Serikat telah jauh lebih berkembang dibandingkan dengan di Indonesia. Walaupun demikian, terdapat beberapa kemiripan antara doktrin debt recharacterization yang terdapat di Indonesia dengan masing-masing doktrin equitable subordination dan debt recharacterization yang terdapat di Amerika Serikat.

.....The United States recognizes equitable subordination and debt recharacterization as doctrines aimed at ensuring protection for creditors from inequitable conduct by other creditors (especially shareholder-creditors). On the other hand, Indonesia does not recognize these doctrines. However, Mahkamah Agung in Putusan No. 1038 K/Pdt.Sus/2010 has applied the debt recharacterization doctrine to shareholder loans by referring to UU KPKPU and, in particular, Article 3 paragraph (2) of UU PT. Nevertheless, these legal instruments do not explicitly regulate the application of the debt recharacterization doctrine. Therefore, this study will analyze (1) the regulation and application of the debt recharacterization doctrine in Indonesia; (2)

the regulation and application of the equitable subordination and debt recharacterization doctrines in the United States; and (3) the comparison of the regulation and application of these two doctrines in Indonesia and the United States. Through research using normative juridical method and qualitative approach, the following conclusions can be drawn. First, the bankruptcy law in Indonesia provides protection for creditors in obtaining their rights and preventing debtor actions that harm creditors. In this regard, the application of the debt recharacterization doctrine adds an additional dimension to that protection, namely preventing shareholder-creditors actions that harm other creditors. Second, Indonesian bankruptcy law does not explicitly regulate the debt recharacterization doctrine, but Mahkamah Agung has ensured the existence of this doctrine in Putusan No. 1038 K/Pdt.Sus/2010. As for the United States bankruptcy law, it only contains explicit regulations regarding the equitable subordination doctrine, but not regarding the debt recharacterization doctrine. Nevertheless, both doctrines have been developed by various United States courts. Third, the regulation and application of the equitable subordination and debt recharacterization doctrines in the United States have developed much more than in Indonesia. However, there are some similarities between the debt recharacterization doctrine in Indonesia and, respectively, the equitable subordination and debt recharacterization doctrines in the United States.