

PERJANJIAN NOMINEE ATAS KEPEMILIKAN MODAL ASING DALAM PERSEROAN KOMANDITER

ABSTRAK

Tujuan Penelitian tesis ini adalah untuk mengetahui dan menganalisis aturan dan keabsahan perjanjian *nominee* dalam aktivitas penanaman modal asing di Indonesia jika dikaitkan dengan syarat sah perjanjian dan untuk menganalisa dan mengkritisi dasar pertimbangan hakim dalam mengambil keputusan terhadap perjanjian *nominee* kepemilikan modal asing pada Persekutuan Komanditer dalam Putusan Kasasi Mahkamah Agung Nomor: 35K/Pdt/2018. Agar supaya pembahasan lebih terarah dan tersistematis sesuai dengan maksud dan tujuan diadakan penelitian, maka perumusan masalah yang akan diteliti yaitu bagaimana aturan dan keabsahan perjanjian *nominee* dalam aktivitas penanaman modal asing di Indonesia jika dikaitkan dengan syarat sah perjanjian dan apa dasar pertimbangan hakim dalam mengambil keputusan terhadap perjanjian *nominee* kepemilikan modal asing pada Persekutuan Komanditer dalam Putusan Kasasi Mahkamah Agung Nomor: 35K/Pdt/2018 bila dihubungkan dengan prinsip keadilan, prinsip kepastian hukum dan prinsip kemanfaatan. Metode yang digunakan dalam penelitian ini adalah *yuridis normatif*. Hasil dari penelitian adalah bahwa perjanjian *nominee* penanaman modal asing ke dalam CV ini bertentangan dengan syarat objektif sahnya suatu perjanjian, sehingga sifatnya batal demi hukum, akibat dari perjanjian *nominee* yang batal demi hukum tersebut, maka seharusnya perjanjian kerjasama tersebut dianggap tidak pernah ada sama sekali dan kondisinya harus kembali seperti saat sebelum adanya perjanjian kerjasama tersebut, dimana modal yang telah disetorkan ke dalam CV Putri Ayu oleh Turner Leigh Michael dan Jones Richard Forrester (para penggugat) harus dikembalikan oleh Nino Sulistiati dan Putri Sari Wijaya (Tergugat). Dasar pertimbangan majelis hakim pada perkara tersebut dengan memutuskan perjanjian kerjasama atas nama (*nominee*) kepemilikan CV Putri Ayu adalah sah yang didasari oleh perjanjian alamiah dirasa kurang tepat dan bertentangan dengan prinsip kemanfaatan dan prinsip kepastian hukum.

Kata Kunci: *Perjanjian Nominee, Modal Asing, Perseroan Komanditer.*

NOMINEE AGREEMENTS FOR FOREIGN CAPITAL OWNERSHIP IN LIMITED PARTNERSHIP

ABSTRACT

The purpose of this thesis research is to find out and analyze the rules and validity of nominee agreements in foreign investment activities in Indonesia if they are related to the legal terms of the agreement and to analyze and criticize the basis of judges' considerations in making decisions on foreign capital ownership nominee agreements in Limited Partnerships in the Cassation Decision. Supreme Court Number: 35K/Pdt/2018. In order to make the discussion more focused and systematic in accordance with the aims and objectives of the research, the formulation of the problem to be studied is how the rules and validity of the nominee agreement in foreign investment activities in Indonesia are related to the legal terms of the agreement and what is the basis for the judge's considerations in making decisions on the nominee agreement for foreign capital ownership in the Limited Partnership in the Supreme Court's Cassation Decision Number: 35K/Pdt/2018 if it is related to the principle of justice, the principle of legal certainty and the principle of expediency. The method used in this research is normative juridical. The results of the study are that the nominee agreement for foreign investment into this CV is contrary to the objective conditions for the validity of an agreement, so that it is null and void, as a result of the nominee agreement being null and void, then the cooperation agreement should be considered to have never existed at all and The condition must return to the way it was before the cooperation agreement, where the capital that had been deposited into CV Putri Ayu by Turner Leigh Michael and Jones Richard Forrester (the plaintiffs) had to be returned by Nino Sulistiati and Putri Sari Wijaya (the Defendant). The basis for consideration of the panel of judges in this case by deciding that the cooperation agreement on behalf of the (nominee) ownership of CV Putri Ayu is valid based on a natural agreement which is deemed inappropriate and contrary to the principle of expediency and the principle of legal certainty.

Keywords: Nominee Agreement, Foreign Capital, Limited Partnership.