

Abstract

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The Use of Nominees in The Establishment of a Limited Liability Company by Notary in relatives with Foreign Investment Facilities as an Instrument of Economic Development In Indonesia

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As a developing country, foreign investment is a necessity to support the acceleration of economic development. In order for investment to provide economic benefits for national development, arrangements and institutions are needed that can ensure the existence of a supervisory mechanism to prevent the creation of a Nominee agreement. Nominee agreements for shareholders in contract law in Indonesia are categorized as innominaat agreements (unnamed agreements). This agreement is not regulated in the Civil Code, but occurs in many business practices in Indonesia.

This study proposes the following legal issues: 1) What is the regulation and authority of the Investment Coordinating Board (BKPM) for licensing the establishment of a Limited Liability Company with capital originating from foreign investors? 2) How is the application of the licensing arrangements? and 3) What is the ideal arrangement that should be applied to foreign investors who use nominees Indonesian citizens or Indonesian legal entities?

The results of the study show that many Nominee agreements are carried out because of the needs of the community. In practice, nominee agreements can be divided into direct nominee agreements, where share ownership in a limited liability company is declared on behalf of another person and indirect nominees, namely constructing several agreements in layers with the aim that the beneficiary can control, receive benefits and indirectly owns the shares.

As a recommendation, it is necessary to establish new regulations and institutions, to ensure the application of the principle of recognizing beneficial owners in every foreign investment activity. Regulations and supervisory agencies for beneficial owner disclosure are needed to prevent the use of nominees for legal ownership in foreign investment

Keywords: share nominee, beneficial owner, notary.

ABSTRAK

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Penggunaan *Nominee* Dalam Pendirian Perseroan Terbatas Oleh Notaris Dikaitkan dengan Fasilitas Penanaman Modal Asing Sebagai Sarana Pengembangan Ekonomi di Indonesia

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Sebagai negara berkembang, penanaman modal bagi Indonesia khususnya penanaman modal asing merupakan kebutuhan untuk mendukung akselerasi pembangunan ekonomi. Agar kegiatan penanaman modal dapat memberi manfaat ekonomi bagi pembangunan nasional, maka diperlukan pengaturan dan kelembagaan yang dapat memastikan tersedianya mekanisme pengawasan untuk mencegah pembuatan perjanjian *Nominee*. Perjanjian *Nominee* saham dalam hukum perjanjian di Indonesia dikategorikan sebagai perjanjian innominaat (perjanjian tidak bernama). Perjanjian ini tidak diatur dalam Kitab Undang-Undang Hukum Perdata, namun banyak terjadi dan dilakukan dalam praktek bisnis di Indonesia.

Penelitian ini mengajukan permasalahan hukum sebagai berikut : 1) Bagaimana pengaturan dan kewenangan Badan Koordinasi Penanaman Modal (BKPM) atas perizinan pendirian Perseroan Terbatas dengan modal yang berasal dari investor asing? 2) Bagaimana penerapan pengaturan perizinan tersebut? dan 3) Bagaimana pengaturan ideal yang seharusnya diterapkan pada investor asing yang menggunakan *nominee* Warga Negara Indonesia atau badan hukum Indonesia?

Hasil penelitian menunjukkan, *Nominee agreement* banyak dilakukan karena kebutuhan masyarakat. *Nominee agreement* dalam prakteknya dapat dibedakan menjadi perjanjian *nominee* langsung (*direct nominee*) kepemilikan saham dalam perseroan terbatas dinyatakan atas nama orang lain dan *nominee* tidak langsung (*undirect nominee*) yakni mengkonstruksikan beberapa perjanjian secara berlapis-lapis dengan tujuan agar *beneficiary* dapat mengendalikan, menerima manfaat dan secara tidak langsung memiliki saham tersebut.

Dengan demikian, perlu dibentuk regulasi dan kelembagaan baru, untuk memastikan penerapan prinsip mengenali *beneficial owner* pada setiap kegiatan penanaman modal asing. Regulasi dan Lembaga pengawas keterbukaan *beneficial owner* diperlukan untuk mencegah penggunaan *nominee* kepemilikan saham dalam penanaman modal.

Kata kunci: *nominee* saham, *beneficial owner*, notaris.