

ABSTRACT

Derivative Lawsuit for Shareholders Against Violation of Directors' Duty in Sexual Violence Cases: Comparing Indonesia To The United States

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This Legal Research aims to analyze the feasibility of shareholders filing a derivative lawsuit on the grounds of sexual violence in Indonesia's current legal framework, specifically Article 97(6) of the Indonesian Company Law. The research originated from the growing concern of the underprepared Indonesia in tackling a wave of Derivative Lawsuits based on sexual violence, as seen in the U.S. There are concerns that, unlike the regulatory framework of the U.S., Indonesia would not adequately protect the shareholders. This study then compares Indonesia's legal framework to the more structured system applied in the United States, particularly Delaware.

The method utilized by the research is a normative-empirical approach. Through a normative approach on the Indonesian and the United States and an empirical approach in how Indonesian companies view sexual violence in practice, the author identified three main differences in regulatory frameworks between the two countries. On the other hand, the empirical approach consists of field research through respondents, namely one state-owned company and one privately owned company. Both approaches are used to assess corporate mechanisms for preventing, handling, and evaluating losses from sexual violence. The research identifies how legal norms operate in practice and where divergence between Indonesian and U.S.

Based on the results of the research, Shareholders in an Indonesian Company can file for a Derivative Lawsuit on Sexual Violence. However, unlike the U.S., Indonesian regulations are still vague and need improvement. The Author has conjured three recommendations from the lessons learnt. Firstly, the Indonesian courts should interpret that a director is liable for damages if they fail to sufficiently conduct oversight. Secondly, a revision of Article 97 (6) of the Indonesian Company Law should be enacted to allow company officers to be the subject of a derivative lawsuit. Lastly, additional provisions should be enacted to require shareholders to show that they have attempted other mechanisms first, prior to filing for a derivative lawsuit.

Keywords: Derivative Lawsuit, Fiduciary Duty, Sexual Violence.

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INTISARI

Gugatan Derivatif untuk Pemegang Saham Terhadap Pelanggaran Director's Duty Dalam Kasus Kekerasan Seksual: Membandingkan Indonesia Terhadap Amerika Serikat

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Penelitian hukum ini bertujuan untuk menganalisis kelayakan pemegang saham dalam mengajukan gugatan derivatif dengan dasar terjadinya kekerasan seksual dalam kerangka hukum Indonesia saat ini, khususnya sebagaimana diatur dalam Pasal 97 ayat (6) Undang-Undang Perseroan Terbatas. Penelitian ini berangkat dari meningkatnya kekhawatiran mengenai ketidaksiapan Indonesia dalam menghadapi potensi maraknya gugatan derivatif terkait kekerasan seksual, sebagaimana terjadi di Amerika Serikat. Oleh karena itu, penelitian ini membandingkan kerangka hukum Indonesia dengan sistem yang lebih terstruktur sebagaimana diterapkan di Amerika Serikat, khususnya Delaware.

Metode penelitian yang digunakan adalah pendekatan normatif-empiris. Melalui pendekatan normatif pada sistem hukum Indonesia dan Amerika Serikat serta pendekatan empiris terhadap praktik perusahaan-perusahaan di Indonesia dalam memandang dan menangani kekerasan seksual, penulis mengidentifikasi tiga perbedaan utama dalam kerangka regulasi kedua yurisdiksi. Sementara itu, pendekatan empiris dilakukan melalui penelitian lapangan dengan dua responden, yaitu satu perusahaan BUMN dan satu perusahaan swasta. Kedua pendekatan tersebut digunakan untuk menilai mekanisme korporasi dalam mencegah, menangani, dan mengevaluasi kerugian akibat kekerasan seksual.

Berdasarkan hasil penelitian, pemegang saham pada perseroan di Indonesia dapat mengajukan gugatan derivatif terkait kasus kekerasan seksual. Namun demikian, berbeda dengan Amerika Serikat, regulasi Indonesia masih bersifat ambigu dan memerlukan penguatan lebih lanjut. Penulis kemudian merumuskan tiga rekomendasi berdasarkan hasil analisis. Pertama, pengadilan di Indonesia perlu menafsirkan bahwa direksi dapat dimintai pertanggungjawaban atas kerugian apabila mereka lalai menjalankan fungsi pengawasan secara memadai. Kedua, Pasal 97 ayat (6) UU PT perlu direvisi agar pejabat perusahaan juga dapat menjadi subjek gugatan derivatif. Ketiga, perlu diterapkan ketentuan mengenai kewajiban pemegang saham untuk terlebih dahulu menempuh mekanisme internal lain sebelum mengajukan gugatan derivatif.

Kata Kunci: *Gugatan Derivatif, Fiduciary Duty, Kekerasan Seksual.*

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