PENERAPAN *FOREIGN STATE IMMUNITIES* TERHADAP BADAN USAHA MILIK NEGARA DALAM *CROSS-BORDER INSOLVENCY:* STUDI KASUS *GREYLAG GOOSE LEASING 1410 DAC V. PT GARUDA INDONESIA LTD*

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INTISARI

Penulisan hukum ini bertujuan untuk menganalisis penerapan imunitas terhadap Badan Usaha Milik Negara ("BUMN") dalam kepailitan lintas batas, berfokus pada bagaimana pengadilan Australia menafsirkan pengecualian *winding-up proceedings* dalam *Foreign State Immunities Act 1985 (Cth)* ("FSIA") pada perkara *Greylag Goose Leasing 1410 DAC v PT Garuda Indonesia Ltd (Greylag v Garuda)*, serta bagaimana perbedaan doktrinal antara pengecualian transaksi komersial dan pengecualian *winding-up proceedings* (pengecualian properti) memengaruhi imunitas negara terhadap entitas yang sama. Urgensi penelitian ini ditunjukkan oleh fakta bahwa *High Court of Australia* memiliki perdebatan hukum internasional mengenai apakah imunitas berlaku bagi BUMN dalam proses *winding-up*. Metode yang digunakan dalam penelitian ini adalah metode penelitian yuridis normatif yang dilengkapi dengan wawancara terhadap praktisi kepailitan lintas batas.

Hasil penelitian menunjukkan bahwa sifat Perseroan Terbatas sebagai *separate entity* berhak atas imunitas berdasarkan hukum korporasi domestik Indonesia dan Australia. Penelitian ini juga menemukan bahwa pengecualian *winding-up* hanya berlaku terhadap proses yang menyangkut badan hukum pihak ketiga di mana negara asing memiliki kepentingan properti, bukan untuk membubarkan *separate entity* itu sendiri. Belum ada preseden mengenai pembubaran BUMN asing melalui pengadilan di negara kreditur, dan dipertahankannya imunitas sesuai asas kolektivitas hukum kepailitan serta menghormati putusan homologasi debitur. Perbedaan putusan *High Court of Australia* dalam *ACCC v Garuda* (imunitas ditolak) dan *Greylag v Garuda* (imunitas diberikan) dapat dipandang sebagai perbedaan sifat pengecualian transaksi dan kontrol yudisial atas properti, bukan inkonsistensi yudisial.

Perbedaan ini menghasilkan preseden perlindungan bagi BUMN dari likuidasi asing; karakterisasi entitas yang sama bergantung pada sifat perkaranya; jalur alternatif melalui pengecualian transaksi komersial untuk melikuidasi BUMN asing, yang terkendala oleh pemisahan antara *immunity from suit* dan *immunity from execution*; serta hambatan prosedural akibat belum diadopsinya *UNCITRAL Model Law on Cross-Border Insolvency* oleh Indonesia.

Kata Kunci: *Foreign State Immunity*, Badan Usaha Milik Negara, Kepailitan Lintas Batas, *Winding-Up Proceedings*, *Foreign State Immunities Act 1985*.

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THE APPLICATION OF FOREIGN STATE IMMUNITIES TO STATE-OWNED ENTERPRISES IN CROSS-BORDER INSOLVENCY: A CASE STUDY OF GREYLAG GOOSE LEASING 1410 DAC V. PT GARUDA INDONESIA LTD

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ABSTRACT

This research aims to analyze the application of foreign state immunity to state-owned enterprises ("SOEs") in cross-border insolvency, focusing on how Australian courts interpreted the winding-up proceedings exception under the Foreign State Immunities Act 1985 (Cth) ("FSIA") in Greylag Goose Leasing 1410 DAC v PT Garuda Indonesia Ltd and how the doctrinal difference between the commercial transaction exception and the winding-up proceedings (property exception) affects the application of state immunity against the same entity. The significance of this research is evident from the fact that even at the highest appellate level, the High Court of Australia was having a divided perspective, revealing an ongoing debate in international law over whether state immunity applies to SOEs in winding-up proceedings. This research employs a normative juridical method with statutory, historical, comparative, and conceptual approaches, supplemented by an interview with a cross-border insolvency practitioner.

The results indicate that the qualification of LLCs as separate entities entitled to immunity is grounded in domestic corporate law. It also found that the winding-up exception only applies to proceedings involving a third-party body corporate in which a foreign state has a proprietary interest, not to dissolving a separate entity itself. The dissolution of a foreign SOE through creditor-state courts is currently unprecedented, and maintaining immunity upholds the collective nature of insolvency proceedings and respects Garuda's homologation. The divergence between the High Court of Australia's decision on ACCC v Garuda (immunity denied) and Greylag v Garuda (immunity granted) should not be seen as judicial inconsistency but the distinct nature of each exception: the nature of the transaction and the judicial control over property.

This produces the following consequences: precedent protecting SOEs from foreign liquidation; dual characterisation of the same entity depending on the nature of the case; an alternative pathway through commercial exceptions to wind-up foreign SOEs, constrained by the distinction between immunity from suit and immunity from execution; and procedural barriers from Indonesia's failure to adopt the UNCITRAL Model Law on Cross-Border Insolvency.

Keywords: *Foreign State Immunity, State-Owned Enterprises, Cross-Border Insolvency, Winding-Up Proceedings, Foreign State Immunity Act 1985.*

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