

Directors' Liability for Losses Incurred in the Management of PT Merpati Nusantara Airlines, Persero

Authors : Eny Suastuti

Abstract : This paper is about state's capital equity in establishing State-owned Company (PT Merpati Persero). Under private law regime, PT Merpati Persero equity is a state asset allocated separately from the State Budget. Consequently, it is no longer a state asset; rather, it becomes a part of company assets. The adoption of Act No. 17 of 2003 on State Finance, Act No. 31 of 1999, which is amended by Act No. 20 of 2001 on Eradication of Corrupt Practices, Act No. 15 of 2004 on Auditing, Management, and Accountability of State Finance, and Act No. 15 of 2006 Audit Board raises legal issues of whether State-owned Company's (PT Merpati Persero) loss may be deemed as loss on state finance made by the Directors of PT Merpati Persero, which implication leads to corrupt practices conducted by the Directors. The principle of civil law states that state assets are separated from the state budget is not a government asset. Therefore the case of a lease agreement 2 (two) units of Boeing 737-400 and Boeing 737-500 between PT Merpati Nusantara Airlines with companies Third Stone Aircraft Leasing Group (TALG) the United States cannot be prosecuted under Articles 2 and 3 of Act No. 31 of 1999 Jo Act No. 20 of 2001 on Eradication of Corrupt Practices (Law PTPK). From this paper, three things are found. First, state's capital equity, which has been allocated separately from state assets in establishing the PT Merpati Persero is not state asset; rather, it is company's asset. Second, in the case of mismanagement leading to company loss, the Directors of PT Merpati Persero may not be charged with committing corrupt practice as prescribed in Articles 2 and 3 of Corrupt Practices Eradication Law. Third, misperception has been made by judicial practices since the courts consider loss in certain transaction made by Directors of PT Merpati Persero to be loss of state finance whose implication is applicability of Articles 2 and 3 of Corrupt Practices Eradication Law.

Keywords : corrupt practice, loss, state's capital equity, state finance (PT Merpati Persero)

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