

**PENERAPAN PRINSIP *BUSINESS JUDGMENT RULE* TERHADAP
KEPUTUSAN DIREKSI ANAK PERUSAHAAN BADAN USAHA MILIK
NEGARA PADA PERKARA TINDAK PIDANA KORUPSI DITINJAU
DARI UNDANG-UNDANG NOMOR 40 TAHUN 2007 TENTANG
PERSEROAN TERBATAS**

TESIS

*Diajukan Untuk Memenuhi Sebagian Persyaratan Untuk Memperoleh Gelar
Magister Ilmu Hukum*



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ABSTRAK

PENERAPAN PRINSIP *BUSINESS JUDGMENT RULE* TERHADAP KEPUTUSAN DIREKSI ANAK PERUSAHAAN BADAN USAHA MILIK NEGARA PADA PERKARA TINDAK PIDANA KORUPSI DITINJAU DARI UNDANG-UNDANG NOMOR 40 TAHUN 2007 TENTANG PERSEROAN TERBATAS

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Pengelolaan usaha BUMN Persero dan Anak Perusahaan BUMN dilaksanakan oleh Direksi dengan penuh tanggung jawab dan kehati-hatian berdasarkan maksud dan tujuan perusahaan (*fiduciary duty*). Prinsip *business judgment rule* hadir sebagai perlindungan yang diberikan kepada direksi apabila dirinya dituntut karena telah merugikan perusahaan. Adapun batasan penerapan prinsip *business judgment rule* diatur dalam Pasal 97 ayat 5 UU PT. Namun, penerapan pasal tersebut membutuhkan interpretasi penegak hukum terutama hakim pada persidangan. Adapun masalah yang diteliti adalah mengenai batasan dalam penerapan prinsip *business judgment rule* terhadap keputusan direksi Anak Perusahaan Badan Usaha Milik Negara studi kasus Putusan Mahkamah Agung Nomor 121 K/Pid.Sus/2020) dan perlindungan hukum bagi pemegang saham apabila Direksi melanggar prinsip *business judgment rule* menurut UU Perseroan Terbatas. Metode penelitian yang digunakan adalah yuridis normatif dengan pendekatan undang-undang dan pendekatan kasus. Penegak hukum seharusnya mempertimbangkan prinsip *business judgment rule* sebagai salah satu perlindungan bagi direksi yang beritikad baik dan penuh kehati-hatian dalam mengambil keputusan bisnis. Menurut penulis, penerapan *business judgment rule* pada kasus Karen Agustawan pada putusan Mahkamah Agung Nomor 121 K/Pid.Sus/2020 telah sesuai dengan amanah Pasal 97 ayat 5 UU PT. Hakim memberikan batasan penerapan *business judgment rule* pada kasus tersebut karena tidak adanya kecurangan (*freud*), tidak adanya benturan kepentingan dan tidak ada perbuatan melawan hukum dan kesalahan disengaja. Selain itu, dari putusan tersebut terdapat kepastian hukum yaitu Anak Perusahaan BUMN bukanlah BUMN, melainkan PT biasa. Kekayaan anak perusahaan badan usaha milik negara merupakan kekayaan BUMN yang telah dipisahkan menjadi modal Anak Perusahaan BUMN. Pengelolaan kekayaan tersebut dilakukan dengan berpedoman pada konsepsi korporasi yaitu tata kelola perusahaan yang baik. Kerugian Anak Perusahaan BUMN bukanlah termasuk kerugian keuangan Negara melainkan kerugian BUMN Persero sebagai pemegang saham pada Anak Perusahaan BUMN. PT Pertamina (Persero) adalah pemegang saham pada Anak Perusahaan BUMN PT Pertamina Hulu Energi. Perlindungan hukum bagi pemegang saham apabila direksi melanggar prinsip *business judgment rule* melalui rapat umum pemegang saham, pemeriksaan terhadap perusahaan, gugatan dan pembentukan organ independen perusahaan.

Kata Kunci : *Business Judgment Rule*, Direksi, Anak Perusahaan BUMN

ABSTRACT

THE APPLICATION OF BUSINESS JUDGMENT RULE PRINCIPLE TO THE DECISION OF THE BOARD OF DIRECTORS IN A SUBSIDIARY OF STATE-OWNED ENTERPRISE IN THE CASE OF CORRUPTION CRIMES BASED ON LAW NO. 40 YEAR 2007 ON LIMITED LIABILITY COMPANIES

(Irma Suryani Syair, 1920112044, *Master of Law, Postgraduate Faculty of Law, Andalas University, 133 pages, Year 2022*)

The management of the state-owned enterprises business and subsidiaries of state-owned enterprises is carried out by the Board of Directors with full responsibility and prudence based on the purposes and objectives of the company (fiduciary duty). The principle of business judgment rule exists as a protection given to the board of directors if he is sued for harming the company. The limitations on the application of the business judgment rule principle are regulated in Article 97 paragraph 5 of the Law No. 40 Year 2007 on Limited Liability Companies. However, the application of the article requires the interpretation of law enforcement, especially judges at trial. The issues studied are regarding the limitations in the application of the business judgment rule principle to the decisions of the subsidiaries directors of State-Owned Enterprises (case study of Supreme Court Decision Number 121 K / Pid.Sus / 2020) and legal protection for shareholders if the Board of Directors violates the principle of business judgment rule according to the Limited Liability Company Law. The research method used is normative juridical with a statutory approach and a case approach. Law enforcement should consider the principle of business judgment rule as one of the protections for directors who are in good faith and full of prudence in making business decisions. Supposedly, the application of the business judgment rule in Karen Agustian's case in the Supreme Court decision Number 121 K / Pid.Sus / 2020 is in accordance with the mandate of Article 97 paragraph 5 of the Law No. 40 Year 2007 on Limited Liability Companies. The judge placed limits on the application of the business judgment rule in the case because of the absence of fraud (freud), the absence of conflict of interest and no unlawful acts and willful misconduct. In addition, from the decision, there is legal certainty, namely that the subsidiary of a state-owned enterprise is not a state-owned enterprise, but an ordinary limited liability companies. The wealth of subsidiaries of state-owned enterprises is the wealth of state-owned enterprises that have been separated into the capital of subsidiaries of state-owned enterprises. The management of wealth is carried out based on the corporate conception, namely good corporate governance. The losses of subsidiaries of state-owned enterprises do not include state financial losses but rather losses of state-owned enterprises as shareholders in subsidiaries of state-owned enterprises. PT Pertamina (Persero) is a shareholder in a subsidiary of the State-owned company PT Pertamina Hulu Energi. Legal protection for shareholders if the board of directors violates the principles of business judgment rule are through general meeting of shareholders, examination of the company, lawsuit and the formation of an independent organ of the company.

Keywords : *Business Judgment Rule, Board of Directors, Subsidiaries of State-Owned Enterprise*