

Prinsip business judgment rules terhadap unsur melawan hukum pada tindak pidana korupsi (Studi kasus putusan 36/Pid/B/TPK/2013/PN. JKT.PST dengan terdakwa Hotasi Nababan mantan Direktur PT. Merpati Nusantara Airlines) = Business judgment rule principle towards tort unsure of corruption criminal act (Case study decision 36/Pid/B/TPK/2013/ PN.JKT.PST with defendant Hotasi Nababan former Director of PT. Merpati Nusantara Airlines

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Abstrak

Banyak sekali kasus mengenai tindak pidana korupsi yang berkaitan dengan pengambilan keputusan direksi dalam persero. Perbuatan direksi dalam pengelolaan persero seringkali yang dianggap menimbulkan kerugian tersebut dikategorikan sebagai tindak pidana korupsi. Padahal jika dilihat dalam Undang-Undang No. 19 Tahun 2003 tentang BUMN, pengelolaan persero harus berdasarkan prinsip-prinsip perusahaan yang terdapat pada Undang-Undang No. 40 Tahun 2007 tentang Perseroan Terbatas.

Penelitian ini membahas bagaimana pengaturan dalam penentuan kerugian Negara dalam tindak pidana korupsi serta bagaimana pengambilan keputusan dalam perjanjian perdata yang dilakukan oleh direksi persero dilindungi oleh prinsip Business Judgment Rules. Di akhir penelitian, peneliti berkesimpulan bahwa pengaturan kerugian Negara telah diatur dalam Undang-Undang Pemberantasan Tindak Pidana Korupsi namun belum jelas mengatur mengenai kerugian Negara sehingga harus merujuk pada pengertian kerugian Negara pada Undang-Undang tentang Perbendaharaan Negara. Pada setiap pengambilan keputusan direksi persero yang telah berdasarkan prinsip kehati-hatian tidak dapat dikategorikan sebagai perbuatan tindak pidana korupsi karena sudah dilindungi oleh prinsip Business Judgment Rules.

.....There are so many cases of corruption related to the decision-making board of directors in state owned. Any losses incurred in the management of state-owned is often considered as a disadvantage State, and the acts of directors are considered to cause harm is categorized as a crime of corruption. In fact, when viewed in Law No.19 of 2003 on state-owned enterprises, state-owned management must be based on firm principles contained in Law No. 40 of 2007 on Limited Liability Companies. So that the decision-making board of directors who have been in accordance with the procedures and the precautionary principle, the principle can be protected by The Business Judgment Rule, adopted in Article 97 paragraph (5) of Law No. 40 of 2007.

This study discusses how regulation in the State in determining the loss of corruption and how decision-making in a civil agreement made by the directors of state-owned protected by the Business Judgment Rules principle. At the end of the study, the researchers concluded that the loss of state regulation in the Law on Corruption Eradication has not been clearly set the losses that the State should refer to the sense of loss the State in the Law on the State Treasury. At each decision-making limited company directors who have been based on the principle of prudence can not be categorized as a criminal act of corruption because it is protected by the Business Judgment Rules principle.