

Penerapan prinsip duty of care direksi dalam perjanjian yang dibuat oleh perseroan terbatas = Implementation of duty of care principle of board of directors in the agreement entered into by limited liability company

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Abstrak

Direksi adalah salah satu organ Perseroan Terbatas yang berwenang dan bertanggung jawab penuh atas pengurusan suatu Perseroan Terbatas. Direksi dalam menjalankan tugasnya harus disesuaikan dengan maksud dan tujuan perseroan. Direksi juga berwenang untuk mewakili Perseroan, baik di dalam maupun di luar pengadilan sesuai dengan ketentuan anggaran dasar Perseroan. Tindakan seorang Direksi adalah suatu hal yang sangat penting untuk kelangsungan dan perkembangan Perseroan yang diurusnya. Dalam kepengurusannya, Direksi wajib menjalankan fiduciary duty yang didalamnya meliputi juga duty of care dan duty of loyalty.

Dalam menjalankan tugas fiduciary duty-nya tersebut direksi dilindungi oleh Business Judgement of Rule, sehingga apabila perseroan mengalami kerugian maka direksi hanya mempunyai tanggungjawab yang terbatas dan tidak akan dimintakan pertanggungjawaban secara pribadi. Tetapi didalam kasus PT.X ini, direksi telah lalai dalam melaksanakan prinsip Duty of care dalam perjanjian yang dibuat atas nama PT.X, sehingga mengakibatkan kerugian bagi PT.X yang diurusnya. Hal ini berakibat bahwa direksi dapat dimintakan pertanggungjawaban secara pribadi terhadap kerugian yang diderita oleh PT.X.

.....Board of Director is an organ in a Limited Liability Company fully authorized and responsible on the management of the Limited Liability Company. Board of Director in carrying out its duty must comply with the aims and objectives of the company. The Board of Director is also authorized to represent the company, within or outside the court pursuant to the articles of association of the company. Action conducted by a Director in the company has very significant role in the continuity and development of the company he or she managed. In carrying out its managerial actions, the Board of Director must perform fiduciary duty principle within which also included duty of care and duty of loyalty.

In performing its fiduciary duty, the Board of Directors is protected by Business Judgement of Rule, so that in the case the company experienced of loss, the Board of Director will only have limited responsibility, and will not be claimed for its personal responsibility. However, in this PT.X case, the Board of Director had failed to perform Duty of Care principle in the agreement it made on behalf of PT.X, which caused PT.X he managed experiencing loses. This case cause the Board of Directors can be prosecuted personally against the lost incurred by PT.X.