

Penerapan doktrin duty of care dan business judgment rule dalam putusan nomor: 428/PDT.G/2013/PN.JKT.PST = The implementation of doctrine duty of care and business judgment rule in case no. 428/PDT.G/2013/PN.JKT.PST / Wihelmus Jemarut

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Abstrak

ABSTRAK

Ada dua pertanyaan dasar yang diuraikan dalam tulisan ini. Pertama, bagaimana pelaksanaan kewenangan Direksi dalam batasan doktrin duty of care dan business judgement rule? Kedua, bagaimana penerapan duty of care dan business judgment rule dalam perkara No. 428/PDT.G/2013/PN.JKT.PST? Metode penelitian yang dipakai adalah penelitian normatif dengan menggunakan tiga pendekatan, yakni doktrinal, perundang-undangan dan kasus. Kesimpulan dari tulisan ini, yakni, pertama, doktrin duty of care merupakan dasar berlakunya doktrin business judgment rule. Direksi mendapat perlindungan hukum berdasarkan teori business judgment rule apabila duty of care terpenuhi. Kedua, doktrin duty of care dan business judgment rule terpenuhi dalam putusan perkara No. 428/PDT.G/2013/PN.JKT.PST. Penulis menyarankan agar undang-undang perseroan terbatas perlu membuat ketentuan secara tegas tentang standar kehati-hatian dan standar adanya itikad baik dalam mengurus perseroan.

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ABSTRACT

There are two main questions that explained in this research. First, how is the implementation of the authority of the Board of Directors in the frame of the doctrine ?duty of care? and ?business judgment rule?? Second, how is the implementation of doctrine ?duty of care? and ?business judgment rule? in case No. 428/PDT.G/G/2013/PN.JKT.PST? The research method used in this writing is normative research method with three approaches: doctrinal, legislation, case. There are two conclusions that the researcher found from the research in this writing: First, the ?duty of care? doctrine is the basic concept to implement the doctrine ?business judgment rule?. The board of director can get the legal protection based on the theory ?business judgment rule? if the doctrine duty of care is fulfilled. Second, doctrine duty of care and business judgment rule is fulfilled in case No. 428/PDT.G/2013/PN.JKT.PST. The researcher suggests that the legislation of Limited Liability Company (Ltd.) need to make the clear and assertive provision about the standard of circumspection and the standard of good intention from the Board of Director in managing the company