

Penegakan prinsip business judgement rule terhadap keputusan direksi perseroan analisis kasus keputusan pemberian fasilitas pembayaran pesawat terbang kepada PT Mandala Airlines oleh direksi PT PANN Persero = The enforcement of business judgement rule principle against the decision of the board of directors of the company case analysis of the decision to grant aircraft financing facility to PT Mandala Airlines by the board of directors of PT PANN Persero

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Abstrak

ABSTRAK

Nama : Indita Fardhani Malfian
Program Studi : Hukum Ekonomi
Judul : Penegakan Prinsip Business Judgement Rule Terhadap Keputusan Direksi Perseroan Analisis Kasus Keputusan Pemberian Fasilitas Pembiayaan Pesawat Terbang Kepada PT Mandala Airlines oleh Direksi PT PANN Persero
Tesis ini membahas perihal prinsip business judgement rule sebagai suatu prinsip dalam hukum perusahaan yang memberikan perlindungan bagi Direksi atas keputusan bisnis yang tidak dibuatnya secara mandiri. Ditengarai PT PANN Persero merupakan BUMN Persero dengan core business dibidang usaha pembiayaan pengadaan kapal berdasarkan Peraturan Pemerintah No. 18 Tahun 1974 tentang Penyertaan Modal Negara Republik Indonesia Untuk Pendirian Perseroan Persero Dalam Bidang Pengembangan Armada Niaga Nasional. Suatu Hari Pemerintah RI selaku pemegang saham meminta perseroan untuk melaksanakan pemberian fasilitas pembiayaan pesawat terbang ke sejumlah perusahaan maskapai penerbangan salah satunya yaitu PT Mandala Airlines berdasarkan Surat Menteri Keuangan No. SLA-775/DP3/1994 tanggal 9 November 1994, yang mana tidak sesuai dengan maksud dan tujuan PT sebagaimana tertera dalam PP No. 18/1974 dan Anggaran Dasar PT. Atas kegiatan tersebut, PT PANN Persero mengalami kerugian sebab PT Mandala Airlines sebagai lessee pesawat belum melunasi sebagian besar utangnya atas pembiayaan pesawat terbang sebab gagal melakukan restrukturisasi utang. Jika ditinjau dari sisi PT PANN Persero, kerugian tersebut terjadi bukan dikarenakan Direksi PT PANN Persero telah melanggar prinsip duty of care saat memutuskan untuk melakukan kegiatan pemberian fasilitas pembiayaan pesawat terbang kepada PT Mandala Airlines tersebut. Faktanya, sebelum dan saat dilakukannya proyek ini Direksi sudah menyampaikan fakta-fakta yang ada di perusahaan kepada pemegang saham serta mengingatkan pemegang saham bahwa keputusan Direksi untuk melakukan pengurusan PT berdasarkan prinsip fiduciary duty dalam UUPT harus semata-mata demi kepentingan PT sesuai maksud dan tujuan PT serta memperhatikan ketentuan larangan dan batasan dalam peraturan perundang-undangan serta anggaran dasar PT yang berlaku. Namun, peringatan Direksi tersebut diacuhkan oleh para pemegang saham sehingga Direksi PT PANN Persero disini cuma melaksanakan hal yang telah diamanatkan para pemegang saham tersebut. Berdasarkan alasan ini, Direksi PT PANN Persero seyogyanya berhak memperoleh perlindungan dari tanggung jawab pribadi atas kerugian yang dialami PT melalui prinsip Business Judgement Rule sebagaimana diatur dalam Pasal 97 ayat 5 UUPT sebab terjadi penyalahgunaan keadaan Misbruik van Omstadiheden terhadap Direksi PT PANN Persero saat menyetujui pelaksanaan proyek pemberian fasilitas pembiayaan pesawat terbang yang mengakibatkan PT PANN Persero tidak memiliki opsi lain, selain menjalankan amanat Pemerintah RI

selaku pemegang saham, walaupun aktivitas tersebut sesungguhnya bertolak belakang dengan core business PT sebagaimana tertera dalam Pasal 2 PP No. 18/1974. Kata Kunci: Direksi, Fiduciary Duty, Business Judgement Rule.

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ABSTRACT

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Title The Enforcement of Business Judgement Rule Principle Against the Decision of the Board of Directors of the Company
Case Analysis of the Decision to Grant Aircraft Financing Facility to PT Mandala Airlines by the Board of Directors of PT PANN Persero
This Thesis discusses about the principle of business judgement rule as a principle in Corporate Law which gives a protection to the Board of Directors on business decision which is not made independently by them. PT PANN Persero is a state owned enterprise with core business in the field of ship procurement financing based on Government Regulation No.18 of 1974 regarding Capital Participation of Republic of Indonesia for the Establishment of the Company in the field of National Trade Fleet Development. One day, the Indonesian Government as a shareholder asked the Company to implement the provision of aircraft financing facility to a numerous airline companies one of them is PT Mandala Airlines based on the Letter of Finance Minister No S 524 MK.016 1994 dated 12 July 1994 and Subsidiary Loan Agreement No. SLA 775 DP3 1994 dated 9 November 1994, which does not appropriate with the Company's purposes and objectives as stated in GR No.18 1974 and Article of Association of the Company. Because of that activity, PT PANN Persero suffered a loss because PT Mandala Airlines as the lessee of the airplane has not paid off most of its debt on aircraft financing because failed to do debt restructuring. If viewed from the side of PT PANN Persero, such loss occurred not because the Board of Directors of PT PANN Persero has violated the principle of duty of care when decided to conduct the aircraft financing facility to PT Mandala Airlines. In fact, before and during this project is implemented the Board of Directors of PT PANN Persero has conveyed the facts that exist in the company to the shareholder as well as reminded them that the decision of The Board of Directors to perform the management of the Company based on the fiduciary duty principle in the Company Law must be solely for the interests of the Company pursuant to its purposes and objectives as well as notice the provisions of prohibitions and restrictions in the applicable regulations and Article of Association of the Company. However, such warnings are ignored by the shareholders so that the Board of Directors of PT PANN Persero here only did what has been mandated by the Company's shareholders. Based on that reason, the Board of Directors of PT PANN Persero should be entitled to get protection from personal responsibility through the business judgement rule principle as regulated in Article 97 paragraph 5 of the Company Law for losses suffered by the company because there is a misuse of circumstances *Misbruik van Omstgigheden* against the Board of Directors of PT PANN Persero when approved the execution of granting aircraft financing facility which resulted PT PANN Persero having no other options, besides carried out the mandate of the Government of Republic of Indonesia as a shareholder, though such activity in fact is contrary to the Company's core business as stated in Article 2 of GR No.18 1974. Keywords Board of Directors, Fiduciary Duty, Business Judgement Rule.