

Kebijakan dalam proses pengadaan barang dan jasa di PT PLN Persero berdasarkan prinsip business judgement rule = Policy in the process of the procurement of goods and services of PT PLN Persero based on the principle of business judgement rule

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Abstrak

ABSTRAK

Luasnya lingkup keuangan Negara berpotensi menyebabkan pemahaman kerugian BUMN merupakan tindak pidana korupsi. Menurut teori transformasi kekayaan Negara penyertaan modal negara pada BUMN telah bertransformasi menjadi kekayaan BUMN. PT PLN Persero sebagai perseroan terbatas memberlakukan ketentuan Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas termasuk prinsip Business Judgement Rule dalam Pasal 97 sebagai perlindungan hukum atas pertanggungjawaban keputusan bisnis yang mengakibatkan kerugian perusahaan. Suatu ukuran Business Judgment Rule adalah kerugian yang timbul bukan karena kesalahan/kelalaian direksi, direksi beritikad baik dan penuh kehati-hatian untuk kepentingan dan tujuan Perseroan, tidak memiliki benturan kepentingan dan telah mengambil tindakan mencegah timbul atau berlanjutnya kerugian. Penelitian hukum yuridis normatif ini dilakukan melalui studi kepustakaan dan wawancara. Direksi PT PLN Persero berusaha konsisten menjalankan prinsip Business Judgment Rule sejak tahap perencanaan pengadaan hingga manajemen aset dengan mengacu pada ketentuan Anggaran Dasar, batasan kewenangan, Board of Manual, ketentuan yang berlaku dan mengadopsi good procurements yaitu mengimplementasikan Pendekatan strategis, Fokus Value for Money, Organisasi, Kultur Profesionalisme dan Pengendalian Risiko. Pengambilan keputusan/kebijakan korporasi dilengkapi dengan justifikasi. Apabila terdapat indikasi kerugian pada pengadaan barang dan jasa di PT PLN Persero untuk penyelesaian permasalahan hukumnya sebaiknya ditinjau terlebih dahulu berdasarkan Hukum Perdata dan Hukum Administrasi. Pertanggungjawaban Hukum Pidana seharusnya menjadi ultimum remedium atau sarana terakhir yang diterapkan.

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ABSTRACT

The widespread scope of a state's financial has the potential to cause the financial loss unrelated to BUMN state owned enterprises to be the kind of criminal acts of corruption. Whereas according to the theory of transformation of state assets, the partial state's capital in BUMN has transformed to become the asset of BUMN. Considering that PT PLN State owned electricity company is a limited liability company, in running their routine activity, therefore, they apply the provisions of Law No. 40 Tahun 2007 on limited liability company inclusive of Business Judgement Rule principle in article 97 that constitutes legal protection over the accountability of the funds in each and every business's decision that results in a loss of the company. A measure of Business Judgment Rule is the loss that does not occur because of the fault of the board of directors, in fact, they have good intentions and conduct carefully according to the benefit and objective of the company, does not have personal interest, and has taken actions to prevent the occurrence or continuity of the loss. Business Judgment Rule must be applied in the process first started in the pre decision, the decision phase, up to the post phase decision. This normative legal research method is used

literature study and interviews. The boards of directors of PT PLN Persero have consistently conducted the principle of Business Judgement Rule started in the planning phase of procurement of goods and services up to management assets based on The Articles Of Association, provisions of authority constraints Board of Manual of Director and Commissioners Indonesian law regulations, adopting good procurements by applying a Strategic Approach, Value focus for Money, and Professionalism Organization, Professionalism Culture and Risk Control. Every decision or corporate policies shall be conducted with any justification. If there is any loss damage indication in many of the procurement of goods and services in reinsurance in PTPLN Persero , the settlement of the lawsuit should be reviewed beforehand based on civil law and through the administrative law. The accountability reports on the criminal law are supposed to be the ultimum remedium or the last facility applied.