

Penerapan doktrin business judgment rule terkait pertanggungjawaban pidana direksi BUMN dalam tindak pidana korupsi = The implementation of business judgment rule doctrine related to criminal liability of directors of state-owned enterprise BUMN in corruption crime

Nurul Fauziah Hambali, author

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Abstrak

ABSTRAK

Tesis ini membahas tentang pertanggungjawaban direksi terhadap kebijakan bisnisnya yang menimbulkan kerugian bagi perseroan dan keuangan negara sehingga dianggap sebagai tindak pidana korupsi, manakala perseroan tersebut merupakan BUMN. Akan tetapi, menurut doktrin Business Judgment Rule, direksi tidak serta-merta dapat dimintai pertanggungjawaban secara pribadi. Hal ini dapat dilihat pada contoh kasus pengadaan sewa menyewa pesawat yang melibatkan Direktur Utama PT. Merpati Nusantara Airlines PT. MNA dan kasus penjualan aset perseroan oleh Direktur Utama PT. Industri Pangan Nusantara PT. INSAN. Adapun metode penelitian adalah penelitian hukum normatif. Doktrin Business Judgment Rule telah diakomodir dalam undang-undang, dengan melihat ketentuan Pasal 97 Ayat 5 Undang-Undang Nomor 40 Tahun 2007. Terkait dengan kasus korupsi yang melibatkan direksi karena kerugian yang terjadi akibat kebijakan bisnisnya, doktrin Business Judgment Rule dapat dijadikan sebagai alasan penghapus pidana berdasarkan 2 dua hal yaitu noodtestand dan sifat melawan hukum materiil secara negatif. Doktrin Business Judgment Rule dapat dijadikan sebagai alasan penghapus pidana berdasarkan sifat melawan hukum materiil secara negatif dalam kasus PT. MNA. Sedangkan dalam kasus PT. INSAN, kedudukan doktrin Business Judgment Rule dapat dijadikan sebagai alasan penghapus pidana berdasarkan noodtestand.

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ABSTRACT

This thesis discusses about the responsibility of the directors of its business decisions that cause losses for the company and state finance, Therefore, it is considered as a criminal act of corruption when the company is a State Owned Enterprise BUMN . However, according to Business Judgment Rule doctrine, directors cannot be appealed for their personal liability. It is observable in the case of procurement of aircrafts lease which involved former general manager of PT. Merpati Nusantara Airlines PT. MNA and in the case of company asset sale by President Director of PT. Food Industry Nusantara PT. INSAN. The research method used in this thesis is normative law research. Business Judgment Rule doctrine has been accommodated by law, subject to the provisions of Law of The Republic of Indonesia Number 40 of 2007, Article 97 paragraph 5 of the 1945 Constitution of the Republic of Indonesia. The aforementioned cases, which is caused by losses of poor business decisions involving the directors, can be the excuse to abolish Business Judgment Rule doctrine by two 2 things noodtestand and negative unlawful nature of judicial law. Business Judgment Rule doctrine can serve as an excuse of criminal law abolition based on the negative unlawful nature of judicial law in PT. MNA case, whereas in PT. INSAN case, the position of Business Judgment Rule doctrine can be applied as an excuse of criminal law abolition based on noodtestand.