

Prinsip Business Judgement Rule Pimpinan/Direksi Operator Investasi Pemerintah Dalam Pelaksanaan Investasi Pemerintah = Principles of Business Judgment Rule for Leaders/Directors of Government Investment Operators in the Implementation of Government Investment

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Abstrak

Tesis ini membahas terkait prinsip business judgement rule yang akan memberi perlindungan hukum pimpinan/direksi Operator Investasi Pemerintah dalam pelaksanaan Investasi Pemerintah. Investasi Pemerintah merupakan hal yang baru yang diterapkan di Indonesia berdasarkan Peraturan Pemerintah Nomor 63 tahun 2019 tentang Investasi Pemerintah (PP No. 63/2019), yang secara operasional dilaksanakan oleh Operator Investasi Pemerintah (OIP). Dalam menjalankan Investasi Pemerintah, OIP berpotensi menghadapi risiko investasi. Untuk melindungi pimpinan/direksi OIP dari pertanggungjawaban hukum atas kerugian tersebut, PP No.63/2019 mengadopsi prinsip business judgement rule. Namun di kalangan aparat penegak hukum maupun hakim prinsip ini tidak sepenuhnya diterapkan. Hal tersebut dapat menghambat tugas OIP dalam melaksanakan tugas Investasi Pemerintah, karena dibayangi ketakutan pertanggungjawaban hukum jika terjadi kerugian. Penelitian ini menggunakan metode yuridis normatif, dimana Penulis melakukan penelaahan terhadap bahan hukum primer berupa peraturan perundang-undangan dan putusan hakim. Dari penelitian ini dapat disimpulkan bahwa secara normatif PP No.63/2019 yang mengadopsi prinsip business judgement rule seharusnya mampu memberi perlindungan hukum bagi pimpinan/direksi OIP. Penulis menyarankan agar perlindungan hukum tersebut lebih optimal, maka perlu dilakukan hal-hal sebagai berikut: 1) mengatur Investasi Pemerintah dalam bentuk undang-undang; 2) menegaskan dalam regulasi bahwa Investasi Pemerintah masuk ke dalam ranah keuangan privat (untuk mencegah aparat penegak hukum mudah mengkaitkan kerugian investasi dengan kerugian keuangan negara); dan 3) mensosialisasikan business judgement rule di kalangan aparat penegak hukum dan hakim agar memiliki kesamaan pemahaman.

.....This thesis discusses the principles of business judgment rule that will provide legal protection for the leaders/directors of Government Investment Operators in the implementation of Government Investments. Government Investment is a new thing implemented in Indonesia based on Government Regulation Number 63 of 2019 concerning Government Investment (Government Regulation No. 63/2019), which is operationally implemented by Government Investment Operators. In carrying out Government Investment, Government Investment Operators faces investment risk. In order to protect the Government Investment Operators leaders/directors from legal liability for these losses, Government Regulation No. 63/2019 applies the business judgment rule principle. However, among law enforcement officers and judges this principle has not been fully implemented. This can hinder Government Investment Operators' task in carrying out Government Investment duties, because it is overshadowed by the fear of legal liability in the event of a loss. This study uses a normative juridical method, where the author reviews the primary legal materials in the form of statutory regulations and judges' decisions. From this research, it can be said that normatively Government Regulation No. 63/2019 which applies the business judgment rule principle should be able to provide legal protection for Government Investment Operators leaders/directors. The author suggests that

the legal protection is more optimal, it is necessary to do the following things: 1) regulate Government Investment in the form of a law; 2) it is stated in the financial regulations that Government Investment enters the private sphere (to prevent law enforcement officers from easily linking investment losses with state financial losses); and 3) socializing the business judgment rule among law enforcement officers and judges in order to have a common understanding.