

ABSTRAK

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The Implementation of Business Judgment Rule Doctrine in Decision Making by the Directors of State-Owned Limited Liability Company (Persero) reviewed based on Law Number 40 of 2007 concerning Limited Liability Companies and Law Number 19 of 2003 concerning State-Owned Enterprises

(xiii + 132 pages + 1 attachments)

Board of Directors (BOD) as an organ of the limited liability company, has an important role in carrying out management interest to ensure it achieves the aims and objectives of the Company. BOD is required to be able to make decisions quickly, accurately, and in the most profitable way for the Company. Similarly, BOD of the State-Owned Limited Liability Company (Persero) also has a responsibility to conduct the interests and goals of State-Owned Enterprise (SOE). In making business decisions, Directors of Persero have the obligation to comply with laws, articles of association, the principles of Good Corporate Governance and all internal regulations of SOE Persero. Fundamentally, all business activities have a risk, widely known as "no risk, no business". Thus, there is a doctrine known as Business Judgment Rule that can protect business judgment of the BOD of Persero if the business judgment causes losses to the Company in the future. A problem often occurs when the BOD of the Persero have implemented the applicable legal regulations and have also considered all business risks yet it causes losses, the BOD of the Persero are instead asked to be personally accountable before the law because they are considered to harm state finances and as if there is no legal protection that can protect the business decisions of the BOD of Persero. This research uses normative-empirical legal approach by looking at the Indonesia Limited Liability Company Law (UU PT 40/2007) and State-Owned Enterprise Law (UU BUMN 19/2003) and using a live case study, in the case of Karen Agustiawan as the former President Director of PT Pertamina (Persero) and the case of Hotasi Nababan as the former President Director of PT Merpati Nusantara Airlines as references. The results of this research indicate that the existence of the doctrine of the Business Judgment Rule in Indonesia law and regulations, the BOD of Persero can be exempted from personal accountability as long as the business decisions are not made on the basis of fraud, conflict of interest, illegality, and gross negligence.

Keyword: BOD State-Owned Limited Liability Company (Persero), Business Judgment Rule, Accountability, Legal Protection, Good Corporate Governance

Reference: 70 (1976-2021)