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THE APPLICATION OF BUSINESS JUDGMENT RULE PRINCIPLE TO THE DECISION OF THE BOARD OF DIRECTORS IN A SUBSIDIARY OF STATE-OWNED ENTERPRISE IN THE CASE OF CORRUPTION CRIMES BASED ON LAW NO. 40 YEAR 2007 ON LIMITED LIABILITY COMPANIES

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Abstract: *The management of the state-owned enterprises business and subsidiaries of state-owned enterprises is carried out by the Board of Directors with full responsibility and prudence based on the purposes and objectives of the company (fiduciary duty). The principle of business judgment rule exists as a protection given to the board of directors if he is sued for harming the company. The limitations on the application of the business judgment rule principle are regulated in Article 97 paragraph 5 of the Law No. 40 Year 2007 on Limited Liability Companies.*

Key Words: *Business Judgment Rule, Board of Directors, Subsidiaries of State-Owned Enterprise.*

1. INTRODUCTION:

The problems of State-Owned Enterprises (BUMN) Persero and BUMN Subsidiaries now revolve around capital from state assets which have been separated. Referring to the BUMN Law and Law Number 40 of 2007 concerning Limited Liability Companies (UU PT), it adheres that the capital that has been separated from state assets is included as BUMN Persero capital, giving 2 (two) consequences, namely first, capital from state assets which is separated into BUMN BUMN capital as company money. Second, with the existence of capital from the separated state assets, the state becomes a shareholder in BUMN Persero as much as the capital entered.

2. THEORITICAL FRAMEWORK:

a. Legal Certainty Theory
According to Sudikno Mertokusumo, legal certainty is a guarantee that the law is enforced, that those entitled by law can obtain their rights and that decisions can be enforced.[1]

b. Legal Entity Theory
According to Friedrich Carl Von Savigny, a legal entity is an abstraction, so it is impossible to become a legal subject that can enter into legal relations.[2]

c. Legal Protection Theory
According to Satjito Rahardjo legal protection is an effort to protect someone's interests by allocating a human right to him to act in the context of his interests.[3]

3. LITERATURE REVIEW:

The purpose *business judgment rule* limits of authority and is carried out with great care and good faith.[4]

The David H. Balley stated that the focus of corruption lies in the existence of an element of abuse of authority which results in financial losses to the State and society.[5]

4. METHOD:

The method used in this study is a normative juridical approach, which is an approach that is focused on studying and researching legal material with reference to legal norms contained in laws and regulations, court decisions and legal norms that exist in society.[6]

5. DISCUSSION:

In principle, the management of BUMN Persero is carried out by the Directors under the supervision of the Board of Commissioners at BUMN Persero. These two organs are ordered by the Company Law to carry out the principle *of duty of care*, which in essence means carrying out their duties and authorities with full responsibility and prudence based on the aims and objectives of the Persero BUMN. The Board of Directors is the only organ that is given the authority to carry out tasks in administering and managing BUMN Persero in order to achieve company goals. The Board of Directors has the right to represent state-owned enterprises internally and externally. The amount of authority given to the Board of Directors also has an impact on the magnitude of their responsibilities as representatives and management of the company. Sometimes, in the business world, Directors are required to make the right decisions even though these decisions are not always profitable for the company. As long as the board of directors manages the PT in accordance with prudence and responsibility solely for the interests of the PT, then the directors can be said to have carried out a *fiduciary duty* which the directors receive protection through the principle of the *business judgment rule* as happened in the case of Karen Agustiawan.

6. ANALYSIS:

A. Principles *Business Judgment Rule* to Decisions of the Board of Directors of Subsidiaries of State-Owned Enterprises (Case Study of Supreme Court Decision Number 121 K/Pid.Sus/2020)

The limitation *business judgment rule* in the Company Law is that the directors have taken steps to prevent the occurrence or the loss continues. As previously described, business decisions made by Karen Agustiawan have gone through a *due diligence process* to prevent losses. Karen Agustiawan representing PT Pertamina (Persero) on August 26 2013 has taken steps to*withdraw*the 10% Participating Interest ownership in the BMG Block to prevent the company from increasing losses due to a decrease in the value of the project's reserves.

B. Legal Protection for Shareholders If the Board of Directors Violates the *Business Judgment Rule* According to the Limited Liability Company Law

Shareholders can increase their control by voting at the GMS regarding important policies within the company. If necessary, shareholders can add more rigid rules regarding the limits of the directors' authority in making business decisions so that there are no violations of the *business judgment rule* by the directors that are detrimental to the company.

7. CONCLUSION

From the discussion as explained earlier, several conclusions can be drawn, including:

1) The limits on the application of the *business judgment rule* that must be fulfilled by the directors are regulated according to Article 97 Paragraph (5) of the Company Law.
2) Legal protection for shareholders if the Board of Directors violates the principle of *business judgment rule* according to the Limited Liability Company Law, consisting of preventive legal protection through shareholder control at the GMS and establishing company independent organs such as Independent Commissioners, Representative Commissioners and Committees.

REFERENCES:

1. Sudikno Mertokusumo, 2007, *Mengenal Hukum Suatu Pengntar*, Liberty, Yogyakarta, page160.
2. Chidir Ali, 2014, *Badan Hukum*, PT Alumni, Bandung, 2014, page 31-32

3. Satjipro Rahardjo, 2003, *Sisi-Sisi Lain dari Hukum di Indonesia*, Kompas, Jakarta, page 121.
4. Asep N Mulyana, 2018, *Business judgment rule Praktik Peradilan Terhadap Penyimpangan Dalam Pengelolaan BUMN/BUMD*, PT Grasindo, Jakarta, page 24.
5. Elwi Danil, 2011, *Korupsi : Konsep, Tindak Pidana, dan Pemberantasannya*, Raja Grafindo Persada, Jakarta, 2011, page 6.
6. Zainuddin Ali, 2011, *Metode Penelitian Hukum*, Sinar Grafika, Jakarta, page 105.