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Implementation of Application Principle Business Judgement Rule on Case Action Criminal Corruption. (Case Study: Decision No. 121 K/Pid.Sus/2020)

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Abstract

Studies This discuss regarding the Implementation of the application principle *Business Judgment Rules* (BJR) in Decision No. 121 K/Pid.Sus/2020. At the Cassation Level, the *Judex Juris Court* through Decision No. 121 K/Pid.Sus/2020 emit decision Which different with the Court *Judex Facts* namely Decision No. 34/PID.TPK/2019/PT. DKI jo. Decision No. 15/Pid.Sus-TPK/2019/PN. Jkt.Pst. This study analyzes the reasons why the Panel of Cassation Judges applied the BJR principle in Decision No. 121 K/Pid.Sus/2020 and the legal implications arising from the application of the BJR principle by the Panel of Cassation Judges in Decision No. 121 K/Pid.Sus/2020. The study uses a qualitative method with a normative legal approach (*statute approach*), and a case approach *, namely the case of* BUMN corruption . Results studies This show, Assembly Judge Cassation in apply principle BJR in Decision No. 121 K/Pid.Sus/2020 was correct because its business decision was in accordance with the requirements in Article 97 paragraph (5) of Law No. 40 of 2007 concerning Companies. Limited, found 4 (four) implications law, among them namely the emergence disparity decision criminal vertical between justice *judex facti* and *judex juris* , although this criminal disparity can be justified because the Tribunal Judge Cassation has in accordance with its function as justice *judex juris* which applies the BJR principle which was previously not applied in the *judex facti trial* . Other implications include the acquittal of the defendant, the Public Prosecutor (Prosecutor) No can submit Review Return (PK) to Decision No. 121 K/Pid.Sus/2020, And can its use Decision No. 121 K/Pid.Sus/2020 as jurisprudence related to the implementation of the BJR principle in cases of business decisions in corporate corruption cases.

Keywords: Corruption Crimes in Ties, Business Judgement Rule, Pertamina BUMN, Limited Liability Company, Decision Gap.

Introduction

In the context of the corporate world, company directors are often faced with making business decisions that are full of risks, especially in sectors that involve large investments, such as the energy sector. In Indonesia, the concept of the Business Judgement Rule (BJR) has become an important reference for assessing whether directors can be held legally accountable for business decisions that result in losses. This principle provides protection to directors who make business decisions in good faith, without conflict of interest, and by considering the interests of the company, even though the decision results in losses. The background underlying this study is to evaluate the implementation of the Business Judgement Rule principle in the case of corruption at PT Pertamina, especially in the Supreme Court Decision No. 121 K/Pid.Sus/2020 concerning the former President Director of PT Pertamina, Karen Agustiawan. The Karen Agustiawan case is a real example of the application of BJR in Indonesia, especially in dealing with allegations of corruption related to investments made by PT Pertamina in the Basker Manta Gummy (BMG) block, Australia.

In 2009, Pertamina acquired a 10% stake in the block, but several years later, this investment was deemed detrimental to the state. In the first-level trial and appeal, Karen was found guilty and sentenced to prison and a fine. However, at the cassation level, the Supreme Court acquitted her by referring to the application of the BJR principle, considering that the business decision was made in good faith and in accordance with the interests of the company. The application of the Business Judgement Rule principle in this case has several legal implications.

First, there is a disparity in the verdict between the judex facti court (first instance and appeal) and the judex juris court (cassation). In the judex facti court, Karen was found guilty, while in the judex juris court, she was acquitted due to the application of the BJR principle. This disparity in the verdict shows a difference in legal interpretation regarding the responsibility of directors in making risky business decisions.

This study aims to analyze in more depth the reasons for the Cassation Panel of Judges to apply the Business Judgement Rule principle in Decision No. 121 K/Pid.Sus/2020 and the legal implications that arise from the application of this principle. One significant legal implication is that this decision can be used as jurisprudence in similar cases in the future, especially in cases involving business decisions in state-owned companies (BUMN).

Theoretically, this study adds to the body of knowledge regarding the application of the Business Judgement Rule doctrine in Indonesia, which although not explicitly stated in the law, has been implicitly adopted in Law No. 40 of 2007 concerning Limited Liability Companies. This law stipulates that directors cannot be held liable for company losses if they have carried out their duties in good faith, without conflict of interest, and in accordance with the intent and purpose of the company. According to Prasetyo & Hanifah (2021), BJR is recognized as an important mechanism in corporate decision-making, which protects directors from legal risks as long as decisions are made in good faith and in the interests of the company.

In practice, this study provides insight into legal and business circles regarding how risky business decisions can be protected by the Business Judgement Rule principle. For company directors, especially in BUMN, the application of this principle provides them with space to make risky decisions without having to worry about facing criminal sanctions, as long as the decision is taken in good faith and in accordance with the interests of the company. Indrajit & Widodo (2022) also emphasized that although BJR is not explicitly regulated in Indonesian regulations, its application in the Karen Agustiawan case reflects the increasingly widespread acceptance of this principle among the judiciary.

This study also emphasizes the importance of implementing the Business Judgement Rule principle in corporate law in Indonesia, especially in cases involving business decision-making in state-owned companies. With clear legal protection for directors, it is hoped that they will be freer to make strategic business decisions without worrying about criminal threats, as long as the decision is made responsibly and in good faith. As highlighted by Putra (2023), the implementation of BJR provides flexibility for directors to make high-risk decisions without fear of criminal liability, as long as they act in the interests of the company and in good faith.

Method

This study uses a normative legal approach with a qualitative method, which focuses on the analysis of laws and regulations, legal doctrines, and court decisions related to the application of the Business Judgement Rule (BJR) principle in corruption crimes. The case approach is used to analyze the Karen Agustiawan case, especially the Supreme Court Decision No. 121 K/Pid.Sus/2020. The primary data used include court decisions, such as Decision No. 121 K/Pid.Sus/2020 and related regulations, including Law No. 40 of 2007 concerning Limited Liability Companies and Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Corruption. Secondary data in the form of journals, articles, and legal literature are used to support the analysis. The data collection technique is carried out through literature studies, while the data analysis technique uses descriptive-analytical to interpret the relevance between legal theory and facts in the application of BJR.

Result and Discussion

Research result

In this study, the application of the Business Judgement Rule (BJR) is analyzed in the context of a corruption case involving the former President Director of PT

Pertamina, Karen Agustiawan. This case centers on a business decision made regarding an investment in the Basker Manta Gummy (BMG) oil block in Australia in 2009. At the first level, Karen was found guilty and sentenced to eight years in prison, but at the cassation level, the Supreme Court acquitted her by applying the BJR principle. The results of the study show that the Supreme Court's decision in Decision No. 121 K/Pid.Sus/2020 was based on the consideration that the business decision taken by Karen Agustiawan as President Director of PT Pertamina met the BJR requirements. The Board of Directors had acted in accordance with the good faith and prudence required in running the company, and there was no evidence to indicate a conflict of interest. The Supreme Court is of the opinion that the losses arising from the investment were not the result of Karen's negligence or personal error, but were part of the normal business risk in the company's operations.

In addition, the results of this study also show a disparity in decisions between the judex facti court (first instance and appeal) and the judex juris court (cassation). At the first instance, the Central Jakarta District Court in Decision No. 15/Pid.Sus-TPK/2019/PN Jkt.Pst found Karen guilty of committing a criminal act of corruption. This decision was later upheld by the Jakarta High Court in Decision No. 34/PID.TPK/2019/PT DKI. However, at the cassation level, the Supreme Court acquitted the defendant on the grounds that the business decision was made within the framework of fiduciary responsibility, which is protected by the BJR principle.

Another outcome is the identification that the BJR doctrine applied by the Supreme Court in this decision has significant legal implications, especially in cases involving business decisions in State-Owned Enterprises (BUMN). The Supreme Court acknowledged that business decisions, even though they are risky and result in losses, must still be viewed in the context of the broader interests of the corporation. If the decision is made in good faith and without conflict of interest, then the directors cannot be prosecuted criminally just because the final result is detrimental. The Supreme Court also emphasized that there was no evidence to show that Karen Agustiawan personally benefited from the investment made. This supports the application of BJR which protects directors from criminal prosecution in cases where they make reasonable business decisions based on the information available at the time.

Discussion

The application of the Business Judgement Rule (BJR) in Decision No. 121 K/Pid.Sus/2020 is an important step in the development of corporate law in Indonesia, especially regarding the responsibility of directors in making business decisions. BJR is a legal doctrine that provides protection to directors from lawsuits related to risky business decisions, as long as they act in good faith, have no conflict of interest, and act in the best interests of the company. According to a recent study by Putri & Irawan (2022), the application of BJR in various legal systems, including Indonesia, has developed as an instrument that protects innovation and courage in taking business risks, especially in dynamic and unpredictable market conditions.

The Karen Agustiawan case tests the limits of directors' liability in the context of state-owned enterprises, where business decisions often involve high risks and significant financial impacts. Initially, the Central Jakarta District Court and the Jakarta High Court did not apply the BJR principle, and considered Karen's decision in the BMG block investment as an act that could be categorized as a criminal act of corruption because it resulted in losses for the company and the state. However, the Supreme Court at the cassation level ruled that the decision was part of a reasonable business risk and that Karen had carried out her duties in accordance with the BJR principles.

In Law No. 40 of 2007 concerning Limited Liability Companies, it is stated that directors cannot be held responsible for losses arising in the management of the company if they can prove that the loss was not due to their fault or negligence, that they have carried out management in good faith and with caution, and that there is no conflict of interest. The application of the BJR principle in this case shows that the Supreme Court recognizes the important role of directors in making business decisions, and provides them with space to make risky decisions without having to worry about facing criminal sanctions if the decision is taken for a legitimate reason.

The disparity in decisions between the first instance and cassation courts also highlights the different interpretations regarding the directors' responsibilities. At the first instance and appeal, the courts focused more on the end result of the business decision, namely the losses suffered by Pertamina. However, the Supreme Court looked at the decision-making process itself, namely whether the directors had acted in accordance with the principles of fiduciary and good faith. This difference in approach shows the importance of a deeper understanding of BJR, especially in the first instance and appeal courts, so that not only the end result is assessed, but also the decision-making process itself.

The implementation of BJR in Indonesia, although still relatively new, is increasingly relevant in the modern context, where companies, especially state-owned enterprises, are required to make quick and risky decisions in running their businesses. According to research by Sari & Yusuf (2021), quick decision-making driven by market needs makes protection for directors more important, because today's business processes are increasingly complex and cannot always be measured in terms of end results. Protection of directors from criminal prosecution in reasonable business decisions is essential to maintaining healthy business dynamics. Otherwise, directors will tend to avoid risks, which can ultimately harm the company and stakeholders.

However, it is important to note that the implementation of BJR must be accompanied by good supervision. Directors must still ensure that they conduct adequate due diligence, have sufficient knowledge, and do not act hastily in decision making. If these principles are not followed, then BJR cannot be applied to protect directors from legal liability. The results and discussion of this study emphasize that the implementation of the Business Judgement Rule is the right step in protecting directors who act in good faith in making business decisions. The application of this principle in the Karen Agustiawan case provides an important precedent for similar cases in the future, especially in the context of BUMN.

Conclusion

This study reveals that the application of the Business Judgement Rule (BJR) in Decision No. 121 K/Pid.Sus/2020 related to the Karen Agustiawan case is an important step in the development of corporate law in Indonesia, especially in the context of State-Owned Enterprises (BUMN). This case highlights that directors, in making risky business decisions, have the right to be protected from criminal prosecution as long as the decision is made in good faith, there is no conflict of interest, and is made in the interests of the company. The Supreme Court acquitted Karen Agustiawan on the grounds that the business decision that caused losses to PT Pertamina was not the result of personal negligence, but rather a reasonable business risk. This confirms that in corporate law, a detrimental end result does not necessarily prove a criminal act if the decision-making process has been in accordance with the principles of fiduciary and good faith. In addition, the disparity in decisions between the first and cassation levels emphasizes the importance of understanding the BJR principle in assessing the responsibility of directors, especially in cases involving risky business decisions in BUMN.

Improvement of judges' understanding of BJR: First instance and appellate courts need to better understand the application of the BJR principle so that they do not only focus on the results of business decisions, but also the decision-making process carried out by the board of directors. Special training related to this principle can be provided to judges handling corporate cases. Strengthening BJR regulations: Laws and regulations, especially Law No. 40 of 2007 concerning Limited Liability Companies, need to be clarified regarding the application of BJR to provide more detailed guidance on the limits of directors' responsibilities in making risky business decisions, especially in SOEs. Development of internal oversight mechanisms: Companies, especially SOEs, need to develop stronger oversight mechanisms to ensure that directors who make risky decisions have conducted adequate due diligence and acted on complete and valid information.

Further study of the BJR doctrine in Indonesia: Further research is needed to analyze how BJR is applied in various industrial sectors in Indonesia, so that it can provide a broader understanding of legal protection for directors in making business decisions. Business decision-making guidelines: Companies need to adopt clear guidelines and operating standards in making risky business decisions, so that directors can act with a strong legal basis and are protected from unreasonable demands in the event of losses.

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