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Application of Business Judgement Rule Doctrine in Case Settlement (Case Study of Corruption Crime of PT Asuransi Jiwasraya (Persero))

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ABSTRACT

As is known in Corporate Law, corporate law experts divide 2 (two) major groups of business entity forms, one of which is a legal entity. Included in this group is the Limited Liability Company (PT) The thing that distinguishes between the two types of business entities incorporated and unincorporated lies in the responsibility of the company owner. In relation to practice, business people are more interested in establishing a business entity in the form of a legal entity, namely a Limited Liability Company ("PT"). The reasons why business people are more likely to choose a PT, namely the continuity of a business entity in the form of a PT does not depend on the personalities of the owners but on the capital accumulated, the separation of responsibilities between the company owner and the company, and because PT can be used as a means to move towards a more liberal and open business. In carrying out the management of a PT, the Board of Directors performs its duties with reference to the principle of good faith. In this case, it is actually difficult to distinguish which actions are actually carried out in good faith and which actions are reasonable in carrying out their duties. In relation to its duties and authorities, the management of the Company carried out by the Board of Directors includes running business activities, controlling, and making business decisions that have an impact on the Company, even though these decisions can cause profits or losses.

Introduction

As stated in Article 1 point 2 of Law Number 40 of 2007 concerning Limited Liability Companies (UUPT), the functions and responsibilities of each organ of the company are impacted by the state of the business world today. The organs of the company are the Board of Directors, the General Meeting of Shareholders, and the Board of Commissioners.

Organs are a separate part of an institution that has a separate position from shareholders. The following is an explanation from the PT Organ: (Asikin & Zainal, 2004).

1. General Meeting of Shareholders (GMS).
   All corporate decisions are made by the GMS, the organ with the greatest authority within the organization, following certain requirements outlined by applicable laws and regulations. It is also asserted, although, that the GMS is not superior to other company organs because each has a role and authority that are in line with its duties and obligations (Harahap, 2021).
2. Management.
   The organ of the company is authorized and entirely in charge of managing the business in line with its goals and objectives. It also represents the business both inside and outside of court in compliance with the terms of the association's articles of association.
3. Board of Commissioners.
   The organization inside the company is responsible for advising the board of directors and carrying out general and/or specific oversight in line with the articles of association.

The UUPT and the articles of association serve as guidelines for all Company Organs in the exercise of their authority and responsibility (Ridwan, Barkah, &; Bachri, 2021). Therefore, the Company's Organ cannot be held accountable for the Company's losses if it exercises its authority and responsibility in compliance with the Law and the articles of organization. A legal connection established by PT as a legal entity is founded on (Harjono & Betlehn, 2021):

1. Applicable legal regulations;
2. Company's Articles of Association;
3. Generally accepted and universal legal doctrines.

The legal connection provides guidance about what is ordered, what is permitted, and what is banned, limiting the authority of shareholders, the Board of Directors, and the Board of Commissioners. The Company, being an artificial organization, functions through corporate actors, namely corporate agents agents, and corporate organs. The Company's corporate organs, also known as Organs, function as the Company's agents and representatives but are unable to govern themselves. As previously said, the Company's articles of association govern the authority and accountability of the Company's organs and the PT as they have a legal relationship. The procedures for designating, altering, and terminating Board of Directors members as well as for proposing new Board of Directors members are governed by the articles of association. Members of the Board of Directors have the following legal rights:

1. Manage the business for the benefit of the business in line with its goals and objectives, in compliance with any applicable rules, and within the parameters set forth in this law and/or the articles of association.
2. Receive salary and benefits based on the General Meeting of Shareholders.
3. Representing the Company, both in and out of court.
4. Give written power of attorney to 1 (one) or more employees of the Company or to other persons for and on behalf of the Company to perform certain legal acts as described in the power of attorney.
5. Self-defense at GMS.

The Board of Directors is required to manage with honesty, caution, and a focus on profits while performing its tasks. The Board of Directors must have the ability to implement decisions such that none of them are based on their own judgment interests but solely for the benefit of the PT and in making these decisions not only to achieve *profit* but also based on rational decisions and depends on internal factors (finance and resources) and external factors (competition and economic conditions). Regarding this matter, standardization of assessment is needed which is important to protect the Board of Directors who can prove that all decisions taken are carried out in good faith and there is no malicious intent (*mens rea*) (Ganapathi &; Abu-Shanab, 2020). The standardization of judgment is closely related to the Doctrine *of Business Judgment Rule* (BJR). However, BJR is not merely to provide immunity to the Board of Directors and its staff for losses arising from business policies or decisions (Prayogo et al., 2023).

State-Owned Enterprises (SOEs) are businesses with a profit-making objective that also adhere to the norms of good corporate governance. The BJR concept allows the Board of Directors some leeway in administering the company, but only to a certain extent (Sesara, 2021) but is required to have *fiduciary duties* to the company and shareholders (McMillan, 2013). Related to SOEs and BJR doctrine is a criminal case of corruption in PT Asuransi Jiwasraya (Persero). In this case, the defendant stated in his defense memorandum that the policy of the Board of Directors for the period 2008-2018 claimed to be within certain limits protected by the BJR concept (Juven Martua Sitompul, 2024).

Research Methods

Based on the subject matter above, this article is written using normative legal research methods, with reference to legal norms and positive literature, this method uses secondary data obtained through literature research in the form of empirical laws, books, scientific papers in the form of journals, statutes and other documents obtained online. Data collection is carried out qualitatively, namely through searching and analyzing legal documents, such as:

1. Laws and other relevant regulations, such as Law No. 40 of 2007 Limited Liability Company, constitute primary legal material;
2. Books, legislation, periodicals, and other relevant library materials are examples of secondary legal content that clarifies the original legal material;
3. Tertiary law materials include extensive Indonesian and English dictionaries, legal dictionaries, general dictionaries, and supporting materials for primary and secondary legal materials.

Results and Discussion

History of BJR Doctrine

For over 200 years, the Common Law state has included the BJR doctrine. As long as decisions are made carefully and loyally, the BJR doctrine shields the company's board of directors (or workers) from accountability for inadvertent errors in decision-making. A court in England ruled in 1742 that directors could not be held accountable for choices they made in good faith on behalf of the firm, even if the outcomes did not turn out as planned (Gerard V. Mantese and Emily S. Fields, 2020). In Charitable Corp v Sutton, the Lord Chancellor of England stated that the Board "may be guilty of acts of commission and omission, of mal-feasance or nonfeasance" but if "acts are executed within their authority ... though attended with bad consequences, it will be very difficult to determine that these are braches of trust". This concept was eventually used in the Louisiana

Supreme Court ruling in the case of Percy v Milaudon where the court ruled that Directors cannot be held liable for errors and judgments if the errors and judgments based on "if the error was one into which a prudent man might have fallen" (Juven Martua Sitompul, 2024).

In its journey, the BJR doctrine was first introduced by the Delaware Supreme Court as an analytical material relating to transactions involving controlling shareholders (Johnson, 2013). In addition, Spain has also adapted the BJR doctrine in *Law 31/2014*, stipulating the requirements that must be met by the Board of Directors when making strategic business decisions to avoid personal liability. These requirements include: (David Miranda and Ignasi Bruguer, n.d.):

1. They have behaved in good faith, sincerely believing that the choice they made was sane and advantageous to the business.
2. They favor the company's interest over their own or that of their relatives, and they have no conflicts of interest.
3. They took informed action and received all the information required to reach a justifiable conclusion. (i.e. external reports).
4. They have ensured the proper adoption of the associated business choice by adhering to an appropriate decision-making procedure in accordance with internal applicable laws and regulations.

Based on its history and development, BJR doctrine prioritizes the principle of prudence and the existence of good faith from the Board of Directors before such protection is granted.

BJR Doctrinal Definition

The BJR theory, as previously said, seeks to defend the decisions made by those who acted in good faith and with caution. This theory is often referred to as the legal protection theory for the Board of Directors and the Board of Commissioners, who do their tasks carefully and in good faith for the benefit of the PT but yet lead the Company to suffer significant losses (Harjono &; Betlehn, 2021). Referring to the process of implementing BJR doctrine until now, BJR doctrine has been a conception of Common Law for more than 160 years ago (Carlos Andres Laguado Giraldo and Maria Paula Diaz Canon, 2022). Defining BJR is not an easy task (Gevurtz, 1993), however, based on its development, BJR can be defined as follows (Gevurtz, 1993):

> "A presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the company. Absent an abuse of discretion, that judgment will be respected by the courts. The burden is on the party challenging the decision to establish facts rebutting the presumption."

Meanwhile, according to Meriam-Webster, what is meant by BJR is:

> "A rule of law that provides corporate immunity to directors of corporations protecting them from liability for the consequences of informed decisions made in good faith."

In one of the Delaware court rulings stated that what is meant by BJR is (Andika, Vanida, Aprilia, & Irjanto, 2021):

> "a presumption that in making a business decision the directors of a corporation acted (the rule is inapplicable to an omission) on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company."

Black's Law Dictionary gives the definition of BJR as follows (Kusumawati & Sumiyati, 2021):

> "The presumption that in making business decisions not involving direct self-interest or self-dealing, corporate direction act on an informed basis, in good faith, and in honest belief that their actions are in the corporation's best interest."

Thus, based on some of the definitions above, it can be concluded that the elements of BJR, among others, are the existence of *good faith* and *honest belief* in the decision making of the Board of Directors.

BJR Doctrine in National Law

It was communicated in the prior presentation that the Board of Directors, as an Organ of the Company, is required to abide by the laws and regulations, the company's articles of organization, and its decision-making procedures. Furthermore, it adheres to the fundamentals of sound corporate governance (Andika et al., 2021). BJR, as one of the "commitments" of the Board of Directors in carrying out its duties and authorities, is not implicitly recognized by Indonesia (Andika et al., 2021). However, the BJR doctrine is adopted in the provisions of laws and regulations in Indonesia. Specifically for the Board of Directors, there are several requirements that need to be met to be able to apply the BJR doctrine, namely in the event of a loss as referred to in Article 97 paragraph (3) of the Law, the Board of Directors cannot be held responsible for losses if they can prove:

1. Such losses are not due to his fault or negligence.
2. Has done the management with good faith and care for the benefit and in accordance with the purpose and purpose of Company;
3. There is no conflict of interest both direct and indirect in respect of management actions resulting in loss; And.
4. Have taken measures to prevent such losses arising or continuing.

Thus, based on national law, the BJR doctrine is a doctrine that teaches that a decision of the Board of Directors regarding the Company's activities shall not be contested by anyone even if the decision later turns out to be wrong or detrimental to the Company, as long as the decision meets the following requirements (Harjono & Betlehn, 2021):

1. Decisions in accordance with applicable law;
2. Done in good faith;
3. Done with the right purpose;
4. The decision has rational bases (rational basis);
5. Decisions are made with due care as done by people who are quite careful in similar positions;
6. Done in a way that deserves his trust (reasonable belief) as the best (best interest) for the Company (Fuady, 2002).

In the UUPT, the BJR doctrine only applies to the management of the Company which is a broader aspect than business decisions (Robin Panjaitan, Martono Anggusti, and Roida Nababan, 2021). Meanwhile, according to Bismar Nasution, in general, BJR only applies to business decisions. Thus, in the event of losses resulting from business decisions, the Board of Directors will be protected by BJIR doctrine and cannot be charged personal liability (Hadi, Suryamah, & Afriana, 2021).

Analysis of Corruption Cases of PT Asuransi Jiwasraya (Persero)

In 2019, media reports said that PT Asuransi Jiwasraya (Persero) (AJS) experienced liquidity problems so that the company's equity became negative Rp23.92 trillion and needed Rp32.89 trillion to return to health. In addition, the Audit Board (BPK) also found manipulation of financial statement recording and fictitious profit recording for several years, this caused state losses of Rp16.81 trillion. The case ended based on a judge's

decision on October 12, 2020. In the verdict, the defendants were found guilty of corruption and sentenced Hendrisman Rahim (President Director of AJS), Hary Prasetyo (Finance Director of AJS), Syahmirwan (Head of Investment Division of AJS), and Joko Hartono Tirto (private party) to life imprisonment. In the defense memorandum, the defendants submitted that the actions taken were in accordance with BJR doctrine. It was also conveyed that the Board of Directors carried out investment management reviewed by AJS in the period 2008 to 2018 carried out jointly or collegially collectively. The Board of Directors declares that in carrying out its duties in accordance with applicable law, good faith, and prudence. The actions that have been taken are based on considerations for the best interest for the company. Therefore, with regard to the BJR doctrine, the Board of Directors should not be held accountable.

In the trial process, legal facts were found that the defendants made direct appointments to 4 (four) investment managers, namely PT AAA Sekuritas, PT Batavia Prosperindo Aset Manajemen, PT Dana Reksa Investment Management and PT Trimegah Sekuritas as Investment Managers. The appointment was made without going through an investment committee meeting and beauty contest for the selection of investment managers.

Conclusion

Based on the description previously submitted, the implementation of the BJR doctrine cannot be immediately enforced. Elements related to fiduciary duty and elements of BJR doctrine in Article 97 paragraph (3) of the Law need to be proven concretely. Indications that the defendants did not exercise the principle of prudence in making strategic decisions in the interests of the Company have directly violated the BJR doctrine. The decisions taken are also not based on good faith, but only for the benefit or personal interest of the Board of Directors. The allegation was strengthened by the discovery of legal facts of a few receipts of the defendants in the form of money, goods and other forms including a number of facilities from investment managers. In addition, there are actions by the Board of Directors who invest AJS investment funds into shares of companies that have underperformed, causing default so that they do not run the Company responsibly. The falsified AJS financial accounts, which show a shift from loss to profit, demonstrate this. The state suffered losses of Rp16.8 trillion as a result. Therefore, the BJR concept cannot be used to shield the Board of Directors from legal complications in the situation of AJS corruption. In these situations, the Board of Directors' negligence resulted in the loss of both AJS and the state. The AJS Board of Directors failed to run the company with caution and good faith. In reality, the interests of the directors themselves are served, not those of the corporation. As a result, the AJS Board of Directors may be held personally liable. It is necessary to hold the Directors of AJS accountable for more than just not carrying

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