

**PENERAPAN *BUSINESS JUDGEMENT RULE* BAGI DIREKSI BADAN  
USAHA MILIK NEGARA DALAM PERKARA PENGADAAN BARANG YANG  
MERUGIKAN NEGARA**

**(Studi Putusan Mahkamah Agung Nomor: 5124 K/Pid.Sus/2022 dalam  
Perkara Pengadaan *Quay Container Crane* PT Pelindo II)**

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**ABSTRAK**

*Business Judgement Rule* (BJR) merupakan doktrin imunitas bagi Direksi Badan Usaha Milik Negara atas kerugian yang timbul akibat pengambilan keputusan bisnis, termasuk keputusan dalam pengadaan barang dan jasa. Namun, penerapan doktrin tersebut masih belum seragam sehingga menimbulkan ketidakpastian hukum dan banyaknya Direksi yang terjerat kasus, termasuk mantan Direktur Utama PT Pelindo II, RJ Lino. Penelitian ini bertujuan untuk mengetahui dan menganalisis tanggung jawab Direksi PT Pelindo II pada pengadaan barang dan jasa dalam hal terjadi kerugian dan penerapan BJR dalam Putusan Mahkamah Agung Nomor: 5124 K/Pid.Sus/2022. Penelitian ini menggunakan metode pendekatan penelitian yuridis normatif yang bertumpu pada data sekunder yang diperoleh melalui studi kepustakaan dengan metode normatif kualitatif. Hasil penelitian dan pembahasan menunjukkan bahwa Direksi PT Pelindo II dapat dimintai pertanggungjawaban pribadi atas kerugian negara karena tidak melaksanakan tugas dan wewenangnya berdasarkan *fiduciary duty*. Adapun BJR tidak dapat diterapkan bagi Direksi PT Pelindo II dalam Putusan Mahkamah Agung Nomor 5124 K/Pid.Sus/2022 akibat tidak terpenuhinya unsur-unsur BJR secara kumulatif dalam Pasal 97 ayat (5) Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas. Sebagai konsekuensinya, Majelis Hakim tidak menganalisis dan mempertimbangkan BJR dalam memeriksa dan memutus perkara ini.

**Kata Kunci:** *Business Judgement Rule*, Direksi, Badan Usaha Milik Negara, Pengadaan Barang dan Jasa, Kerugian Negara

***APPLICATION OF BUSINESS JUDGEMENT RULE FOR BOARD OF  
DIRECTORS OF STATE-OWNED ENTERPRISES IN PROCUREMENT OF  
GOODS IN THE EVENT OF STATE LOSSES***

***(Study of Supreme Court Decision Number: 5124 K/Pid.Sus/2022 in the PT  
Pelindo II Quay Container Crane Procurement Case)***

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***ABSTRACT***

*The Business Judgement Rule (BJR) is an immunity doctrine for Directors of State-Owned Enterprises for losses incurred from business decision-making, including in procuring goods and services. However, the application of this doctrine is still not uniform, resulting in legal uncertainty and many Directors being entangled in cases, including the former President Director of PT Pelindo II, RJ Lino. This research aims to determine and analyze the responsibilities of the Director of PT Pelindo II in the procurement of goods and services in the event of losses and the application of the BJR in Supreme Court Decision Number: 5124 K/Pid.Sus/2022. This research uses a normative juridical approach that relies on secondary data obtained through a literature study using normative qualitative methods. The results of the research and discussion indicated that the Director of PT Pelindo II can be held personally responsible for state losses because he does not carry out his duties and authority based on fiduciary duty. Furthermore, BJR cannot be applied as an immunity doctrine for the Director of PT Pelindo II in Supreme Court Decision Number 5124 K/Pid.Sus/2022 due to cumulative failure to fulfill the elements of the BJR in Article 97 paragraph (5) of Law Number 40 of 2007 concerning Limited Liability Companies. Consequently, the Panel of Judges also did not analyze and consider BJR when examining and deciding this case.*

***Keywords:*** *Business Judgement Rule, Board of Directors, State-Owned Enterprises, Procurement of Goods and Services, State Losses*