

**PENERAPAN *BUSINESS JUDGEMENT RULE* OLEH DIREKSI ANAK
PERUSAHAAN BADAN USAHA MILIK NEGARA YANG
MENIMBULKAN KERUGIAN
(Studi Putusan Mahkamah Agung Nomor: 3614 K/Pid.Sus/2024)
Oleh:**

Cindy Ludfiyya

E1A021157

ABSTRAK

Penerapan *Business Judgement Rule* (BJR) memberikan perlindungan hukum bagi Direksi Perseroan dalam pengambilan keputusan bisnis dari tanggung jawab secara pribadi meskipun keputusan mengakibatkan kerugian, sepanjang tindakan didasarkan pada itikad baik dan hati-hati (*fiduciary duty*). Kerugian dari pengambilan keputusan bisnis atas resiko bisnis banyak menjerat Direksi dituding menciptakan kerugian negara, termasuk kasus Ir. Kusmahadi Setya Jaya Direksi PT. Nusantara Terminal Services (Anak Perusahaan BUMN).

Penelitian bertujuan untuk menganalisis penerapan BJR oleh Direksi PT. NTS dalam Putusan Mahkamah Agung Nomor 3614 K/Pid.Sus/2024 dan kaitannya status hukum Anak Perusahaan BUMN apabila terjadi kerugian tidak selalu dianggap kerugian keuangan negara karena tergantung dengan teori yang digunakan. Penelitian ini menggunakan metode pendekatan penelitian yuridis normatif dengan pendekatan perundang-undangan, kasus, dan konseptual, spesifikasi penelitian preskriptif, analisis dengan data sekunder, dan metode analisis normatif kualitatif.

Hasil penelitian dan pembahasan menunjukkan bahwa penerapan BJR tidak dapat diterapkan karena bertentangan dengan kewajiban hukumnya dan tidak memenuhi unsur BJR Pasal 97 ayat (5) UU PT. Konsekuensinya, Majelis Hakim tidak menganalisis dan mempertimbangkan BJR dalam Putusan Mahkamah Agung Nomor 3614 K/Pid.Sus/2024 dan kerugian PT. NTS selaku Anak Perusahaan BUMN dalam Putusan Mahkamah Agung Nomor 3614 K/Pid.Sus/2024 dapat dikategorikan kerugian keuangan negara karena dalam pertimbangan hukum hakim kerugian ditinjau dengan teori sumber.

Kata Kunci: Penerapan *Business Judgement Rule*, Anak Perusahaan BUMN, Kerugian Keuangan Negara.

**APPLICATION OF BUSINESS JUDGEMENT RULE BY THE
BOARD OF DIRECTORS OF STATE-OWNED ENTERPRISES
SUBSIDIARIES CAUSING LOSSES**
(Study of Supreme Court Decision Number: 3614 K/Pid.Sus/2024)
By:

Cindy Ludfiyya

E1A021157

ABSTRACT

The application of the Business Judgement Rule (BJR) provides legal protection for the Company's Directors in making business decisions from personal responsibility even though the decision results in losses, as long as the action is based on good faith and caution (fiduciary duty). Losses from making business decisions on business risks have ensnared many Directors accused of creating state losses, including the case of Ir. Kusmahadi Setya Jaya, Director of PT. Nusantara Terminal Services (Subsidiary of a BUMN).

The study aims to analyze the application of BJR by the Directors of PT. NTS in the Supreme Court Decision Number 3614 K/Pid.Sus/2024 and its relationship to the legal status of BUMN Subsidiaries if losses occur, they are not always considered state financial losses because they depend on the theory used. This study uses a normative legal research approach method with a statutory, case, and conceptual approach, prescriptive research specifications, analysis with secondary data, and qualitative normative analysis methods.

The results of the research and discussion show that the application of BJR cannot be applied because it is contrary to its legal obligations and does not fulfill the elements of BJR Article 97 paragraph (5) of the PT Law. Consequently, the Panel of Judges did not analyze and consider BJR in the Supreme Court Decision Number 3614 K/Pid.Sus/2024 and the losses of PT. NTS as a BUMN Subsidiary in the Supreme Court Decision Number 3614 K/Pid.Sus/2024 can be categorized as state financial losses because in the judge's legal considerations the losses were reviewed with the source theory.

Keywords: *Application of Business Judgement Rule, BUMN Subsidiary, State Financial Losses.*