

PERTIMBANGAN HAKIM DALAM PENERAPAN DOKTRIN ATURAN PENILAIAN BISNIS (*BUSINESS JUDGEMENT RULE*) TERHADAP KASUS TINDAK PIDANA KORUPSI OLEH DIREKSI BADAN USAHA MILIK NEGARA (BUMN)

Intisari

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Tujuan penelitian ini adalah untuk mendeskripsikan dasar pertimbangan hakim terkait penerapan doktrin aturan penilaian bisnis (*business judgement rule*) dalam memutuskan perkara tindak pidana korupsi yang melibatkan direksi BUMN serta memberikan masukan terkait indikator-indikator apa saja yang perlu dijadikan hakim sebagai panduan di masa mendatang ketika menghadapi kasus serupa.

Penelitian ini merupakan penelitian normatif dengan melakukan kajian atas doktrin yang berkembang dalam ilmu hukum, menelusuri sejarah perkembangan doktrin, menemukan doktrin dalam perundang-undangan yang ada di Indonesia serta meneliti isi putusan pengadilan. Analisis yang digunakan dalam penelitian ini adalah analisis kualitatif dalam melihat kecenderungan dasar pertimbangan hakim dalam memutuskan perkara untuk kemudian diinterpretasikan secara deskriptif untuk menggambarkan fenomena-fenomena yang ada agar dapat menjawab rumusan masalah yang ditentukan di awal.

Dari penelitian ini didapatkan hasil bahwa faktor yang berasal dari hakim itu sendiri turut berkontribusi terhadap munculnya kondisi belum diterapkannya secara konsisten doktrin aturan penilaian bisnis (*business judgement rule*) di dalam *ratio decidendi* meskipun doktrin tersebut sudah terdapat di dalam undang-undang. Hal ini dikarenakan lemahnya kemampuan hakim untuk berpikir sistematis serta minimnya pengetahuan hakim terhadap *issue* terkait aturan penilaian bisnis (*business judgement rule*), disamping terdapat pula *issue* problematika status keuangan negara anak perusahaan BUMN yang masih menjadi perdebatan. Kesimpulan yang dihasilkan dari penelitian ini adalah bahwa hakim belum secara konsisten menerapkan doktrin aturan penilaian bisnis (*business judgement rule*) di dalam *ratio decidendi* sehingga diperlukan upaya tambahan untuk meningkatkan kemampuan hakim berpikir sistematis khususnya ketika menghadapi kasus tindak pidana korupsi korporasi BUMN, meningkatkan pengetahuan hakim terkait *issue* aturan penilaian bisnis (*business judgement rule*) ketika menangani tindak pidana korupsi korporasi BUMN, serta diperlukannya upaya menyelesaikan problematika status keuangan negara pada anak BUMN agar tercipta kepastian norma hukum yang akan digunakan.

Kata Kunci : Korupsi, *Ratio Decidendi*, *Business Judgement Rule*, BUMN

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JUDGES' CONSIDERATIONS IN THE APPLICATION OF THE BUSINESS JUDGMENT RULE DOCTRINE IN CRIMINAL CORRUPTION CASES BY THE DIRECTORS OF STATE-OWNED ENTERPRISES (SOEs)

Abstract

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The purpose of this research is to describe the basis for judge's considerations regarding the application of business judgment rule doctrine in deciding cases of criminal acts of corruption involving board of directors of state-owned enterprises and to provide input regarding what indicators judges need to use as a guide in the future when facing similar cases.

This research is normative research by conducting a study of doctrines that have developed in legal science, tracing the history of the development of doctrine, finding doctrine in existing laws and regulations in Indonesia and examining the contents of court decisions. The analysis used in this research is qualitative analysis in looking at the basic tendencies of judges' considerations in deciding cases and then interpreting them descriptively to describe existing phenomena in order to answer the problem formulation determined at this research.

From this research, the results obtained show that factors originating from the judges themselves contribute to the emergence of conditions where the doctrine of business judgment rules has not been consistently applied in judge's decision even though this doctrine is already contained in the Indonesian law. This is due to the judge's weak ability to think systematically and the judge's lack of knowledge of issues related to business judgment rules. Apart from that, there are also problematic issues regarding the state's financial status of state owned enterprises' subsidiaries which is still debatable. The conclusion resulting from this research is that judges have not consistently applied the doctrine of business judgment rules in judge's decision so that additional efforts are needed to improve the ability of judges to think systematically, especially when handling cases of state-owned enterprises corruption, increasing the knowledge of judges related issue of business judgment rules when dealing with criminal acts of corruption in state-owned enterprises, as well as the need for efforts to resolve problematic state financial status in subsidiaries of state-owned enterprises in order to create certainty about the legal norms that will be used.

Keywords : *Corruption, Ratio Decidendi, Business Judgement Rule, State-Owned Enterprises.*

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