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Implementing Business Judgment Rules in Corporate Decision-Making: A Focus on the Tourism Industry

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Abstract: The Board of Directors assumes responsibility for managing a Limited Liability Company, making decisions amidst uncertain circumstances that may lead to company losses. Directors must adherence to the principles of the business judgment rule and act without conflict of interest and with utmost good faith towards the company's best interests. This study explores the application of business judgment rules by directors in corporate governance, employing normative juridical methods. Directors' accountability for company losses under these rules were examined based on the primary, secondary, and other relevant data sources. The research concludes that directors can effectively apply business judgment rules when they operate with integrity and prioritize the company's well-being, emphasizing the importance of maintaining good corporate governance standards.

Keyword: Business Judgement Rule; Directors; Limited Liability Company.

INTRODUCTION

Former Pertamina President Director Karen Agustiawan was acquitted by the Supreme Court in the corruption case involving the Basker Manta Gummy block in 2009. Karen stated that her decision was a corporate action based on business judgment but was unjustly labeled as a criminal act of corruption.(Sandi, 2020) PT. Waskita Karya (Persero), Tbk is collaborating with the Attorney General's Office to promote best practices concerning the Business Judgment Rule in decision-making processes. This rule, governed by Article 97 and Article 114 of the 2007 Company Law, defines the bounds within which directors and commissioners can be held accountable for their decisions.(Syahputra, 2023)

The court's ruling failed to consider pertinent information and criteria aimed at mitigating ongoing losses. Karen had obtained approval from the board of commissioners, and the decision was devoid of conflicts of interest, unlawful intent, or fraudulent actions.(Simbolon & Pramarta, 2023)

The Business Judgment Rule serves as a standard of review to shield directors from shareholder blame for corporate actions, provided those actions are carried out within the scope of their authority and with due diligence and good faith.(Tim Detik.com, 2023)

This research aims to explore the application of business judgment rules in everyday business decisions, an area that remains under-researched. It will also examine notable cases involving company directors, such as that of Mrs. Karen Agustiawan, to provide comprehensive insights.

In instances like the case of the Director of PT. Jiwasraya Insurance, personal liability can be imposed if their actions are deemed to lack good intentions, leading to losses for the state. This underscores the critical need for appropriate application of business judgment rules.(Nulhakim & Novianto, 2023)

State-owned enterprises (BUMN) play a pivotal role in contributing to the national economy. While directors are protected under the Business Judgment Rule within the framework of the Limited Liability Company Law, losses incurred by BUMNs are considered state losses due to their reliance on state funds. This introduces complexities in applying business judgment rules, particularly concerning accountability for state-owned assets.(Harahap, Nasution, Juwana, & Siregar, 2021)

The distinction between state wealth and corporate assets further complicates matters. Shares held by the state in business entities transform from state wealth to corporate wealth, affecting the application of business judgment rules in decision-making processes by directors and commissioners.(Yunus & Nasution, 2021)

Directors play a crucial role in daily company operations, making decisions that are fundamental to corporate governance. The implementation of Good Corporate Governance heavily relies on the Board of Directors' ability to exercise independent judgment in unpredictable business environments.(Azheri & Anggunsuri, 2020) Business judgment rules serve as a framework that reflects directors' discretion and independence, emphasizing decisions made in the best interests of the company and in good faith.(Irianto & Wardani, 2023)

The rationale behind business judgment rules is grounded in agency theory and principles of corporate governance.(Sutarna & Subandi, 2023) Agency theory explores the relationship between company owners (principals) and management (agents), highlighting the need for governance structures that align incentives, ethics, property rights, remuneration, and ownership systems to prevent issues like corruption stemming from information asymmetry and lack of oversight.(Ramadhan, Wijaya, & Ruslan, 2022) Conversely, stewardship theory emphasizes the fiduciary responsibility of directors to manage company resources in the best interests of stakeholders.(Wardoyo, Rahmadani, & Hanggoro, 2021) For instance, consider a scenario where the board of directors of a hotel decides to expand by purchasing land and constructing a new hotel. Despite shareholder approval, the completion coincides with the onset of the Covid-19 pandemic in 2020, causing a significant downturn in tourism and rendering the investment unprofitable. In this case, directors cannot be held accountable because their decision was based on promoting the company's interests.(Schillemans & Bjurstrøm, 2020)

Conversely, if directors engage in purchasing land from conflicted parties or award development contracts to firms associated with directors or commissioners without disclosing these relationships, it constitutes a conflict of interest. Such conflicts must be transparently disclosed to all stakeholders. Directors involved in conflicts of interest should recuse themselves from decisions where their impartiality may be compromised, such as determining tender winners.

The following research questions were proposed in this research:

1. What are the significances of business judgment rules to directors and commissioners?
2. What are the liabilities faced by directors and commissioners in the absence of business judgment rules?.

METHOD

Normative legal approaches, based on the study's backdrop, emergent phenomena, and research objectives, were employed in this investigation. In order to handle research concerns, the normative juridical approach entailed looking through secondary research sources and library materials. This comprised rigorous analysis, norms and principles research, and vertical and horizontal synchronization of laws and regulations pertaining to the role and status of independent commissioners. The legal sources used in this study included primary, secondary, and additional legal documents (Marzuki, 2017). Some resources clarified primary and secondary sources, while other pieces included reviews of literature from other periodicals. Definitions of independent commissioners as well as pertinent laws and regulations were included in the data collection. Using a statutory regulations approach, the research reviewed all relevant statutory regulations. This strategy applied normative juridical techniques to analyze, identify, and modify pertinent laws and regulations. The Republic of Indonesia's 1945 Constitution and other pertinent laws used as primary research materials. Secondary materials included books, scientific books, periodicals, theories, proceedings from symposiums and seminars, and scientific articles. Additional corroborating evidence clarified the main and secondary sources (Johan, 2023). The study utilised qualitative research approaches to investigate the diverse facets, roles, and roles of independent commissioners (Johan, 2022).

RESULT AND DISCUSSION

The Legal Basis of Business Judgement Rule

The Director applies the business judgment rule based on Article 92(1), which mandates that directors manage the company's interests in alignment with its objectives. Article 97 further specifies that the Board of Directors is entrusted with this responsibility as outlined in Article 92(1). Additionally, Article 114(3) of the Limited Liability Company Law holds each board member personally liable for the company's losses if found guilty or neglectful in performing their duties.(*UU No. 40 / 2007*, 2007)

Directors and commissioners are appointed and terminated during general meetings of shareholders. The length of their terms is determined by the company's articles of association, which may prescribe terms of one, two, or three years.

The Significance of Business Judgement Rule for the Board of Directors and Commissioners

The board of directors exercises daily decision-making authority in accordance with its mandate, but certain matters beyond its authority necessitate approval from the board of commissioners and shareholders at general meetings, as stipulated in the company's articles of association. One such instance is the requirement for approval from shareholders at a general meeting to pledge a substantial portion of the company's assets as collateral for obtaining debt.

Debt is essential for companies seeking fresh capital to sustain growth, thereby enhancing shareholder value. However, it also imposes financial obligations such as interest payments to creditors, which can strain the company's finances and potentially lead to insolvency and bankruptcy.

The business judgment rule is crucial as it empowers directors to make decisions confidently in managing the company. Without this protection, directors may hesitate to make decisions for fear of personal liability for any resulting losses. Commissioners, tasked with overseeing the company's operations, also share accountability in ensuring the company's prudent management.

The Liabilities of Directors and Commissioners in the Absence of Business Judgment Rules

Directors and commissioners face potential accountability if their decisions lead to losses. They must demonstrate that decisions were made based on current conditions and were in the company's best interest. It is crucial that they operate without conflicts of interest or malicious intent that could harm the company.

Even when the best available policy is adopted at the time, directors and commissioners are required to act in good faith, prioritizing the company's welfare over personal gain. Proving this can be challenging, especially if circumstances prevent replicating the exact conditions under which the decision was made.

CONCLUSSION

The Business Judgment Rule, derived from Limited Liability Company Law no. 40 of 2007, serves to safeguard directors in their decision-making processes. Without these rules, directors would face heightened scrutiny and potential blame if their decisions prove detrimental to the company. The rule protects the interests of directors, commissioners, and shareholders by ensuring that as long as decisions are made in the company's best interests, or indirectly benefit shareholders, directors cannot be held personally liable.

Directors and commissioners are obligated to prioritize the company's interests above personal gain and must avoid conflicts of interest. This study, while valuable, has limitations due to its focus on normative research. Future research could broaden its scope by surveying business stakeholders—directors, commissioners, and shareholder-investors—on various instances where directors may have allegedly violated the principles of the Business Judgment Rule. Such empirical research could provide deeper insights into the practical application and effectiveness of these principles in real-world scenarios.

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