

***BUSINESS JUDGMENT RULE* SEBAGAI PERLINDUNGAN HUKUM  
BAGI DIREKSI BADAN USAHA MILIK NEGARA DALAM  
MELAKSANAKAN KEPUTUSAN BISNIS  
(Analisa Kasus Putusan Nomor 121 K/Pid.Sus/2020 jo. Nomor 15/Pid.Sus-  
TPK/2019/PN.JKT.PST)**

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**ABSTRAK**

Maksud dan tujuan pendirian Badan Usaha Milik Negara (BUMN), sebagaimana diatur dalam Undang-Undang No.19 Tahun 2003 tentang BUMN adalah termasuk untuk mengejar keuntungan. Salah satu upaya Direksi BUMN dalam rangka memenuhi maksud dan tujuan tersebut adalah dengan melaksanakan investasi. Setiap investasi, termasuk investasi BUMN tentunya memiliki potensi keuntungan dan resiko masing-masing, yang umumnya berbanding lurus, semakin tinggi potensi keuntungan, semakin tinggi pula resiko pada investasi tersebut (populer dengan adagium *high risk high gain*). Dalam beberapa kasus, Direksi BUMN dapat diduga telah melakukan tindak pidana yang merugikan keuangan negara ketika BUMN yang dipimpinnya mengalami kerugian. Untuk itu, penting bagi Direksi BUMN untuk menjalankan investasinya sesuai dengan aturan, salah satunya tentang konsep *Business Judgment Rule* (BJR). BJR telah diatur dalam Pasal 97 ayat (5) Undang-Undang No.40 Tahun 2007 tentang Perseroan Terbatas, dimana Direksi tidak dapat dituntut untuk bertanggung jawab atas kerugian perseroan selama Direksi yang bersangkutan mampu membuktikan hal-hal tertentu, antara lain jika Direksi telah melaksanakan investasi dengan itikad baik dan berhati-hati. Dalam tulisan ini, Penyusun bermaksud membahas tentang *Business Judgment Rule* berlaku sebagai perlindungan hukum bagi direksi BUMN dalam melaksanakan keputusan bisnis dan sejauh mana *Business Judgment Rule* dijadikan pertimbangan dalam perkara Dugaan Tindak Pidana terkait Kerugian BUMN: Analisa Kasus Putusan Nomor 121 K/Pid.Sus/2020 jo. Nomor 15/Pid.Sus-TPK/2019/PN.JKT.PST.

Kata kunci: ***Business Judgment Rule*, Direksi BUMN.**

## ABSTRACT

*The purpose and objective of establishing a State-Owned Enterprise (BUMN), as regulated in Law No.19 of 2003 concerning BUMN (UU BUMN) is to pursue profit. One of the efforts of the Board of Directors (BoD) of BUMN in order to fulfill these aims and objectives is to carry out investments. Every investment, including BUMN investment, of course has its own potential profit and risk, which are generally directly proportional, the higher the potential profit, the higher the risk on the investment (high risk high gain). In some cases, BUMN Directors can be suspected of having committed criminal acts that harm state finances when the BUMN they lead suffer losses. For this reason, it is important for BUMN Directors to carry out their investments in accordance with the rules, one of which is the concept of the Business Judgment Rule (BJR). BJR has been regulated in Article 97 paragraph (5) of Law No.40 of 2007 concerning LLC (UU PT), where the BoD cannot be held responsible for the loss of the company as long as the person concerned is able to prove certain things, including if the BoD has made an investment in good faith and careful. In this paper, the author intend to discuss the BJR which is applicable as legal protection for BUMN managers in carrying out business decisions and the extent to which the BJR is taken into consideration in cases of alleged criminal acts related to BUMN losses, Case Analysis No.121K/PID.SUS/2020 jo. No.15/PID.SUS-TPK/2019/PN.JKT.PST.*

**Keywords: Business Judgment Rule, Directors, BUMN.**