

Implementation of the Business Judgement Rule Doctrine as Legal Protection for Directors in Realizing Good Governance of Regionally-Owned Enterprises

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Abstract

The form of BUMD governance as a regional company as regulated in UUPD and PPBUMD consists of Regional Public Companies (Perumda) and Regional Limited Companies (Perseroda). The establishment of Perumda is in the form of regional regulations based on regional needs and the feasibility of the business field of the Perumda to be formed. Perumda is a BUMD whose entire capital is owned by one region only and is not in the form of shares. One of the important organs in a company is the board of directors. The board of directors who control the company in daily activities has the authority to determine policies in carrying out its powers and obligations in managing the company must have good intentions, be responsible, have integrity, be honest, and be highly dedicated to advancing and developing the company. The board of directors is fully responsible personally for the company's losses if the person concerned is guilty or negligent in carrying out his duties. The board of directors can take or carry out actions to facilitate his duties as long as it is within the scope of his duties and obligations and does not conflict with customs, fairness, and propriety. Implementation of the business judgment rule (BJR) doctrine as a form of protection given to directors in carrying out their duties and responsibilities in running the company. Business decisions or actions taken by directors are intended to manage the company professionally according to their expertise to generate profits for the company, even though there are risks from these decisions and actions that can cause losses for the company.

I. Introduction

The Second and Fourth Paragraphs of the Preamble to the 1945 Constitution of the Republic of Indonesia (UUD 1945), mandate that one of the goals of the state is to realize prosperity and general welfare for the people of Indonesia. The 1945 Constitution also provides authority for regional governments to regulate and manage their own government affairs according to the principles of autonomy and assistance tasks to accelerate the realization of public welfare through improving services, empowerment and community participation. The granting of authority to regional governments is also accompanied by the transfer and assignment of financing. The most important source of financing is local revenue (PAD).

PAD is regional income sourced from regional taxes, regional levies, results from the management of separated regional assets, and other legitimate regional original income, which aims to provide regions with flexibility in exploring funding in the implementation of regional autonomy as a manifestation of the principle of decentralization.¹

The regional government has the function and responsibility to improve the welfare of the people by implementing development in all fields. The source of PAD is a source of regional finance that is excavated in the relevant region, which can come from regional taxes and regional levies.² So that PAD can become the largest source of finance for the implementation of regional autonomy.³

The establishment of BUMD in order to support regional development and improve the welfare of the community in the region. Purwadi said that the establishment of BUMD has a role in realizing regional prosperity by contributing to PAD revenues either in the form of dividends or taxes. The challenge of increasing PAD can be answered by increasing the role/contribution of BUMD. In macro terms, the role of regional companies (BUMD) in the regional economy can be measured through their added value contribution to gross regional domestic income and their ability to absorb labor.

Innovation and investment carried out by local governments are focused on obtaining economic, social and/or other benefits for the community in the region. Local government is the implementation of government affairs according to the principles of autonomy and assistance tasks with the principle of the broadest possible autonomy in the system and principles of the Unitary State of the Republic of Indonesia. In implementing this government, local governments have obligations, one of which is to advance the welfare of the community. All actions taken by local governments must be focused on the welfare of the community, one way is through the effectiveness of the performance of BUMD in the form of regional companies.⁴

Regional companies are all companies established with capital that is wholly or partly

¹ Rudy Badrudin, *Ekonomi Otonomi Daerah* (Yogyakarta: UPP STIM YKPN, 2011), hlm. 99

² Yuliati, *Akutansi Sektor Publik*, Cetakan Kelima (Jakarta: Salemba Empat, 2000), hlm. 97.

³ Chabib Soleh dan Heru Rocmansjah, *Pengelolaan Keuangan dan Aset Daerah* (Jakarta: Fokusmedia, 2010), hlm.

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separated regional assets, unless otherwise determined by or based on law. The purpose of regional companies is to participate in implementing regional development, especially in national economic development to meet the needs of the people by prioritizing peace and pleasure at work in the company, towards a just and prosperous society. Management of regional companies is in the hands of regional company administrators who are responsible to the regional head. The responsibility of the regional head as owner and manager.

Based on Article 1 number 40 UUPD, it is emphasized that BUMD is a business entity whose capital is wholly or mostly owned by the region. When associated with Article 7 paragraph (7) letter a of Law Number 40 of 2007 concerning Limited Liability Companies (UUPT), then BUMD must be established in the form of Persero. This provision is reaffirmed in Article 339 paragraph (2) UUPD, that regional limited liability companies after being stipulated by regional regulations, the formation of their legal entities is carried out based on the provisions of laws and regulations concerning limited liability companies (PT), so that in establishing BUMD must refer to UUPT.

Based on UUPT, a persero consists of three organs, namely GMS, Board of Directors, and Commissioners. The position of Director in managing the company is an important and strategic position. The Board of Directors is an organ of PT that manages the company. Therefore, demands and expectations are placed on the Directors to carry out their duties professionally and based on good faith and responsibility.

Ideally, BUMD is one of the sources of income for a regional government. BUMD is a manifestation of the role of local government in regional economic development. However, in its development, BUMD has become one of the regional financial problems. Not only has it failed to become a source of income, BUMD can even burden regional finances.⁵ Referring to Article 97 paragraph (5) of the UUPT, members of the Board of Directors may not be responsible for the company's losses if they can prove that; (a) the company's losses were not due to their fault or negligence; (b) they have carried out management in good faith, with care, and with full responsibility for the interests of the company and in accordance with the company's intent and objectives; (c) they do not have a conflict of interest, either directly or indirectly, regarding the management actions taken; and (d) they have taken action to prevent bankruptcy. The concept of Article 97 paragraph (5) of the UUPT is in accordance with the doctrine of the business judgment rule (BJR) where the Board of Directors can be protected and free from lawsuits. The business judgment rule is a concept where the Board of Directors of a company cannot be legally held responsible for decisions they make even if the decision causes losses to the company, as long as the decision is made in good faith, with the right intent and method, with a rational basis, and with care.⁶

In Indonesia, unfortunately, there is no uniform understanding among law enforcers regarding the application of the business judgment rule doctrine. Although Article 97 paragraph (5) of the PT Law has provided the requirements for the application of the

⁵ Setiawan dkk., "Model Pelayanan Publik yang Berkeadilan: Studi Empirik ada PDAM Kota Surakarta", *Laporan Penelitian* (Surakarta: Institute Fakultas Ekonomi Universitas Muhammadiyah Surakarta, 2008), hlm. 2

⁶ Asep Mulyana, *Business Judgment Rule, Praktik Peradilan Terhadap Penyimpangan Dalam Pengelolaan BUMN/BUMD* (Jakarta: PT Grasindo, 2018), hlm. 10.

business judgment rule, it does not explain the benchmark for fulfilling each provision. In this case, of course, the law will be determined from the facts revealed in court.

There are several examples that researchers present that are not uniform among law enforcers regarding the application of this business judgment rule doctrine. First, the case that occurred in the Supreme Court Decision No. 417 K/PID.SUS/2014 concerning the lease of a Boeing 737 aircraft between PT A and B. At that time, PT A's purpose in leasing the aircraft was to expand by adding to its fleet of aircraft and replacing old aircraft with new ones.

In the trial held by the Jakarta Corruption Court, an expert basically stated that the director of PT A could not be blamed because the aircraft provider was in default. Then, the Board of Directors' action in changing the type of aircraft did not violate the rules because in the Work Budget Plan (RKA) approved by the General Meeting of Shareholders (GMS), there is a provision that the director has the authority to change the type of aircraft without having to report to the shareholders.

In addition, regarding the security deposit paid by PT A to B, according to the expert, this action is normal in the aviation business. Because the security deposit actually guarantees that PT A as the lessee will receive the aircraft from B. With various considerations, the expert emphasized that this aircraft rental case is not appropriate to be brought to the criminal realm.

The example of this case shows that in principle the director of PT A has carried out all applicable procedures in leasing a Boeing 737 aircraft and in accordance with the principles of good corporate governance. However, the verdict stated that the Defendant (Director) was proven legally and convincingly guilty of committing a criminal act of corruption together.

2. Research Method

Soemitro said that normative legal research is also called library legal research, because it is mostly carried out on secondary data found in libraries.⁷ An approach is a researcher's perspective in selecting a spectrum of discussion space which is expected to provide a clear description of the substance of a scientific work.⁸ The data sources needed in this study were obtained from libraries and documents, through secondary data. According to Sugiyono, secondary data is a source of data that does not directly provide data to data collectors, for example through other people or through documents. In research, the sources of secondary data can be laws, books, journals, articles related to the research topic.⁹

3. Result and Discussion

a. Forms Of Governance Of Regionally-Owned Enterprises By The Board Of Directors In Anticipation Of Regional Financial Losses

⁷ Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri* (Jakarta: GhaliaIndonesia, 1990), hlm. 11

⁸ I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif dalam Justifikasi TeoriHukum*, Cetakan Kedua (Jakarta: Kencana, 2017), hlm. 11-12

⁹ Sugiyono, *Metode Penelitian Kuantitatif* (Bandung: Alfabeta, 2018), hlm. 456

The government's role is so great that it is a manifestation of the concept of the teachings of a modern legal state known as the welfare state concept, which places the government as the party responsible for the welfare of its people. Therefore, the government is actively involved in efforts to improve all aspects of the lives of its people, both economic, social, and legal and security issues. The implementation of government based on the concept of decentralization, gives some of the rights to control the state to local governments to participate in carrying out economic functions, especially the state's entrepreneurship function.¹⁰

Basically, every regional government has its own economic potential, one of which is the Regional Company or BUMD whose existence is currently still looked down upon, which is sometimes even considered a burden for the regional government. The existence of business entities that manage regional wealth as one of the drivers of regional economic development has not provided optimal contributions to increasing regional income in particular and contributions to increasing community welfare in general.¹¹

In the national economy, important economic actors in Indonesia are carried out by several business entities that can be grouped as State-Owned Enterprises (BUMN), Private-Owned Enterprises (BUMS) and Regionally-Owned Enterprises (BUMD). These three business entities have their own characteristics, advantages and disadvantages. However, all three have a strategic role in building the national economy. BUMD, for example, plays a role in contributing to the economy and pioneering business activities.

Regionally-Owned Enterprises (BUMD) are one of the sources of regional revenue (PAD) that provide significant contributions to regional original income. In addition to the prosperity and welfare of the community, the existence of regional companies (BUMD) according to Rodi Dohar Harahap as quoted by Yudho Taruno Muryanto and Djuwityastuti, is to seek profit in their business fields in order to increase regional original income from dividends deposited into the regional treasury.

Based on the results of the 2023 BUMD Directory updating activity, there were 1,133 BUMD companies in Indonesia in 2022. Of that number, 1,0854 companies were active, while 49 other companies were temporarily closed. Furthermore, of the 1,084 companies with active status, only 1,008 BUMD companies were confirmed to have provided their financial report data by the deadline for the release of this publication. So the BUMD data in this publication only covers 1,008 BUMD companies.

b. Responsibilities Of The Board Of Directors In Management Of Regionally-

¹⁰ Ryan Surya Pradhana, "Wewenang Kepala Daerah Dalam Pengelolaan Badan Usaha Milik Daerah", *Jurnal Hukum PERATUN*, Vol. 2, No. 2, Agustus 2019, hlm. 236

¹¹ Khopiatuziadah, "Landasan Hukum Pengelolaan Badan Usaha Milik Daerah: Antara Ada Dan Tiada (*Legal Basis on Local Owned Enterprise Management: Between Existing And Not*)", *Jurnal Legislasi Indonesia*, Vol. 11 No. 3, September 2014, hlm. 223

Owned Enterprises

The establishment of a BUMD company must have a clear motivation, because in principle the local government is not a business actor but has the main responsibility of carrying out development and services for the community. While in the implementation of development, capital is needed in a fairly large amount and must be available at the right time.¹² Therefore, the existence of BUMD must be aimed at supporting development and community services without harming regional finances, and must even provide benefits to regional finances.

Based on Article 22 paragraph (4) PPBUMD regarding regional capital participation in the context of establishing a regional limited liability company is carried out in accordance with the provisions of laws and regulations governing limited liability companies. Meanwhile, regional capital participation in the context of increasing BUMD capital based on Article 23 PPBUMD is carried out for business development, strengthening capital structure, and assignments of regional government. Regional capital participation for increasing BUMD capital is carried out after an investment analysis has been carried out by the regional government and the availability of a BUMD business plan.

In addition to capital participation, regional governments can also reduce capital. Based on Article 24 PPBUMD, regional capital reduction in BUMD can be carried out as long as it does not result in share ownership below 51% (fifty one percent) by 1 (one) region. To maintain this, regional governments must pay attention to the regulation of authorized capital and paid-up capital in the articles of association. The reduction in share ownership carried out by regional governments to BUMD can occur due to divestment and/or dilution. Reduction in share ownership due to divestment and/or dilution in BUMD is prioritized to be taken over by other regions and/or other BUMDs. BUMD capital sourced from regional capital participation is the limit of regional responsibility for BUMD losses. This means that when a BUMD suffers a loss, the regional government is only responsible for the amount of capital invested.

The obligation to make minutes of the GMS is carried out because the board of directors is in the position of organizer of the GMS, so that the preparation of the minutes is still included in the administrative affairs of the meeting which is the responsibility of the board of directors. The minutes are an important document for the company because they contain the results of the GMS which must be carried out by the board of directors. The question is who makes the minutes of the GMS if the organizer of the GMS is not the board of directors but the board of commissioners or shareholders. So in this case, it is still the party that organizes the GMS (the board of commissioners or shareholders) who

¹² Aminuddin Ilmar, *Hukum Penanaman Modal di Indonesia* (Jakarta: Kencana, 2004), hlm. 1.

makes the minutes of the GMS. Although the one who makes the minutes of the GMS is not the board of directors, the one who is required to keep the minutes is still the board of directors, because it is the obligation of the board of directors as the manager of the company.

Legally based on Article 1 number 17 of the PPBUMD, it is determined that the commissioner is an organ of a regional limited liability company that is tasked with supervising and providing advice to the board of directors in carrying out the management activities of the regional limited liability company. The members of the commissioner may consist of independent elements and other elements. Other elements may consist of central government officials and regional government officials who are not tasked with carrying out public services, and the members of the commissioner are appointed by the GMS.

In the provisions of Article 50 PPBUMD, members of the commissioners also have an obligation to act in good faith and be responsible for carrying out their duties in the interests of the BUMD. Each member of the commissioner is fully responsible personally if the person concerned is guilty or negligent in carrying out his duties. Based on Article 115 of the UUPT, members of the board of commissioners are jointly and severally liable with members of the board of directors for a bankrupt company, as long as the bankruptcy occurs due to the commissioner's error or negligence in supervising the management carried out by the board of directors and the company's assets are insufficient to pay all of the company's obligations due to the bankruptcy. Responsibility also applies to members of the board of commissioners who have not served 5 (five) years before the bankruptcy declaration decision is pronounced. However, the members of the board of commissioners can be freed from responsibility for the bankruptcy of the company if they can prove: a) the bankruptcy is not due to their error or negligence; b) they have carried out their supervisory duties in good faith and with caution for the benefit of the company and in accordance with the intent and purpose of the company; c) they have no personal interest, either directly or indirectly, in the management actions of the board of directors that result in bankruptcy; and d) they have provided advice to the board of directors to prevent bankruptcy.

Based on Article 121 of the UUPT, commissioners in carrying out their supervisory duties can form a committee, the members of which are one or more members of the commissioners. These committees include the audit committee, remuneration committee, and nomination committee. Article 117 paragraph (1) of the UUPT stipulates that the articles of association may stipulate the granting of authority to commissioners to provide approval or assistance to the board of directors in carrying out certain legal acts. What is meant by "providing approval" is providing written approval from the commissioner. Furthermore, what is meant by "assistance" is the commissioner's action to accompany

the board of directors in carrying out certain legal acts. However, it must be remembered that the granting of approval or assistance by the commissioner to the board of directors in carrying out certain legal acts does not constitute an act of management.

In the event that the articles of association stipulate the requirements for granting approval or assistance as referred to above, then based on Article 117 paragraph (2) of the UUPT, without the approval or assistance of the commissioner, the legal act remains binding on the company as long as the other party in the legal act acts in good faith. What is meant by "legal acts that remain binding on the company" is legal acts carried out without the approval of the commissioners in accordance with the provisions of the articles of association remain binding on the company, unless it can be proven that the other party did not act in good faith. The provisions as referred to in this paragraph may result in personal liability of members of the board of directors in accordance with the provisions of the UUPT.

c. Application Of The Business Judgement Rule Doctrine In Providing Legal Protection For The Board Of Directors As Managers Of Regionally-Owned Business Entities

In principle, BUMD directors can be protected by the Business Judgement Rule principle in exercising their authority, where directors can be released from personal responsibility if the losses caused by their decisions can be proven to have been made in good faith, with full responsibility, in accordance with applicable policies and regulations, and do not fulfill the elements of a criminal act of corruption. The Business Judgement Rule principle can provide protection for directors who are often required to make decisions quickly in order to respond to changes in the very dynamic business world. Basically, state losses must be clearly distinguished from business risks. It does not mean that if the directors carry out their duties and later cause the company to suffer losses, then this immediately falls into the category of causing state losses.¹³

In the provisions stipulated in Article 1 number 15 of Law Number 15 of 2006 concerning the Audit Board of Indonesia (UU BPK) it is stipulated that "state/regional losses are a shortage of money, securities, and goods that are real and certain in amount as a result of unlawful acts, whether intentional or negligent". State losses caused by certain parties are settled in accordance with applicable provisions and laws. Provisions related to state losses incurred by state officials who are not treasurers are stipulated in Article 35 paragraph (1) and (2) of Law Number 17 of 2003 concerning State Finance (UU State Finance), it is stated that.

The Board of Directors as the holder of authority in managing the company in

¹³ Asep N. Mulyana, *op.cit.*, hlm. 10. Lihat juga Gita Wanda Sesara Amir, "Konsep Penerapan Prinsip Business Judgement Rule Pada Keputusan Direksi Badan Usaha Milik Negara (BUMN)", *Dharmasiswa: Jurnal Program Magister Hukum*, Vol. I No. 1, (Maret 2020), hlm. 214

accordance with its duties and responsibilities must be carried out with full responsibility, good faith, and earnestly with the aim of serving the interests of the company, and adhering to the principle of the business judgment rule (BJR).

A company as a legal entity certainly does not have its own will and does not carry out its own desires, so that the board of directors is required to be able to make decisions quickly in order to respond to changes in the very dynamic business world. If the board of directors' responsibility in managing the BUMD business is violated, then the legal sanction for the board of directors is to be held accountable for their actions, and the form of legal protection for the board of directors when they are considered to have violated the principle of trust that has been given to them is by applying the principle of the Business Judgement Rule (BJR) doctrine.

The doctrine of business judgment rule comes from countries that adhere to the common law system which was born and rooted in the doctrine of fiduciary duty or the responsibility of company directors. Business judgment rule arises as a result of the implementation of fiduciary duty by a director, namely the principle of duty of skill and care, so all errors that arise after the implementation of this principle, have the consequence that the director is released from personal responsibility if an error occurs in his decision.

Indonesia adopts BJR in UUPT, the purpose of which is to protect directors and commissioners. Regarding the responsibility of directors and commissioners, it is strictly regulated that both are personally or jointly liable if the director is negligent or not careful in carrying out his duties in good faith and with full responsibility or the commissioner is negligent and not careful in carrying out supervisory duties causing losses or bankruptcy for the company. The business judgment rule doctrine is often used as a defense so that directors can be protected and free from lawsuits. Business judgment rule is a concept where the company's directors cannot be legally held responsible for the decisions they make even though the decision causes losses to the company, as long as the decision is made in good faith, with the right purpose and method, and is based on rationality and caution. By regulating the Business Judgement Rule doctrine in UUPT, it is hoped that it can provide legal protection for directors in managing and running the company according to their duties and functions based on the principle of fiduciary duty.

The Board of Directors is obliged to manage the company in good faith, as stated in Article 97 paragraph (2) of the UUPT that the management as referred to in paragraph (1), must be carried out by each member of the board of directors in good faith and with full responsibility, every action of the board of directors based on good faith is protected by law as long as the action can be proven by avoiding actions that benefit a director personally in making an important decision regarding the company that results in the company experiencing losses. A director can be held personally responsible, if proven to

have violated the principle of fiduciary duty in carrying out the management of the company which results in losses to the company. In its development, the application of the principle of fiduciary duty has raised deep concerns for directors in making their business decisions. Article 97 paragraph (3) of the UUPT explains that "each member of the board of directors is fully personally responsible for the company's losses if the person concerned is guilty or negligent in carrying out his duties in accordance with the provisions as referred to in paragraph (2)". This is as referred to in Article 97 paragraph (5) of the UUPT which explains that:

"members of the board of directors cannot be held responsible for losses as referred to in paragraph (3) if they can prove: (a) the loss is not due to their fault or negligence; (b) have carried out management in good faith and with caution for the interests and in accordance with the intent and purpose of the company; (c) have no conflict of interest either directly or indirectly regarding management actions that result in losses; and (d) have taken action to prevent the occurrence or continuation of such losses".

Article 97 paragraph (5) of the UUPT as a form of the embodiment of the business judgment rule doctrine, can be applied as long as a director can prove that his actions are in accordance with the criteria in Article 97 paragraph (5) of the UUPT, where the proof is in court and the judge will assess whether the actions of the directors can be exempted from personal responsibility or not. Based on Article 104 paragraph (4) of the UUPT, it is stated that directors cannot be held responsible for the bankruptcy of the company if the directors can prove otherwise. The formulation of Article 104 paragraph (4) of the UUPT is a construction of the UUPT regarding BJR for directors related to the company's obligations in bankruptcy. The concept of BJR has been outlined in positive law in Indonesia through the UUPT. Regulations regarding this matter are important, at least for 3 (three) things:¹⁴

- a. as a preventive measure for companies required to ensure the process of organizing decision-making at the board of directors level is carried out correctly;
- b. encourage directors to dare to make decisions in accordance with the company's intent and objectives. As mandated by Article 1 paragraph (1) of the UUPT, the basis for establishing a company is mandated to carry out business activities. Therefore, as long as the decision is based on the BJR concept, the board of directors does not need to be afraid of the legal risks, especially if it later causes losses for the company;
- c. a guide for law enforcement officers to select events that are suspected of being

¹⁴ Diky Anandya, dkk, *op.cit*, hlm. 16. Lihat juga Aurelio Gurrea Martinez, "re-Examining the law and economics of the Business Judgement Rule: Notes for Its Implementation in Non-US Jurisdictions", *Journal of Corporate Law Studies*, Vol. 18, No. 2, July 2018, hlm. 423

criminal acts. This is important to mitigate the practice of legal entrapment due to the lack of understanding of law enforcement officers when investigating losses due to a decision in a company. In addition, as occurs in countries that adhere to common law, BJR is also used as a limitation for judicial institutions to avoid conducting second guess on a business decision because the court does not have every business decision and its nature is always dynamic. If a BJR test is carried out, it is feared that the court will make an assessment (hindsight bias) and create institutional problems for the court.

Business Judgement Rule is defined as a legal guarantee for the board of directors of a company to make decisions correctly, even if they are ultimately wrong and cause losses. In fact, this concept is one of several doctrines that have been known in corporate law, including separate corporate responsibility, piercing the corporate veil, fiduciary duty, and ultra vires. All of these doctrines must be carried out by every company to achieve the concept of good corporate governance and in accordance with the intent and purpose of its formation. Until now, there have actually been differences of opinion regarding the concept of business judgement rule. Some parties consider it a doctrine and not a few parties also argue that business judgement rule (BJR) is more appropriately interpreted as a rule, as stated by Farrar that BJR is a rule or presumption of no responsibility (preemption of liability) from the director. Hensey stated that BJR is a concept that provides immunity for individual directors from responsibility for damages arising from certain decisions. If observed, the two opinions interpret BJR as a form of protection for individual decision makers (rule concept) with the decision-making process (doctrinal concept).

4. Conclusion

The form of BUMD governance as a regional company as regulated in UUPD and PPBUMD consists of Regional Public Companies (Perumda) and Regional Limited Companies (Perseroda). The establishment of Perumda is in the form of regional regulations based on regional needs and the feasibility of the business field of the Perumda to be formed. Perumda is a BUMD whose entire capital is owned by one region only and is not in the form of shares.

One of the important organs in a company is the board of directors. The board of directors who control the company in daily activities has the authority to determine policies in carrying out its powers and obligations in managing the company must have good intentions, be responsible, have integrity, be honest, and be highly dedicated to advancing and developing the company. The board of directors is fully responsible personally for the company's losses if the person concerned is guilty or negligent in carrying out his duties. The board of directors can take or carry out actions to facilitate his duties as long as it is within the scope of his duties and obligations and does not conflict with customs, fairness, and propriety.

Implementation of the business judgment rule (BJR) doctrine as a form of protection given to directors in carrying out their duties and responsibilities in running the

company. Business decisions or actions taken by directors are intended to manage the company professionally according to their expertise to generate profits for the company, even though there are risks from these decisions and actions that can cause losses for the company. However, decisions taken by directors are not for personal interests or the interests of certain parties, so that the BJR doctrine can be used by directors to protect themselves from all forms of liability for losses experienced by the company.

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