

Application Of The Business Judgment Rule Doctrine To Business Decisions Of The Directors Of The State-Owned Enterprise Persero As A Legal Entity Whose Capital Comes From Separated State Assets

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Abstract.

The juridical basis for the application of the business judgment rule principle is a reflection of the independence and discretion of the board of directors, where in every decision they make, no party should be able to interfere with the challenge of their decision, including the court, even if their decision causes the company to suffer losses. This is regulated in Article 97 paragraph (5) and Article 104 paragraph (4) of Law no. 40 of 2007 concerning Limited Liability Companies. This provision also applies to State-Owned Enterprises Persero based on Article 1 point 2, Article 11, Article 91 of Law no. 19 of 2003. Apart from that, the Supreme Court has also issued Supreme Court Fatwa Number WKMA/Yud/20/VIII/2006 which confirms that state assets that have been separated into BUMN are not state assets and that all provisions and principles apply to BUMN Persero. the principles of limited liability companies regulated in Law no. 40 of 2007 concerning Limited Liability Companies. The principles of business judgment rules are applied to the directors of State-Owned Enterprises Persero if they make business decisions in accordance with applicable law, namely; Done in good faith, done with the right aim (prosper purpose), the decision has a rational basis (rational basis), done with due care as would be done by a person who is careful enough in a similar position, and carried out in a manner that he reasonably believes is in the best interest for the company.

Keywords: Business Judgment Rule, Limited Liability Company and BUMN.

I. INTRODUCTION

A limited liability company (PT) as a legal entity (artificial person) is also a legal subject. By law, their position is equal to that of a person in the sense that a natural person can be burdened with rights and obligations, can act in their own name, and of course a limited liability company has assets that are separate from the personal assets of its organs. Of the various forms of business that exist in Indonesia, the Limited Liability Company (PT) is the form of business that can be said to be the most dominant, as the form of business most chosen by business actors. This is due to two things, first, PT is a capital association and second, PT is an independent legal entity. "The existence of a PT as a capital association makes it easier for the company to transfer its funds or shares, while the position of the PT as an independent legal entity leads to separate company assets" The loss to the BUMN was then withdrawn by law enforcers as a criminal act of corruption and deemed to fulfill the elements of an offense in Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, which states that an act is designated as a criminal act. Corruption if it meets the elements of being against the law, causing harm to state finances, and benefiting oneself, other people, or a corporation. One example of this case is the ensnarement of the former director of BUMN PT. Merpati Nusantara Airlines,

Hotasi Nababan was involved in a criminal act of corruption. On August 16 2011, the former President Director of Merpati Nusantara Airlines was named a suspect by investigators at the Attorney General's Office for his decision to enter into an aircraft rental agreement between PT. Merpati Nusantara Airlines (MNA) with a company from the United States, namely Third Stone Aircraft Leasing Group (TALG). Along the way, it turned out that TALG had violated the business agreement. As a business entity that takes the form of a limited liability company, the doctrines and regulations that apply in limited liability companies should also apply to state-owned companies, including the business judgment rule doctrine that is applied in ordinary limited liability companies, but there is no understanding between law enforcers and there is no certainty. The law in implementing this doctrine in BUMN Persero makes the Board of Directors

always in doubt when making business decisions, and ultimately affects the slow development of BUMN Persero. It is against the background of the above circumstances that the author wishes to conduct research relating to the application of the business judgment rule doctrine to the business decisions of the directors of BUMN Persero, as a legal entity whose capital comes from separated state assets.

II. METHODS

The research method used in this research is normative juridical. Normative juridical legal research is a scientific research procedure to find the truth based on legal scientific logic from the normative side. Research was conducted on legal principles, legal systematics, law as a norm which is a benchmark for societal behavior to solve problems related to legal vacuums, legal ambiguities, or conflicting norms. The scientific logic in normative legal research is built on the basis of scientific discipline and the workings of normative legal science, namely legal science whose object is law itself. According to Soerjono Soekanto, legal research carried out by examining library materials or secondary data alone, can be called normative legal research or library legal research. Techniques for collecting legal materials, whether in the form of primary legal materials, secondary legal materials or tertiary legal materials, reviewed using literature studies and interviews conducted related to the thesis research are:

- 1) Literature study Literature study is carried out by reviewing legal materials related to research. The existing legal materials are then grouped according to the respective categories of legal materials.
- 2) Interviews Interviews are conducted to obtain secondary legal materials and to support normative legal research.

The legal materials obtained are then analyzed through the following processing process:

a. Description technique

It is a basic analysis technique whose use cannot be avoided. Description means an as-is description of a condition or position or legal or non-legal propositions.

b. Interpretation techniques

In the form of the use of types of interpretation in legal science such as grammatical, historical, theological, systematic, authentic interpretation, etc.

c. Evaluation techniques

Is an assessment in the form of correct or incorrect, agree or disagree, right or wrong, valid or invalid by researchers regarding a view, proposition, statement, formulation of norms, good decisions stated in primary legal materials, secondary legal materials and tertiary legal materials .

e. Argumentation techniques

This technique cannot be separated from the evaluation technique because the assessment must be based on reasons that are legal reasoning. In discussing legal issues, the more arguments the more it shows the depth of legal reasoning.

f. Systematization techniques

In the form of an effort to find links in the formulation of a legal concept or legal proposition between equal and unequal statutory regulations.

III. RESULTS AND DISCUSSION

Case Discussion

To overcome the crisis that occurred at PT. MNA, the Defendant as President Director together with other Directors in May 2006 had planned to add two Boeing 737 Family aircraft. This plan was continued by Tony Sudjiarto, General Manager of Planning (Defendant in the same case but tried in splits) by placing advertisements on the internet. Then on October 11 2006, the GMS of PT. MNA established the 2006 RKAP, which contained matters relating to aircraft procurement planning policies and described the fleet currently being operated. The defendant did not explain the plan to procure the two Boeing 737 Family aircraft at the annual GMS, and the plan to procure the two Boeing 737 Family aircraft was also not included in the RKAP. Based on an advertisement published by Tony Sudjiarto, on December 6 2012 TALG submitted a proposal for two Boeing 737-400 and Boeing 737-500 aircraft. The aircraft offered by TALG,

Tony Sudjiarto has carried out physical checks and prices based on information from Naveed, namely the Boeing 737-500 MSN 24898 aircraft, made in 1991 with a value of US\$ 10,750,000,- which is in Guang Zhou China, and the Boeing 737-400 aircraft MSN 23869 with a value of US\$ 11,500,000,- located in Jakarta; The two planes belong to Lehman Brothers and will be sold through agents and its subsidiary, East Dover.

The agreement made between PT. The MNA with TALG is a back to back agreement, which means that TALG is willing to buy the two aircraft from Lehman Brothers on the condition that PT. MNA will lease the aircraft; Based on this agreement, on December 18 2006, Tony Sudjiarto based on Power of Attorney No: MNA/001/3/5/ADM-460/DZ from the defendant, signed a Lease Agreement Summary of Terms (LASOT) with Jon Cooper as CEO of TALG. Two LASOTs are made for each aircraft. The signing of LASOT was not carried out face to face, but by scanning and emailing, Tony Sudjiarto from Jakarta and Jon Cooper from Washington DC. The main points of agreement in LASOT include:

1. Agreement to place a Security Deposit of US\$ 500,000 for each aircraft;
2. Agreement to place Security Deposit funds amounting to US\$ 1,000,000 directly in the Hume Associates attorney's office account;
3. Security Deposit placement must be made one day after the Purchasing Agreement between TALG and Lehman Brothers.

After signing the LASOT, Tony Sudjiarto made a Service Note No: OV/ND/148/XII/2006 to the Defendant for the placement of the security deposit. The official memorandum was forwarded by the Defendant to all directors. Based on this disposition, the Corporate Finance Division prepared a Board of Directors Instruction form (Circular Board) to make a transfer of US\$ 1,000,000, - and signed it by all directors. On December 19 2006, TALG, represented by Alan Mesner, signed a Summary of Terms for the Sale of One Boeing 737-400 and a Summary of Terms for the Sale of One Boeing 737-500 with East Dover; On December 20 2006, as a follow-up to LASOT, the defendant and Harry Pardjaman (Operational Director of PT. MNA) signed a Lease Agreement for a Boeing 737-500 aircraft with TALG represented by Alan Mesner, the signing process was carried out via scan and email, while the Lease An agreement for the Boeing 737-400 aircraft has not yet been made. On 21 December 2006 the defendant signed a letter Number: MNA/DZ/2006/1/3/KU-531 addressed to Bank Mandiri regarding the transfer of Hume Associates' account worth US\$ 1,000,000. TALG as Lessor failed to procure/deliver the aircraft. which was promised to PT. MNA. Due to this failure, PT. MNA requested that the Security Deposit be returned and cancel the rental agreement with TALG. It was later discovered that the security deposit deposited by PT. MNA was disbursed and used privately by Alan Messner and John Cooper. PT. MNA, assisted by the State Attorney, represented by Yosep Suardi Sabda, filed a civil lawsuit at the US District Court for the District of Columbia against Alan Messner and John Cooper, and was won by PT. MNA.

Alan Messner and John Cooper were determined to have defaulted and were obliged to return PT's security deposit. MNA with flowers. Until now PT. MNA is still trying to return the security deposit, including by criminalizing Alan Messner and John Cooper. In the financial report, the security deposit is recorded as a receivable owned by PT. MNA. Previously, the Criminal Investigation Agency (Bareskrim) of the National Police Headquarters investigated this case since May 2007 and five months later, 27 September 2007, the Director III of Corruption Crime & WCC issued a notification letter stating: from the results of the Bareskrim investigation, no facts of corruption were found. in that case. On July 4 2011, the attorney general's office again questioned Hotasi Nababan. After being questioned twice, on 16 August 2011, Hotasi was declared a suspect on charges of committing corruption which resulted in losses to the State. In this case, the Public Prosecutor charged the Defendant as the director of the company, for his actions together with other people, in renting two planes for operational needs of the company he leads, PT. Merpati Nusantara Airlines (MNA) is a company in the form of a State-Owned Enterprise (BUMN). According to the Public Prosecutor, the Defendant's actions violated Article 2 paragraph (1) Jo. Article 18 Law Number 31 of 1999 Jo. Law Number 20 of 2001 concerning Eradication of Corruption Crimes Jo. Article 55 paragraph (1) 1 of the Criminal Code, Subsidiary Article 3 Jo. Article 18 Law Number 31 of 1999 Jo. Law Number 20 of 2001 concerning Eradication of Corruption Crimes Jo.

Article 55 paragraph (1) 1st of the Criminal Code. That the security deposit paid will be used as a down payment for the purchase of a Boeing 737-500 aircraft by TALG to East Dover Ltd is an act that is against the law because it is contrary to the principles of good corporate governance as regulated in: Article 5 Paragraph (3) of the Law. Law No. 19 of 2003 concerning BUMN, Decree of the Minister of Finance Number: Kep.166/KMK.01/1991, Article 3 Letter e Jo. Article 8 Letter h Jo. Attachment to Miscellaneous Section Number 8 Decree of the Minister of State-Owned Enterprises Number: Kep-101/MBU/2002 concerning Preparation of Work Plans and Budgets for State-Owned Enterprise Companies. And the Defendant's actions have enriched other people or a corporation, namely TALG or Hume & Associates and resulted in financial losses to the state, cq PT. Merpati Nusantara Airlines amounting to US\$ 1,000,000.-

The prosecution of DP Nababan as a Defendant was prosecuted by the Public Prosecutor with the following charges:

1. Declare that the defendant Hotasi DP Nababan has not been proven to have committed a criminal act of corruption as stated in the Primary Indictment;
2. Acquit the defendant Hotasi DP Nababan from the Primary Charges;
3. Declare that the defendant Hotasi DP Nababan has been proven guilty of committing no crime of corruption as the Subsidiary Indictment violates Article 3 Jo. Article 18 Law Number 31 of 1999 Jo. Law Number 20 of 2001 concerning Eradication of Corruption Crimes Jo. Article 55 paragraph (1) 1 of the Criminal Code;
4. Sentenced the defendant Hotasi DP Nababan to imprisonment for 4 (four) years, reduced by the time the defendant was in city detention, with an order that the defendant be detained in a detention center;
5. The defendant will be fined Rp. 500,000,000,- (five hundred million rupiah) Subsidiary 6 (six) months in prison;
6. State the evidence used in case no. 1 to 80 is used for other things;
7. Sentence the defendant to pay court costs of Rp. 10,000,- (ten thousand rupiah).

In this case the judge acquitted the former director of PT. Merpati Nusantara Airlines, Hotasi Nababan. The judge stated that the defendant Hotasi DP Nababan had not been legally and convincingly proven to have committed a criminal act of corruption as stated in the primary and subsidiary indictments. Acquitted the defendant of all charges. Restoring the defendant's rights to his abilities, position, and honor and dignity. This decision apparently was not fully agreed with by all member judges. Judge member 1, Hendra Yosfin, expressed a dissenting opinion. According to him, Hotasi and Tony already knew that the deposit payment was to pay the down payment for the purchase of two aircraft by TALG from East Dover, not to rent the two aircraft. Hotasi already knew that the plane did not belong to TALG, but belonged to East Dover. But Hotasi signed the contract agreement as if TALG owned the plane. The defendant did not investigate further regarding the sale and purchase transaction between TALG and East Dover regarding the ownership status of the aircraft. Then checking the TALG and Hume companies was only based on guesswork because they are located in bona fide areas in the American capital. As a result, the State lost US\$ 1 million because the plane did not arrive and the money was not returned. The defendant Hotasi as president director did not obtain any assets from TALG, but Hotasi has legally and convincingly committed a criminal act of corruption in accordance with article 3 of the Corruption Law because the procurement of the rental of 2 aircraft units was not listed in the 2006 RKAP and the defendant paid SD only based on Tony's official note and the due results. very minimal diligent Lauren Siburian (two days).

Case analysis:

The limitations of the analysis include the application of the principles of business judgment rules to the directors' business decisions in aircraft leasing cases between PT. Merpati Nusantara Airlines and TALG. The author believes that the aircraft rental decision made by the directors of PT. Merpati Nusantara Airlines did not violate procedures. In the facts revealed in court, in the Company Budget Work Meeting (RKAP) which had been approved by the GMS there was a clause which stated that the directors could lease aircraft if this was deemed necessary. In accordance with the Articles of Association of PT. Merpati Nusantara Airlines, the decision to lease aircraft is not something that requires approval from the commissioners and shareholders. This decision has also been made in good faith and prudence, based on the principle of

fiduciary duty for the interests of the company. At that time Merpati's condition was critical. Its debts are piling up, its fleet is minimal, while its human resources are excessive, reaching around 3,000 employees. This condition makes this company far from healthy. There is a cash deficit of IDR 15 billion to IDR 20 billion every month. In fact, as a BUMN, it should generate profits. As a result of this situation, not only is Merpati's credibility in the eyes of creditors and lessors low, the company is also threatened with ceasing operations. As the highest peak, Hotasi must change that condition. Apart from cutting the organization and employees by a third, Merpati had to increase its fleet.[5] From this it can be seen that aircraft rental is indeed needed by the company in order to improve the company's performance.

The Board of Directors has implemented the precautionary principle by carrying out physical and price checks at the initial rental stage by the General Manager of Planning, Tony Sudjiarto. In the minutes, it has been proven by Hotasi and other members of the board of directors who were summoned as witnesses, that the Boeing 737-500 aircraft had been inspected long before in May 2006, when it had not been returned by the old charterer, while the Boeing 737-400 was inspected at Soekarno Hatta Airport Cengkareng in December 2006 because it was still leased by Batavia Air and would be returned in March 2007. The Board of Directors also made a security deposit as required in the agreement to a third party who was in a neutral position. Depositing security deposits to third parties who are considered neutral is carried out as an effort to prevent TALG from breaking its promises. That Hume & Associates then transferred the security deposit money to Jon Cooper's personal account was an action that was beyond PT's expectations. Merpati Airlines Nusantara. Meanwhile, criminal law expert IBR Supancana stated that what the Merpati Board of Directors had done in procuring the aircraft was based on the principles of good corporate governance (GCG). According to him, the most important principles in implementing GCG are the principles of transparency, accountability and fairness. These principles have been implemented by the Merpati Board of Directors in the context of aircraft leasing carried out with TALG. The principle of transparency, for example, has been applied in the aircraft procurement process through announcements on the internet. Apart from that, the negotiation process carried out has also been discussed and approved by the board of directors meeting. The existence of transparency and approval by the board of directors' meeting also shows that there is no self-interest from the directors in this agreement. This aircraft rental action is solely in the interests of the company.

This decision is not an unlawful act. Unlawful acts in Article 1365 of the Civil Code include:

1. acts that violate applicable laws.
2. Which violates other people's rights guaranteed by law, or
3. Actions that conflict with the perpetrator's legal obligations, or
4. Actions that are contrary to morality (*goede zeden*), or actions that are contrary to good attitudes in society to pay attention to the interests of other people.

The Board of Directors has taken steps to prevent or minimize losses by filing a lawsuit in the United States courts, demanding that Thirdstone Aircraft Leasing Group (TALG) return the security deposit that was deposited by PT. Merpati Nusantara Airlines. The District of Columbia Court, Washington DC, granted Merpati's lawsuit against Thirdstone Aircraft Leasing Group (TALG) for breaking its promise to procure two Boeing 737 aircraft for the state-owned company. Judge Richard J. Leon, who presided over the trial on July 8 2007, ordered TALG and Alan Messner, as owner of TALG, to pay a refundable security deposit of US\$ 1 million along with interest to Merpati. The excerpt from the judge's decision at the District of Columbia Court, Washington DC, among other things, determines: "The plaintiff, PT (Persero) Merpati Nusantara Air lines ("Merpati"), filed this lawsuit against the defendants Thirdstone Aircraft Leasing Group, Inc ("Thirdstone") and Alan Messner for alleged breach of contract or alternatively, for conversion, arising from an agreement to lease a commercial aircraft. Before the Court, the plaintiff's motion to declare a *verstek* decision against the defendant was presented. Because the plaintiff has fulfilled the jurisdictional and procedural requirements for this decision, the court granted the motion for a *verstek* decision." Next, the judge stated: "Accordingly, based on these affidavits, and the overall record set forth herein, the Court agrees with the plaintiff's calculation of damages. Therefore the Court is of the opinion that the plaintiff is entitled to judgment against the defendants, jointly or severally in the amount of \$1,000,000, plus post-judgment

interest at the rate prescribed by law until this judgment is satisfied.”Based on the principle of business judgment rule, every business decision taken by the board of directors cannot be challenged or questioned, unless the decision has been taken carelessly (in negligent manner), carried out fraudulently (tainted to be fraudulent), there is a conflict of interest (conflict of interest) or based on an unlawful act (illegality).

A director is exempt from personal responsibility for the business decisions he or she takes, even if the decision causes the company to suffer losses, as long as the decision meets the following requirements:

1. Decisions are in accordance with applicable law.
2. done in good faith
3. carried out with the right purpose (prosper purpose).
4. The decision has a rational basis.
5. carried out with due care as would be done by someone who is careful enough in a similar position.
6. carried out in a manner that is reasonable to believe is in the best interest of the company.

The Persero Board of Directors is an organ of the Persero BUMN which is responsible for the management and representation of the Persero BUMN. In their management duties, directors are required to have knowledge and ability at the highest level to carry out management and make business decisions for the sole benefit of the company based on the principles of good corporate governance and other principles applicable in the company. As well as complying with the statutory provisions that apply to BUMN Persero and Limited Liability Companies. On the other hand, this great responsibility and authority places the directors in a very vulnerable position to be subject to personal liability, because basically the directors are an organ that has the authority to act for and on behalf of the company. So, it can be said that the actions of the directors are the actions of the Persero, and vice versa. Personal responsibility is imposed on the directors if the directors make mistakes in their managerial duties within the company. A director can also be held personally liable for errors or violations committed by the company, if it is proven that the director, based on his authority, was involved in it. In the event that the directors take actions, such as making an agreement for the company, but in fact the action is not within their authority, then the company is not bound and responsible for the agreement. Thus, third parties can hold the directors personally accountable.[19] Actions by directors that exceed the limits of their authority are known as *ultra vires* actions. The term *ultra vires* is applied in a broad sense, that is, it includes not only activities prohibited by the articles of association, but also includes actions that are not prohibited, but go beyond those provided for. The Limited Liability Company Law places the aims and objectives of the company in a very central position in the articles of association. Changes to the aims and objectives in the articles of association must be approved by the GMS in accordance with applicable statutory provisions. In addition, changes to the aims and objectives in the budget must be approved by the Minister of Justice, registered in the company register and announced in the state gazette. In Law no. 19 of 2003, does not explicitly explain the personal responsibility of directors.

In BUMN Ministerial Regulation No. Per-01/MBU/2012, only regulates the dismissal at any time of members of the board of directors by the GMS or ministerial decision, if the member of the board concerned:

- a. Not/inadequately able to fulfill the obligations agreed upon in the management contract;
- b. Unable to carry out his duties properly;
- c. Violates the provisions of the articles of association and/or statutory regulations.
- d. Involved in actions that are detrimental to BUMN and/or the State;
- e. Carrying out actions that violate the ethics and/or propriety that should be respected as a member of the BUMN board of directors;
- f. Declared guilty by a court decision that has permanent legal force;
- g. Resign.

IV. CONCLUSION

The juridical basis for the application of the business judgment rule principle is a reflection of the independence and discretion of the board of directors, where in every decision they make, no party should be able to interfere with the challenge of their decision, including the court, even if their decision causes the company to suffer losses. This is regulated in Article 97 paragraph (5) and Article 104 paragraph (4) of Law

no. 40 of 2007 concerning Limited Liability Companies. This provision also applies to State-Owned Enterprises Persero based on Article 1 point 2, Article 11, Article 91 of Law no. 19 of 2003. Apart from that, the Supreme Court has also issued Supreme Court Fatwa Number WKMA/Yud/20/VIII/2006 which confirms that state assets that have been separated into BUMN are not state assets and that all provisions and principles apply to BUMN Persero. the principles of limited liability companies regulated in Law no. 40 of 2007 concerning Limited Liability Companies.

V. SUGGESTION

BUMN, especially those in the form of a limited liability company, means that state assets no longer belong to the state after being included in the capital of the BUMN Persero. So, it becomes clear which realm of law this BUMN Persero stands on. This is also necessary to avoid differences of opinion among academics, practitioners and law enforcement officials which will then have an impact on the practical world.

REFERENCES

- [1] Abdulkadir Muhammad, 2004. Law and Legal Research. Citra Aditya Bakti, Bandung.
- [2] Adrian Sutedi, 2012. State Financial Law, Sinar Graphics, Good Corporate Governance, Sinar Graphics Jakarta.
- [3] Ali Rido, *Legal Entity and Position of the Company's Legal Entity. Association Cooperatives, Foundations, Waqfs*, (Bandung: Alumni, 2001) in Jono, 2008. Bankruptcy Law, Jakarta. Graphic Rays.
- [4] Ami Kencana Prenada Media Gnuhin Ilmar, 2002 The Right to Control the State in the Privatization of BUMN. Kplan Media Group, Jakarta.
- [6] Arifin P. Soeria Atmadja, 2010. Public Finance in Legal Perspective: Theory, Practice and Criticism.-ed. 3,-2,- Jakarta: Rajawali Press.
- [7] Bagir Manan quoted in Maria Farida Indrati Soeprapto, 2007 Legal Sciences, Yogyakarta: kanisius.
- [8] Ben Petet, 2005 Company Law – 2nd ed.p .com (longman Lawa series) /earson Longman, England.
- [9] Bodenheimer in Satjipto Rahardjo, 2006, Legal Sciences, PT. Aditya Bakti's image.
- [10] Burhan Ashsofa, 2004, Legal Research Methods. Rineka Cipta, Jakarta.
- [11] Emmet J. Vaughan and Therese Vaughan, 2003. Fundamentals of risk and Insurance, John Wiler & Sons, Inc, 9th Edition. In Junaedt Ganie, 2013. Indonesian Insurance Law, Sinar Graphics, Jakarta.
- [12] Gunawan Setiardja, 1990, Dialectics of Law and Morals in the Development of Indonesian Society, Kanisius, Yogyakarta.
- [13] Gunawan Widjaja, 2008.150 Questions and Answers About Limited Liability Companies.Jakarta Friends Forum.
- [14] Hamdan Zoelva, 2007 "System for the Implementation of State Power According to the 1945 Constitution", in Sutjipno, Amendments to the 1945 Constitution 1999-2002 (in Academic Language, not Political), Press Constitution, Jakarta.
- [15] Hotasi Nababan, 2012. Don't take civil penalties, sue the Merpati aircraft rental case. Q Communications.
- [16] I Gusti Agung Rai. 2008. Performance Audit in the Public Sector. Salemba Empat, Jakarta.
- [17] Jamin Ginting, 2007. Limited Liability Company Law (UU No. 40 of 2007). Citra Aditya Bakti, Bandung.
- [18] Johny Ibrahim, 2006, Theory and Methodology of Normative Legal Research. Bayumedia, Malang.
- [19] Maria Farida Indrati Soeprapto, 2007, Legal Studies, Yogyakarta: Kanisius.
- [20] Marsh and soulby, 1995. Business Law. 6th Edition. Stanley Thornes Publishers Ltd, Cheltenham, UK.
- [21] Miller and Janes, 2010. Business Law Today-Comprehensive Edition. 8th edition. South-Western Cengage Learning, USA.
- [22] Miriam Budiardjo, 1998, Basics of Political Science, Gramedia Pustaka Utama, Jakarta.
- [23] Moh. Mahfud MD, Building Legal Politics, Upholding the Constitution, Jakarta: Raja Grafindo Persada.
- [24] Mokhammad Najih, Politics of Criminal Law, Concept of Criminal Law Reform in the Dream of a Rule of Law, Setara Press, Malang.
- [25] Munir Fuady, 2002. Modern Doctrines in Corporate Law. PT. Citra Aditya Bakti, Bandung.
- [26] M Yahya Harahaf 2009, Limited Liability Company Law, Sinar Graphic Jakarta.
- [27] Nindyo Pramono, 2006, Separated State Assets According to Law no.19 of 2003 concerning BUMN, in Sri Rejeki Hartono, et.al, ed, 2006. Problems Regarding Business Law: A Dedication to the Supreme Teacher. Yogyakarta.
- [28] Peter Mahmud Marzukii, 2005 Legal research, Fajar Interpratama Offset, Jakarta

- [29] Philip N Pillai, "Legal Frame Work of Business Organizations". (unpublished). matter. 35 in Rudhi Prasetya, 1996. Position of Independent Limited Liability Companies. Citra Aditya Bakti, Bandung.
- [30] Robert W. Hamilton, The Law of Corporations, West Publishing Co, St. Paul, Minn, 1996 in Ridwan Khairandy, 2009. Limited Liability Companies, Doctrine, Legislation and Jurisprudence-revised edition. Total Media, Jakarta.
- [31] Rustamaji Purnomo, 2008. Application of the Doctrine of Piercing the Corporate Veil in Limited Liability Companies (case study of PT. Djaya Tunggal and PT. Bank Pembangunan Asia).
- [32] Soerjono Soekanto, 2006. Introduction to Legal Research Printed 2006. UI Press, Jakarta.
- [33] Sri Redjeki Hartono, 2008. Insurance Law and Insurance Companies. Sinar Graphics, Jakarta.
- [34] Subekti, 2003. Basics of Civil Law. Intermasa, Jakarta.
- [35] Tubagus Ronny Rahman Nitibaskara, 2002, Paradoxical Conflict and Regional Autonomy, Sketch of the Shadow of Conflict in Future Prospects for Regional Autonomy, Sinar Mulia, Jakarta.
- [36] UU no. 17 of 2003 concerning State Finance, State Gazette of the Republic of Indonesia 2003 Number.47, Supplement to State Gazette Number.4286.
- [37] UU no. 19 of 2003 concerning BUMN, State Gazette of the Republic of Indonesia 2003 Number.70, Supplement to State Gazette Number.4297.
- [38] Law No.40 of 2007 concerning Limited Liability Companies, State Gazette of the Republic of Indonesia 2007 Number.106, Supplement to State Gazette Number.4756.
- [39] Letter from the Ministry of State-Owned Enterprises Number S-298/S.MBU/2007 regarding the Procurement of BUMN Goods and Services
- [40] Antonia and Sri Hasnawati, 2009. *Analysis of BUMN Financial Performance Before and After Privatization. Management Review, Journal Vol. 4, No. 2 November.*
- [41] John Armour, 2009. The Essential Elements of Corporate Law: What is Corporate Law?. Discussion Paper No. 643. Harvard Law School Cambridge, MA 02138.
- [42] Nur Agus Susanto, Axiological Dimensions of the "ST" Case Decision, Review of Judicial Review Decision Number 97 PK/Pid.Sus/2012, *Judicial Journal*, Vol. 7 No. December 3, 2014
- [43] Ridwan Khairandy. "Corruption in State-Owned Enterprises in particular
- [44] *Corporate Companies: A Study of the Meaning of State Wealth Separated and State Finances". Law Journal No.1 Vol.16, January 2009.*
- [45] Sri Lestari Kurniawati and Wiwik Lestari, 2008. *Journal of Finance and Banking*. Vol. 12 No. 2, May.
- [46] Aronson v. Lewis, 473 a.2d 805, 812 (del. 1984). In Carlos Andrés Laguado Giraldo, María Paula Díaz Cañon. "Modern Conception of Business Judgment Rule: a case study on Delaware Jurisprudence". 2004. Hal. 17. Downloaded on 16 May 2024, at 17.00 WITA.
- [47] Bosch H, Corporate Practices and Conduct (3rd ed) FT Pitman (1995). In Greenhow, Annette (1999) "The Statutory Business Judgment Rule: Putting the Wind into Directors' Sails," Bond Law Review: Vol. 11: Iss. 1, Article 4.
- [48] Martin Kock & David Powers, Personal Liability For Business Decisions: a translational view in FW Private Equity & Venture Capital Review. 2004. <http://www.mwe.com/info/pubs/Liability1004.pdf>, accessed on 16 February 2024, at 16.00 WITA.
- [49] Erman Rajagukguk. Understanding State Finances and State Losses, p.2. <http://www.bahanskrip.info/perbayar-anggaran-direksi-atas-kerugian-perseroan>. downloaded on May 19 2024 at 14.00 WITA.
- [50] Erman Rajagukguk. Understanding State Finances and State Losses, p.2. <http://www.bahanskrip.info/perbayar-anggaran-direksi-atas-kerugian-perseroan>. downloaded on May 21 2024, at 20.00 WITA.
- [51] Giraldo, Carlos Andrés Laguado and María Paula Díaz Cañon. 2004. "Modern Conception of Business Judgment Rule: a case study on Delaware Jurisprudence". International Law. In <http://redalyc.uaemex.mx/redalyc/html/824/82400501/82400501downloaded> May 16 2024, at 22.00 WITA.
- [52] Irna Nurhayati, Review of the Legal Entity Status of Limited Liability Companies According to Law Number 1 of 1995 concerning Limited Liability Companies. <http://mhugm.wikidot.com/article:002>, downloaded on 02 February 2024, at 21.00 WITA
- [53] <http://www.metrotvnews.com/metronews/read/2013/02/19/1/132362/Ini-Pertimbangan-Panel-of-Judges-Verdict-Acquitted-Hotasi-Nababan>. downloaded on May 3 2024, at 18.00 WITA
- [54] <http://nasional.inilah.com/read/detail/1959733/vonis-bebas-hotasi-nababan-tidak-smooth#.UfAw9IExgy4> downloaded on May 4 2024, at 17.00 WITA.