



The Considerations of the Panel of Judges in Rejecting the Business Judgment Rule Principles in Corruption Crime Case Decisions of PT. Asuransi Jiwasraya

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Abstract

The aim of this study is that to examine one of the corruption cases of PT. Asuransi Jiwasraya which focuses on the considerations of the panel of judges in rejecting the principles of the Business Judgment Rule. The method used in this study was a normative legal research method with a statutory approach and a case approach. The result of this study shows that PT. Asuransi Jiwasraya is legally and convincingly proven guilty of committing a criminal act of corruption which is committed by the directors together with the result of the judge's refusal to apply the principles of the Business Judgment Rule. It is shown based on the juridical facts from Decision Number: 32/PID.SUS-TPK/2020/PN.JKT.PST that the substance of the actions of the defendant of the director of PT. Asuransi Jiwasraya cannot be seen to be based on good faith and it is not prioritizing the prudential principle given the fact that the directors actually benefit themselves and not in the interests of the company. Therefore, the directors of PT. Asuransi Jiwasraya can be held personally responsible for failing to conduct the company's fiduciary duties and causing state losses so that the defendant's actions to obtain protection under the Business Judgment Rule should be set aside.

Keywords: *Criminal Acts; Corruption; Jiwasraya, Business Judgment Rule (BJR); Directors*

A. Introduction

State-Owned Enterprises (BUMN) is commercial organizations in which the state owns either all or part of the capital through direct participation from separate state assets. Based on Law Number 19 of 2003 concerning State-Owned Enterprises, hereinafter referred to as the BUMN Law, state-owned enterprises are simplified into two types that are public company and limited liability company, hereinafter referred to as Persero. A Persero is an independent legal entity which has its own rights and obligations with all the legal consequences (Wicaksono, 2009, p. 15). The establishment of BUMN aims to provide community welfare in the form of goods and services that are have good quality, complete and sufficient for the lives of many people. Therefore, the management of BUMN is conducted by directors who are given the authority to regulate the company in accordance with the provisions and principles of the Limited Liability Company Law. In connection with its obligations, the Board of Directors should make decisions both administrative decisions and commercial decisions related to the company's business

sector; such as, business decisions made by the board of directors by considering many factors in the field such as sources of raw materials, production equipment, quality of production results, distribution areas, marketing plan, and so on. In this case, accurate and precise information is very important for directors in order to consider before making business decisions that determine the company's profits and losses. However, business decisions which sometimes taken by directors turn out to be wrong because there are other factors that the directors which lead to business risks. Therefore, it is necessary to have regulations which serve as a corridor for directors in order to avoid the risk of personal liability after making decisions that are detrimental to the company.

In company law, the limited liability company (UUPT) provides legal protection to Company Directors through principles or rules known as the Business Judgment Rule (BJR), a legal principle originating from the common law system (Janpatar, 2014) contained in Article 97 paragraph 5 of the limited liability company (UUPT). The Business Judgment Rule postulates that a Director cannot be sued for decisions that cause losses provided that the decision is taken carefully, follows applicable regulations, and is conducted in good faith (Rajagukguk, 2007, p. 27). In its implementation, BJR functions to protect a company director in making decisions so that allowing the director to discharge personal responsibility for mistakes in making business decisions which result in the company experiencing losses or even bankruptcy. The basis for considering the existence of the Rule of Business Judgment principle is that not every decision taken by the directors can benefit the company. However, in making these decisions, the directors only make decisions based on the interests of the company, without personal gain factors, (Panjaitan, Anggusti, & Nababan, 2021, p. 14) make decisions based on information they trust, in accordance with appropriate and reasonable circumstances and decisions the best for the company which means that there are no elements of fraud, conflict of interest, violations of law or the concept of intentional error, or gross negligence.

As in the case of main director of PT. Asuransi Jiwasraya Persero, which hereafter refers to as PT. AJS, from 2008 to 2018 was suspected of committing acts that were detrimental to state finances by its main director, Hendrisman Rahim, who was charged with Subsidiary charges in the form of a primary charge which is a violation of Article 2 paragraph 1. Jo. Article 18 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes and subsidiary charges Article 3 paragraph 1 Jo. Article 18 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. The defendant's attorney in the defense note (pledoi) stated that all the actions of the defendant Hendrisman Rahim were appropriate actions to save PT Asuransi Jiwasraya, and the actions of the defendant Hendrisman Rahim were protected by the Business Judgment Rule in order to protect the directors of a company in making decisions so that allowing the directors to discharge their personal responsibilities for mistakes in making business decisions that result in the company experiencing losses or even bankruptcy. In making the defendant Hendrisman Rahim's decision there was no element of personal interest, the decision was made based on information they trusted, the right circumstances and rationally and the decision was the best for the company which meant there were no elements of fraud, conflict of interest, acts against the law, illegality, or the concept of intentional mistakes, and gross negligence.

However, in its decision the Panel of Judges stated that the Defendant Hendrisman Rahim was legally and convincingly proven guilty of committing the crime of Corruption which was committed jointly as in the primary indictment and sentenced the Defendant to life imprisonment. Hendrisman Rahim was declared by the Panel of Judges in its decision to have committed a criminal act of corruption which was detrimental to state finances by abusing his authority as Main Director of PT AJS. Furthermore, the defendant Dr. Hendrisman Rahim, Hary Prasetyo, MBA., and Syahmirwan, S. E. had managed stock investments and mutual funds of PT. AJS is not transparent and accountable by making

agreements without being determined by the Directors of PT. AJS and without analysis based on objective data that was only by agreement with the Defendants Joko Hartono Tirto, Heru Hidayat and Benny Tjokrosaputro, resulting in state losses on stock investments in the form of purchasing 4 stocks of BJBR, PPRO, SMBR and SMRU and mutual fund investments in the form of purchasing 21 Mutual Funds with 13 Investment Managers. Moreover, at the appeal level as in decision Number 2PID. SUS-TPK2021PT. DKI, the Panel of Judges at the DKI Jakarta High Court upheld the decision of the Panel of Judges at the Corruption Crime Court at the Central Jakarta District Court Number 32Pid. Sus-TPK2020 PN. Jkt. Pst dated 12 October 2020 by changing the length of the sentence imposed on the Defendant to imprisonment for 20 twenty years and a fine of IDR 1. 000,000,000.00 (One Billion Rupiah) provided that if the fine is not paid it will be replaced by imprisonment for 4 four months.

B. Research Methods

The research method is a way of thinking to achieve research objectives. Researchers may not be able to formulate, find, analyze, or solve problems without research methods (Soekanto, 2014, p. 43). This research uses a normative research method or what is commonly known as doctrinal research with a statute approach and case approach (Peter Mahmud Marzuki, 2005, p. 55). These two types of approaches are carried out by examining all laws and regulations that are related to the problem (legal issue) at hand. In addition, the data collection technique in this research method is a literature study, namely the collection and identification of legal materials obtained through references, scientific essays, official documents, papers, journals, mass media, the internet and other legal materials that have a relationship with those studied by researchers.

C. Discussion

Considerations of the Panel of Judges in Rejecting the Business Judgment Rule Principles in Corruption Crime Case Verdict of PT PT. Asuransi Jiwasraya

1. Case Position

Decision Number: 32/Pid.Sus-TPK/2020/PN.JKT.PST is a case of loss to a BUMN which resulted in a criminal act of corruption which was brought to trial after going through the investigation and prosecution process by the Attorney General of the Republic of Indonesia. The defendant Dr. Hendrisman Rahim as Main Director of PT. AJS, ex officio as Chairman of the Investment Committee of PT AJS Period 2008 to 2018, with Hary Prasetyo, MBA., (prosecuted in a separate case) as Finance Director of PT. AJS ex officio as Deputy Chairman of of the Investment Committee of PT AJS for the period 2008 to 2018, Syahmirwan, SE. (prosecuted in a separate case) as Head of the Investment Division of PT. AJS for the period 2008 to 2014 and as General Manager of Finance and Production at PT. AJS for the period 2015 to 2018 ex officio as Investment Committee of PT AJS for the period 2008 to 2018, on days and dates that cannot be confirmed anymore in 2008 to 2018 at the Office of PT AJS at Ir. H. Juanda Street No. 34 Central Jakarta City, at the Indonesian Stock Exchange Office on Jenderal Sudirman Street Kav 52 – 53 South Jakarta City, or at least in another place where the Corruption Crime Court at the Central Jakarta District Court has the authority to examine and try cases based on the provisions of Article 35 paragraph (2) of Law Number 46 of 2009 concerning Courts Corruption Crime, having committed or participated in committing acts with Heru Hidayat, Benny Tjokrosaputro and Joko Hartono Tirto (each of whom was prosecuted in a separate case file), unlawfully or abusing the authority, opportunities or facilities as well as position were as follows;

- a. Defendant Dr. Hendrisman Rahim, Hary Prasetyo, MBA., and Syahmirwan, SE. managed Stock and Mutual Fund Investment PT. AJS which was not transparent and accountable by making agreements without being determined by the Directors of PT. AJS that was an agreement with Joko Hartono Tirto, Heru Hidayat and Benny Tjokrosaputo to manage stock and mutual fund placement transactions.
- b. Defendant Dr. Hendrisman Rahim, Hary Prasetyo, MBA. and Syahmirwan, SE. had conducted management of Stock and Mutual Fund Investments, without analysis based on objective data and professional analysis in the NIKP (Head Office Internal Note) but the analysis is only a formality.
- c. Defendant Dr. Hendrisman Rahim, Hary Prasetyo, MBA. and Syahmirwan, SE. had purchased BJBR, PPRO and SMBR stocks even though the stock ownership had exceeded the provisions stipulated in the Investment Guidelines, namely a maximum of 2.5% of outstanding stocks.
- d. Defendant Dr. Hendrisman Rahim, Hary Prasetyo, MBA., and Syahmirwan, SE. had colluded with Heru Hidayat and Benny Tjokrosaputo through Joko Hartono Tirto to conduct purchase and/or sale transactions of BJBR, PPRO, SMBR and SMRU shares with the aim of intervening in prices which in the end did not provide investment profits and could not meet liquidity needs to support operational activities.
- e. Defendant Dr. Hendrisman Rahim, Hary Prasetyo, MBA., and Syahmirwan, SE. together with Heru Hidayat and Benny Tjokrosaputo through Joko Hartono Tirto managed and controlled 13 Investment Managers by forming special mutual fund products for PT. AJS so that the management of financial instruments underlying mutual funds PT AJS can be controlled by Joko Hartono Tirto.
- f. Defendant Dr. Hendrisman Rahim, Hary Prasetyo, MBA., and Syahmirwan, SE. agreed even though they were aware of the purchase/sale transactions of financial instruments underlying 21 mutual fund products managed by 13 Investment Managers controlled by Joko Hartono Tirto who was an affiliated party with Heru Hidayat and Benny Tjokrosaputo which in the end did not provide investment profits and could not meet liquidity needs to support the company's operational activities.
- g. Defendant Dr. Hendrisman Rahim, Hary Prasetyo, MBA., and Syahmirwan, SE. had received money, stock and facilities from Heru Hidayat and Benny Tjokrosaputo through Joko Hartono Tirto and companies collaborating with PT. AJS.

These actions are contrary to the following provisions;

- Article 11 paragraph (2) Law Number 2 of 1992 concerning Insurance Business;
- Article 11 paragraph (1) Law Number 40 of 2014 concerning Insurance;
- Article 8 paragraph (1) letters b and c, Article 11, Article 13 paragraph (1), Article 14 paragraph (1) Article 15 paragraph (1) and Article 20 paragraph (1) Government Regulation Number 73 of 1992 concerning Business Conduct Insurance;
- Article 6 paragraph (3) Minister of Finance Regulation (PMK) Number 53/PMK.010/2012 dated 3 April 2012 concerning the Financial Health of Insurance Companies and Reinsurance Companies;
- Article 11 paragraph (1) Decree of the Minister of Finance (KMK) Number 424/KMK.06/2003 concerning the Financial Health of Insurance Companies and Reinsurance Companies;
- Article 3 number 4, and Article 23 Regulation of the Minister of State for State-Owned Enterprises (Permen BUMN) Number PER-01/MBU/2011 concerning the Implementation of Good Corporate Governance in State-Owned Enterprises;

- Article 59 and Article 60 of the Financial Services Authority (OJK) Regulation Number 2/POJK.05/2014 dated 28 March 2014 concerning Good Corporate Governance for Insurance Companies;
- Article 18, Article 19 letters a and b, Article 20 letters b and c numbers 1 and 2 OJK Regulation Number 43/POJK.04/2015 dated 23 December 2015 concerning Investment Manager Code of Conduct;
- Article 58 OJK Regulation Number 73/POJK.05/2016 dated 23 December 2016 concerning Good Corporate Governance for Insurance Companies;
- Article 6 paragraph (4) POJK Number 71/POJK.05/2016 dated 28 December 2016 concerning the Health of Insurance Companies and Reinsurance Companies;
- Article 1 number 2 and Article 4 Decree of the Board of Directors of PT Asuransi Jiwasraya (Persero) Number 004A.SK.U.012004 dated January 9 2004 concerning Investment Guidelines for PT Asuransi Jiwasraya (Persero);
- Article 1 Number 4 and Article 4 Decree of the Board of Directors of PT Asuransi Jiwasraya (Persero) Number 280.a.SK.U.1212 dated 28 December 2012 concerning Investment Guidelines for PT Asuransi Jiwasraya (Persero);
- Decree of the Board of Directors of PT Asuransi Jiwasraya Number 186.SK.U.0713 dated 15 July 2013 concerning General Guidelines for Good Corporate Governance of PT Asuransi Jiwasraya, namely the Code of Conduct for Implementing PT Asuransi Jiwasraya's GCG Part B .III concerning Anti-Corruption and Donation Business Ethics;
- Article 7 paragraph (2) Decree of the Board of Directors of PT Asuransi Jiwasraya (Persero) Number 217.SK.U.0716 dated 20 July 2016 concerning Investment Guidelines.

2. Public Prosecutor's Indictment

The defendant was charged with Subsidiarity as stated in Indictment Letter No. Case Register: PDS-08/M.1.10/Ft.1 /05/2020 dated 19 May 2020, as follows:

a. Primair

The Defendant's actions are as regulated and punishable by crime in Article 2 paragraph (1) jo. Article 18 Law no. 31 of 1999 concerning Eradication of Corruption Crimes as amended by Law no. 20 of 2001 concerning amendments to Law no. 31 of 1999 concerning Eradication of Corruption Crimes jo Article 55 paragraph (1) 1st of the Criminal Code.

b. Subsidies

The Defendant's actions are as regulated and punishable by crime in Article 3 jo. Article 18 Law no. 31 of 1999 concerning Eradication of Corruption Crimes as amended by Law no. 20 of 2001 concerning amendments to Law no. 31 of 1999 concerning Eradication of Corruption Crimes jo Article 55 paragraph (1) 1st of the Criminal Code.

3. Defense of Legal Counsel (Pledoi)

The Defendant's Legal Advisor in his Memorandum of Defense (Pledoi) stated that all of the defendant Hendrisman Rahim's actions were appropriate and correct steps to save PT AJS, and the defendant Hendrisman Rahim's actions were protected by the Business Judgment Rule in order to protect a company director in making decisions which enabling the directors to release personal responsibility, for mistakes in making business decisions that resulted in the company experiencing losses or even bankruptcy. Furthermore, the defendant, Hendrisman Rahim, in making the decision there was no element of personal interest, it was decided based on information they trusted, according to the right

circumstances and rationally and the decision was the best for the company which meant that there were no elements of fraud or conflict of interest, acts against the law (illegality), or there was the concept of intentional error (gross negligence).

In addition the Defendant's Legal Counsel in his Memorandum of Defense (Pledoi) stated that the Defendant Inherited AJS's Debt Due to Insolvency amounting to IDR 5.7 Trillion and basically the actions conducted by the defendant were in the form of handing over the management of stock and mutual fund investments to witness Heru Hidayat and witness Benny Tjokrosaputro through witness Joko Hartono Tirto as an intermediary was an effort to overcome the insolvency experienced by PT. AJS so that the Defendant considered it as a basis to justify the stock and mutual fund investment policy that had been conducted by the Defendant together with witness Hari Prasetyo and witness Syahmirwan, but in the end it actually resulted in losses for PT. AJS and at its peak customers of PT. AJS experienced payment default in 2019.

With the appointment of the Defendant to join the board of directors of PT. AJS is proof that the State has given its trust to the Defendant, as well as a form of respect and recognition for the Defendant's abilities. The Defendant is trusted to take various strategic policies in order to save this business entity. The policy choice was realized in a series of actions conducted by the Defendant with the intention of saving PT. A.J.S. With the bad conditions experienced by PT. AJS since the Defendant's initial arrival, if the policy choices made caused losses, then it can be concluded that the other alternative policies that the Defendant sought could not improve the existing conditions.

4. The Panel of Judges' considerations rejecting the Business Judgment Rule Principle in Corruption Crime Case Decisions of PT. Asuransi Jiwasraya Number: 32/PID.SUS-TPK/2020/PN.JKT.PST

In its consideration, the panel of judges responded to the defense of the defendant's legal advisor that the defendant's actions were protected by the Business Judgment Rule, stating that the Business Judgment Rule protects every business decision which constitutes a company transaction, as long as it is conducted within the limits of authority with full prudence and good faith. However, based on the facts above, it can be seen that;

- a. The defendant Hendrisman Rahim together with witness Syahmirwan and witness Hary Prasetyo were proven to commit non-transparent stock and mutual fund investment management agreements with witness Joko Hartono Tirto, witness Heru Hidayat and witness Benny Tjokrosaputo to manage and control stock and mutual fund placement transactions. It is contrary to Article 1 number 2 and Article 4 of the Decree of the Directors of PT Asuransi Jiwasraya (Persero) Number 004A.SK.U.012004 dated January 9 2004 concerning Investment Guidelines for PT Asuransi Jiwasraya (Persero);
- b. Witness Syahmirwan, defendant Hendrisman Rahim and Witness Hary Prasetyo had conducted investment management in stocks and mutual funds, without analysis based on objective data and professional analysis in the NIKP (Head Office Internal Note), but the analysis is only made as a formality. This action violates the provisions of Article 58 OJK Regulation Number 73/POJK.05/2016 dated 23 December 2016 concerning Good Corporate Governance for Insurance Companies;
- c. Furthermore, the actions of witness Hary Prasetyo, defendant Hendrisman Rahim, together with witness Syahmirwan can be categorized as violating statutory provisions, including Law Number 14 of 2014 concerning Insurance, Article 59 and Article 60 of Financial Services Authority (OJK) Regulation Number 2/ POJK.05/2014 dated 28 March 2014 concerning Good Corporate Governance

for Insurance Companies, Article 58 OJK Regulation Number 73/POJK.05/2016 dated 23 December 2016 concerning Good Corporate Governance for Insurance Companies, Article 18, Article 19 letters a and b, Article 20 letters b and c numbers 1 and number 2 OJK Regulation Number 43/POJK.04/2015 dated 23 December 2015 concerning Investment Manager Code of Conduct, Article 6 paragraph (4) POJK Number 71/POJK.05/ 2016 dated 28 December 2016 concerning the Health of Insurance Companies and Reinsurance Companies, Article 6 paragraph (3) Minister of Finance Regulation (PMK) Number 53/PMK.010/2012 dated 3 April 2012 concerning the Financial Health of Insurance Companies and Reinsurance Companies, Article 11 Ministerial Decree Finance (KMK) Number 424/KMK.06/2003 concerning the Financial Health of Insurance Companies and Reinsurance Companies, Article 3 number 4, and Article 23 Regulation of the Minister of State for State-Owned Enterprises (Permen BUMN) Number PER-01/MBU/2011 concerning Implementation Good Corporate Governance in State-Owned Enterprises, Article 1 number 2 and Article 4 Decree of the Board of Directors of PT Asuransi Jiwasraya (Persero) Number 004A.SK.U.012004 dated January 9 2004 concerning PT Asuransi Jiwasraya Investment Guidelines (Persero), Article 1 Number 4 and Article 4 Decree of the Board of Directors of PT Asuransi Jiwasraya (Persero) Number 280.a.SK.U.1212 dated 28 December 2012 concerning Investment Guidelines for PT Asuransi Jiwasraya (Persero) which can be described as follows;

- 1) Witness Hary Prasetyo, witness Syahmirwan and defendant Hendrisman Rahim had purchased BJBR, PPRO and SMBR stocks even though their stock ownership had exceeded the provisions stipulated in the Investment Guidelines, namely a maximum of 2.5% of outstanding stocks.
- 2) Witness Hary Prasetyo, witness Syahmirwan and defendant Hendrisman Rahim had colluded with parties affiliated with witness Heru Hidayat and witness Benny Tjokrosaputro through witness Joko Hartono Tirto to conduct purchase and/or sale transactions of BJBR, PPRO, SMBR and SMRU stocks with the aim of intervening in prices which in the end did not provide investment profits and could not meet liquidity needs in order to support operational activities.
- 3) Witness Hary Prasetyo, witness Syahmirwan and defendant Hendrisman Rahim together with witness Heru Hidayat and witness Benny Tjokrosaputro through witness Joko Hartono Tirto colluded with 13 Investment Managers to form a special Mutual Fund product for PT. AJS so that the management of the financial instruments underlying the PT AJS Mutual Funds could be controlled by witness Joko Hartono Tirto.
- 4) Witness Syahmirwan, defendant Hendrisman Rahim and Witness Hary Prasetyo knew and approved the purchase/sale transactions of financial instruments underlying 21 Mutual Fund products managed by 13 Investment Managers controlled by witness Joko Hartono Tirto who is an affiliated party with witness Heru Hidayat and witness Benny Tjokrosaputro, which in the end did not provide investment profits and was unable to meet liquidity needs to support the company's operational activities.
- 5) Witness Hary Prasetyo, witness Syahmirwan and defendant Hendrisman Rahim had received funds and facilities from witness Heru Hidayat and witness Benny Tjokrosaputro through witness Joko Hartono Tirto and companies collaborating with PT. AJS.

These actions were proven to be contrary to the provisions of the laws and internal regulations of PT AJS itself. Furthermore, based on Decision No. 32/PID.SUS-TPK/2020/PN.JKT.PST from the substance of the actions of the defendant Hendrisman Rahim together with witness Hary Prasetyo and witness Syahmirwan were not based on good faith and prioritized the precautionary principle to truly make PT AJS healthy which led to greater loss, the defendant's actions cannot be categorized under the Business Judgment Rule, so the defense that the Defendant's actions are protected by the Business Judgment Rule should be set aside.

The panel of judges also rejected the defense of the defendant's attorney who stated that the defendant inherited AJS's debt due to insolvency amounting to IDR 5.7 trillion, considering that he

actually handed over the management of stock and mutual fund investments to witness Heru Hidayat and witness Benny Tjokrosaputro without being based on reasons which could be categorized as a form of study and analysis of investments which in the end made the greater insolvency.

The author agrees with the consideration of the Panel of Judges that the defendant's actions cannot be categorized as a business judgment rule. Business judgment rule as contained in Article 97 paragraph (5) of Law Number 40 of 2007 concerning Limited Liability Companies, which states that members of the Board of Directors cannot be held responsible for losses as intended in paragraph (3) if they can prove:

- The loss is not due to his fault or negligence;
- He has conducted management in good faith and prudence for the benefit and in accordance with the aims and objectives of the Company;
- He has no conflict of interest, either directly or indirectly, regarding management actions that result in losses; and
- He has taken action to prevent the occurrence or continuation of such losses.

The Business Judgment Rule in these provisions adheres to 3 (three) bases which are used to justify a business decision, namely; (Prayoko, 2015, p. 75)

- a) Good faith
- b) Responsible Business Decisions
- c) Business decisions which do not contain conflict of interest

Basically, directors in conducting their authority and responsibilities, must apply basic principles that are the trust given to the company (fiduciary duty) and the ability as well as a careful attitude in taking action (duty of skill and care), as in Article 92 paragraph (1), (2) jo. Article 97 Paragraph (1), (2) Law 40/2007. Furthermore, the existence of the Business Judgment Rule Doctrine aims to protect directors from business decisions which constitute corporate transactions, as long as these are conducted within the limits of their authority with full prudence and good faith, or if it is conducted in accordance with the principles of Fiduciary Duty and the Limited liability company law. The business judgment rule also exists as a result of the implementation of the principle of fiduciary duty by a director that is the duty of skill and care, so that all errors that arise after the implementation of this duty of skill and care have consequences, namely that the directors receive a release from personal responsibility if an error occurs in his decision (Boen, 2008, p. 100). However, if the directors do not conduct these matters, they can be held personally responsible in the event that the company suffers a loss.

According to Lilik Mulyadi, the ratio decidendi of the panel of judges implementing the Business Judgment Rule certainly cannot be separated from the evidentiary elements which occur at trial by paying attention to material facts and decisions based on these facts (Mulyadi, 2009, p. 164). In this case, the panel of judges examining this case has considered the juridical facts that occurred at trial that judging from the substance of the defendant Hendrisman Rahim's actions as described above, cannot be seen to be based on good faith and prioritizing the principle of prudence; especially, the business policy adopted by the defendant. Hendrisman Rahim is not based on reasons which can be categorized as a form of study and analysis of investment.

In this case, the element of loss and violation of the law has been proven, the Defendant did not implement the Business Judgment Rule principles in making business decisions, and did not try to make PT AJS's finances healthy, but instead caused greater losses for PT AJS. Furthermore, this loss was felt by PT AJS customers who submitted claims at due date where the Business Judgment Rule principle could not be applied in a transaction, if it is proven that the action did not substantially provide benefits to the company (Widjaja, 2008, p. 80). From a series of actions based on the explanation of Law Number 31

of 1999 concerning Corruption Crimes against other laws, the defendant had received profits so that they are categorized as enriching themselves. The increase in wealth is not determined by how large or small the value of the increased wealth is, with material increases it can also be categorized as increasing wealth, even though it should be the state who receives the wealth so that the defendant's actions result in state financial losses.

It is reinforced by the Audit Board of The Republic of Indonesia (BPK RI)'s examination in this case as stated in the report on the results of the examination in the context of calculating state losses Number 06/LHP/XXI/03/2020 dated March 9 2020, namely Report on the Results of Investigative Audits in the Context of Calculating State Losses on Financial Management and Investment Funds at PT. Asuransi Jiwasraya (Persero) for the period 2008 to 2018 provided state losses of IDR 16,807,283,375,000.00 (Sixteen Trillion Eighty Seven Billion Two Hundred Eighty Three Million Three Hundred Seventy Five Thousand Rupiah). Therefore, the Ratio decidendi is linked to the results of the evidence at trial arguing that the defendant was convicted of committing a criminal act of corruption which was detrimental to state finances by abusing his authority as Main Director of PT Asuransi Jiwasraya.

Conclusion

State-Owned Enterprises (BUMN) are business entities whose capital is either wholly or largely owned by the state through direct participation originating from separated state assets. It rises consequence that every business decision of the BUMN directors is against the law and contrary to the principles of the Business Judgment Rule which results in losses for the company with the impact of being charged with criminal acts of corruption with offenses detrimental to state finances. Furthermore, the Business Judgment Rule principle should provide legal protection for directors for their business decisions as long as they are within the limits of their authority and they are conducted in good faith and with full caution as required by Article 97 paragraph (5) of the PT. AJS Law. However, in this case the Corruption Crime Case at PT AJS in Decision Number: 32/PID.SUS-TPK/2020/PN.JKT.PST, the Panel of Judges considered that the actions of the defendant Hendrisman Rahim as Main Director could not be categorized as a Business Judgment Rule so that The defendant's actions to obtain protection under the principles of the Business Judgment Rule should be set aside. The decision ratio of the panel of judges in applying the Business Judgment Rule certainly cannot be separated from the elements of evidence which occur at trial. The Panel of Judges has considered the juridical facts, which in essence are as follows;

1. Made an agreement with Hary Prasetyo and Syahmirwan regarding the non-transparent and unaccountable management of Jiwasraya stock and mutual fund investments.
2. Management of stocks and mutual funds was conducted without analysis based on objective and professional data in the Head Office Internal Note (NIKP), but the analysis was only conducted as a formality and changes to the Board of Directors' Decision from rating grade A to BBB, all of these actions were conducted so that the Medium Term Notes (MTN) to PT Armidian Karyatama and PT Hanson International could be implemented.
3. The purchase of BJBR, PPRO and SMBR stocks had exceeded the provisions stipulated in the investment guidelines, namely a maximum of 2.5 percent of outstanding stocks.
4. Conducted purchase and/or sale transactions of BJBR, PPRO, SMBR and SMRU stocks with the aim of intervening in prices which in the end did not provide investment profits and could not meet liquidity needs in order to support operational activities.
5. Controlled 13 investment managers by establishing special mutual fund products for PT AJS so that the management of the financial instruments underlying PT AJS mutual funds could be controlled by Joko Hartono Tirto.

6. Approved purchase/sale transactions of financial instruments managed by 13 investment managers who were affiliated parties of Heru Hidayat and Benny Tjokro. However, in the end the transaction did not provide investment profits and could not meet liquidity needs in order to support the company's operational activities.
7. Gave money, shares and facilities to Hendrisman Rahim, Hary Prasetyo and Syahmirwan regarding cooperation in managing PT AJS stock and mutual fund investments in 2008-2018. In addition, Hendrisman Rahim received profits in the form of cash amounting to IDR 875,810,680 and 1,013,000 PCAR shares worth IDR 4,590 per lot on January 24 2019 worth IDR 4,649,670,000, bringing the total value to IDR 5,525,480,680 as well as travel tickets to London with his wife, Lutfiyah Hidayati, in November 2010.

Thus, in the Audit Board of The Republic of Indonesia (BPK RI) examination in this case, it was stated in the audit results report in the context of calculating state losses Number 06/LHP/XXI/03/2020 dated March 9 2020 PT. Asuransi Jiwasraya (Persero) for the period 2008 to 2018 provided state losses of IDR 16,807,283,375,000.00 (Sixteen Trillion Eighty Seven Billion Two Hundred Eighty Three Million Three Hundred Seventy Five Thousand Rupiah) with the defendant's proceeds is sentenced to have committed a criminal act of corruption which is detrimental to state finances by abusing his authority as Main Director of PT AJS.

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