

CORPORATE CRIMINAL LIABILITY RELATED TO THE BUSINESS JUDGMENT RULE DOCTRINE

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Abstract: *This article will explain Corporate Criminal Liability related to the Business Judgment Rule doctrine. There are 2 (two) fundamental questions that are the object of research, first: to what extent is Corporate Criminal Liability related to the Business Judgment Rule doctrine, second: to what extent is the Business Judgment Rule doctrine applied in Indonesia? This article uses normative research in the form of regulations, conceptual, comparative approaches, cases, and interviews. This study emphasizes the interpretation and construction of law to obtain several legal norms, conceptions, lists of regulations, and their implementation in real situations. This research shows that Corporate Criminal Liability is related to the Business Judgment Rule doctrine and the application of the Business Judgment Rule doctrine in Indonesia as in the Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies, Article 97 paragraph (5) reads: Members of the Board of Directors cannot be held accountable for losses as referred to in paragraph (3) if it can prove: a. the loss is not due to his fault or negligence; b. has conducted management in good faith and prudence for the benefit and by the aims and objectives of the Company; c. does not have a conflict of interest, either directly or indirectly, for management actions that result in losses; and d. have taken action to prevent the loss from arising or continuing. Of the 4 (four) conditions outlined in the Law above, this is a requirement that must be met if the Business Judgment Rule doctrine is to be applied in Indonesia.*

Keywords: *Criminal Liability, Corporation, Business Judgment Rule.*

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Introduction

The legislation made by legislators that are carried out to overcome everything or anticipate a situation so that laws are sometimes imperfect. The laws that are made are often out of date, and no longer to the needs of society. Reforming laws is not as easy as we think. It requires further research, scientific studies, and academic papers so such a legislation process takes a lot of time.¹ From these circumstances a legal discovery is needed to fill the legal void, which case in

¹ Journal Articles: Harifin A. Tumpa, *Application towards the Concept of Rechtsvinding and Rechtschepping by the Judges in Deciding a Case*, volume 1 issue 2, August 2015, Hasanuddin Law Review, 127.

terms of the need in practice to fill the legal void, especially in the judiciary, this matter is to fill legal vacuum, a Supreme Court Regulation is issued as a guide in carrying out and handling a particular case so that the judicial process can run well, as an example of this study related to corporate criminal responsibility, a Supreme Court Regulation number 13 of 2016 has been issued regarding procedures for handling corporate criminal cases. In this case, in line with the research and development of the Law and Judiciary of the Supreme Court of the Republic of Indonesia (Puslitbang Kumdil), in supporting the development and legal substance².

In terms of the development of criminal law, as time goes by and the legal community is relatively more advanced, criminal law then leads, grows, and develops into part of public law as it is known today, gradually, criminal law as part of public law exists to protect the interests of society. and country.³From general criminal law, special crimes such as corruption are known, in this case, including corruption crimes where the perpetrators are corporations. Corporate criminal responsibility is also known as the Business Judgment Rule doctrine, a doctrine that has developed apart from the existing theory of corporate criminal responsibility, namely: strict liability theory, vicarious liability, identification theory, aggregation theory, and delegation theory. The development of corporations as subjects of criminal law, in general, corporations are identified with legal entities (rechts persons) whose emphasis is on the civil aspect, in the development of criminal law also accommodates corporations as a legal subject. Several theories can be used as the basis for determining a legal entity to be categorized as a legal subject, including: Theory of fiction by Friedrich Carl Vonn Savigny, C.W. Opzoomer, and Houwig. Legal entities don't exist, only people turn on their shadows to explain something and it happens because humans who make it based on law or in other words are people made by law. The theory of assets due to position or the theory of Van Het Ambtelijk Vermogen by Holder and Binder, This theory explains that a legal entity is an entity that has an independent price, which is owned by the legal entity but by its management and because of its position, it is assigned the task to take care of the property. Purposeful property theory or Zweck Vermogen by A. Brinz and E.J.J van der Heyden, explains that only humans can become legal subjects and legal entities are to serve certain interests. The theory of common property or the Propriate Collective by W.I.P.A. Molengraaff and Marcel Planiol. Based on this theory, a legal entity is an asset that cannot be shared among its members; and The theory of reality or the theory of equipment or Organ Theorie by Oto Von Gierke, states that a legal entity is not something fictional, but is a creature that exists in the abstract from a juridical construction⁴.

1. Methodology

This paper uses a descriptive analysis method with a normative juridical approach through statutory approaches (Statute Approach), conceptual approaches (Analytical and Conceptual Approach), and comparative approaches (Comparative Approach), using deductive and or inductive reasoning to obtain and discover objective truth. . The material and data collection techniques were carried out using literature studies, especially for materials related to the object of this writing, questionnaires, interviews, comparisons with other countries.

²Supreme court of the Republic Indonesia, *Laporan tahunan 2020 Optimalisasi Peradilan Modern berkelanjutan*, Jakarta, Supreme court of the Republic Indonesia 2020, 261.

³Lilik Mulyadi, *The Revere Burden of Proof Against Corruption Law in Indonesian Criminal Law System Related With The 2003 United Nations Convention Against Corruption*, volume 4, Jurnal Hukum dan Peradilan, 2015, 103.

⁴Bettina Yahya, *Kedudukan dan tanggung jawab Pidana Korporasi Dalam Tindak Pidana Korupsi*, Puslitbang hukum dan Peradilan Badan Litbang Diklat Kumdil Mahkamah Agung RI, 2016, 35



2. Results And Discussion

2.1 The Business Judgment Rule Doctrine in Indonesia

The philosophy of punishment for corporate perpetrators of corruption in the context of philosophy, crime, and punishment is an “older philosophy of crime control” or even, “a relic of barbarism”. M. Sholehuddin stated that “criminal philosophy” has 2 (two) functions, namely: First, the fundamental function is as a foundation and normative principles or rules that provide guidelines, criteria, or paradigms on criminal and sentencing issues. This function is formally and intrinsically primary and contained in every teaching system of philosophy. That is, every principle established as a principle or rule is recognized as a truth or norm that must be upheld, developed, and applied. Second, the function of theory, in this case as a meta-theory. That is, the philosophy of punishment functions as a theory that underlies and underlies every sentencing theory⁵. The Business Judgment Rule is a doctrine known in company law a doctrine which is used as immunity for the Directors in making decisions for the company, the purpose of this doctrine is to achieve justice for the Directors in carrying out their duties. If the Board of Directors is always in a situation that causes the fear of personal responsibility that overshadows them, this could cause doubts in the decision-making by the Board of Directors so that it can have an impact on decreasing profits obtained by investors, even to the point of decreasing the quality of people who have the potential to become the directors themselves. This is what the Business Judgment Rule wants to address. Where this doctrine is the only solution that can be used as protection for Directors who have good intentions to avoid corporate lawsuits from shareholders and creditors regarding losses that arise as a result of decisions taken by the Directors.

The position of the Business Judgment Rule and the directors can be known in the following sense: Business Judgment Rule is the most important legal assessment standard in corporate law, to protect the Board of Direction from lawsuits, unless it can be proven sufficiently that the Board has violated the tasks mandated to him or if the decision-making process of those taken has violated the principle of independence and the principle of avoiding personal interests. Whereas the concept applied to the business judgment rule is to protect directors from lawsuits, unless it can be proven sufficiently that the person concerned has violated the duties assigned to him or if the decision-making process taken has violated the principle of independence and the principle of avoiding personal interests. Article 97 paragraph (2) of the 2007 Limited Liability Company Law explains that if the position of the Board of Directors has responsibility in managing the interests of the company that is in line with the goals of the company, the management of the Board of Directors must be based on the principle of good faith without abuse of position and knowledge that he has in his position as a Director. In the case of business decisions, it is the directors who are authorized, and if the directors have performed their duties properly, by their belief that from a business point of view that is what is right, the directors cannot be blamed.

The implementation of the company's affairs in good faith and accompanied by responsibility must run in balance with the obligations of the Board of Directors. For the management of the company, the Board of Directors is required to be able to make the right and quick business decisions, this is due to business conditions that are very easy to change very quickly accompanied by intense competition with other companies. However, this demand does not reduce the implementation of the good faith obligations of the Board of Directors, so all decisions taken by the Board of Directors in managing the company must always be based on good faith, even though these decisions can later cause the company to suffer losses.⁶ Garrett, Brandon, Too Big Jail: How Prosecutors Compromise with Corporations, 2014, states that “Sentencing guidelines and judicial practices could be reconsidered, but prosecutors themselves can revitalize the area by adopting a

⁵Lilik Mulyadi, *Membangun Model Ideal Pemidanaan Korporasi-Pelaku Tindak Pidana Korupsi Berbasis Keadilan*, Kencana, 2021, 199

⁶Bewani Octavianisa Masrurah, *Konsep Itikad Baik Dalam Penerapan Business Judgment Rule Berdasarkan Sistem Hukum Perseroan Indonesia Dan Malaysia*, Jurnal Ilmu Sosial dan Pendidikan Vol. 3. No. 3 November 2019, 184

new set of guidelines to strengthen the punishment reserved for the most serious corporate criminals”.⁷

2.2 Responsibility of the Board of Directors of State-owned enterprises for the loss of the Company.

Hillman, Keim and Schuler (2004) reviewed the literature on corporate political strategies and identified four levels of antecedents: firm level (including firm size, dependence on government, risk, slack, diversification, internal structures and management support, and foreign versus domestic ownership), industry level (including industry concentration, number of firms, and level of competition), issue-specific (including salience of the issue and level of competition to affect the issue) and institutional level (including formal and informal institutions). Of particular interest to IB scholars was the relative lack of development regarding the institutional antecedents of corporate political strategies.⁸ Robert A.G Monks And Nell Minow, Wiley, 2008, *Corporate Governance* concerning: “Early concept of the corporation: The corporation could not exist without a notion of private property”⁹ Of the several classifications of criminal acts of corruption as stipulated in Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999, the provisions that are generally used against State-owned enterprises directors for losses to companies are Article 2 and Article 3. There are similarities in the elements of delict in the two Articles which lie in the element of loss to state finances or the state economy so that the two provisions are classified as acts of corruption that are detrimental to state finances. The element of loss indicates that legal subjects supporting rights and obligations are capable of being held accountable for their actions. Including company directors, if they commit acts against the law to enrich themselves at the expense of state finances. This provision is in line with Article 2 letter (g) of the State Finance Law which states that state assets/regional assets that are managed by themselves or by other parties are in the form of money, securities, receivables, goods, and other rights that can be valued in money. Including separated assets in state/regional companies. State financial arrangements according to Atmadja (2010) regulations made without considering the feasibility and only concerned with ambition would be detrimental to state finances. This is explained in Law Number 17 of 2003 concerning State Finance which has become a unit between public authority and private authority, as well as public finance and private finance. State assets that were separated into state-owned capital, changed their legal status from public to private finances due to the breakup of state finances invested in a Limited Liability Company. The transformation from public money to private money is regulated in Law Number 17 of 2003 concerning State Finance and Law Number 1 of 2004 concerning the State Treasury. Payment of operating profits, taxes, and money deposited by the company to the state treasury has changed its status to become public money.

In line with the consideration of the decision of the Constitutional Court, Number 62/PUU-XI/2013 stated that the relationship between the state and State-owned enterprises company is as a shareholder of a Limited Liability Company whose rights and obligations are subject to the Limited Liability Company Law. The state no longer has free power over some of the state’s assets which are separated to become company capital because they have been converted into shareholder rights. After being converted at the General Meeting of Shareholders (GMS), shareholder ownership in the percentage reflected becomes voting rights and the right to receive dividends, so that the state’s relationship with the wealth that it originally owned was severed. State Owned Enterprises/Regional Owned Enterprises in the form of a limited liability company is a legal entity (rich person) as an independent legal subject. This is per the universally applicable legal entity theory that a legal entity is a legal subject that has rights and obligations, goals, and interests of its own. The theory of wealth in private legal entities explains that wealth is not private property

⁷Garrett, Brandon, *Too Big Jail : How Prosecutors Compromise with Corporations*, Harvard University Press, 2014, 18

⁸Rodriguez, P., et al. (2006). "Three Lenses on the Multinational Enterprise: Politics, Corruption and Corporate Social Responsibility". *Journal of International Business Studies*, 7

⁹Robert A.G Monks And Nell Minow, *Corporate Governance*, Wiley, 2008, 97

but is tied up in a body for a specific purpose. Legal entities consist of a wealth of assets intended for certain interests (Ali, 2011). So that every legal entity has its assets that are used for certain interests and purposes. The wealth that is bound to an entity and has a specific purpose is protected by law. This has been regulated in Article 4 of the State-owned enterprises Law, which contains a rule that the state is separated from state property.

Therefore, the position of state as a shareholder is not responsible for the engagement carried out by the company and is not responsible for the company's losses exceeding the number of shares owned. According to Kurniawan (2014), the criteria for the position of an independent legal entity are (1) regular organization. The company has organs consisting of a General Meeting of Shareholders (GMS), directors, and commissioners, (2) separate assets, the company has its assets in the form of authorized capital consisting of all nominal value of shares, (3) self-interest, the company has a relationship own law with third parties represented by the directors both inside and outside the court, and (4) has a specific purpose, which is determined in the articles of association. After the Persero has been approved by the Minister of Law and Human Rights as a legal entity, the state money that was previously used as capital participation has become the company's finances and no longer belongs to the state. This means that when state assets have been separated, these assets no longer enter the realm of public law but enter the realm of private law. The position of the state as a shareholder according to the provisions of Article 3 of the Limited Liability Company Law states that the shareholder is not responsible for the engagement carried out by the company and is not responsible for the company's losses exceeding the number of shares owned. Likewise, the state is not responsible for the company's commitments and losses that exceed the number of shares."The first generation of explanations concentrated mostly on cultural factors. Weber's(1978)."¹⁰

Therefore, when the Persero suffers a loss, the loss does not necessarily become a loss to the state. State losses described in Article 1 paragraph (22) of Law Number 1 of 2004 concerning the State Treasury which provides limits on State/Regional losses are a lack of money, securities, and goods, the real and definite amount of which is the result of acts against the law, whether intentional or negligent. The regulation adheres to the concept of state losses in a material sense that arise when there is a shortage of money. The lack of money in question is of course not a loss in the usual business/business transactions because losses in one year's financial statements only impact reduced state revenues which do not result in state losses (Wati, 2016). "Eco-global crimes are often transnationally organized, with damage being caused by legal transnational corporations".¹¹ Likewise, when the Persero experiences an increase in profit, what is meant is the Persero profit. The state as a permanent shareholder gets revenue through taxes and dividends which are deposited into the state treasury.¹²

2.3 The Concept of Good Faith in the Application of Business Judgment Rules in the Malaysian legal system.

The effect of government policy on the competitive position of businesses represent, in turn, important determinants of firm performance (Shaffer, 1995).¹³ Malaysia is often regarded as a common law country, it has been at the forefront of Islamic capital market regulatory development, creating a hybrid framework comprising corporate law drawn from its common law heritage and shariah principles. The distinguishing feature of Islamic capital markets is compliance

¹⁰Dahlstorm, C., and Victor, L. (2011). Myths of Corruption Prevention, What is (not) Good With a Weberian Bureaucracy?. APSA 2011, Annual Meeting, 5

¹¹ Sollund, Ragnhild. Eco-global crimes: Contemporary problems and future challenges. Routledge, 2016, 3

¹²Muhammad Akram Syarif Hayyi, Muhammad Said Karim, Aminuddin Ilmar, *Urgency Of Applying The Doctrine Of Business Judgment Rule Against State-Owned Enterprise Directors In Corruption Cases*, Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan, Vol. 6, Nomor 1, Juni 2021, 75

¹³Hillman, A.J., and Michael A. Hitt. (1999). "Corporate Political Strategy Formulation: A Model of Approach, Participation, and Strategy Decisions". Academy of Management Review, 825

with Islamic law with its distinctly different jurisprudence and regulatory style from the common law system. Based on the above quotation, it is known that Malaysia is often regarded as a common law country at the forefront of the development of Islamic capital market regulations. However, even though the sharia system has a great influence on the legal system in Malaysia, regarding company law, Malaysia still adheres to the British and Australian systems. "Although shariah has had an increasing influence on various aspects of the Malaysian legal system since independence, companies regulation in Malaysia has been modeled largely on the UK and Australian law, and continues to draw from developments in the common law world." Malaysia applies the common law legal system as well as the UK uses the same company law. Malaysian Company Law is regulated by the Companies Act 1965 which has now changed to the Companies Act 2016. Based on the Companies act 2016 of Malaysia there are several types of business entities, namely: A company limited by shares, namely a company limited by shares, and the obligations of its members are limited to the number of shares. A company limited by guarantee, namely a company limited by guarantee if the liability of its members is limited to the amount given by its members to contribute if the company is closed. An unlimited company, namely a company that is not limited, means that there are no limits on the obligations of its members. A limited liability partnership is regulated in the Limited Liability Partnership Act 2012, A limited liability partnership is a legal entity that has a separate legal personality from its partners. Private Limited Company (Sdn Bhd). Public Limited Company (Berhad). The partnership is regulated in the Malaysian Partnership Act 1961, namely two or more people running the same business to make a profit. Each partner is an agent of the company and other partners for the business purposes of the partnership; and the actions of each partner to run the business carried out by the partnership whose members are binding on the partnership and its partners, unless the partner acting so does not have the authority to act for the company on a particular matter, and the person knows that he or she does not have that authority or does not know or believe he or she is being a partner. Foreign companies. Under the Companies Act 2016 of Malaysia, it is mandatory to use the word Berhad or its abbreviation Bhd. Made into a unit with the name of the company than for companies that are private in nature use "Sdn" which is the abbreviation "alone" before the word "Bhd". If used for an unlimited company, it is placed after the company name. Regarding the Business Judgment Rules doctrine, Malaysia applies this doctrine in the Companies Act of Malaysia 1965 and 2016, juridically these requirements are the same as what is regulated in state law with the common law system. Good faith is implemented by Malaysia with the following description: "A director of a company has the duty under the law to act with reasonable care, skill, and diligence. The Business Judgment Rule provides for the requirements a director will be deemed to have fulfilled this duty."¹⁴

3. Differences in the application of the concept of good faith in the Business Judgment Rule in Indonesian and Malaysian Company Law.

Important gaps in our knowledge remain in respect of the extraterritorial reach of domestic legal standards.¹⁵ The Business Judgment Rule Doctrine in the Company Law in Indonesia, in the opinion of legal experts, that the article in the Company Law is only a manifestation of the meaning of the business judgment rule. The implementation of understanding the business judgment rule is inseparable from the principle of good faith and a sense of responsibility for the board of directors as stipulated in Articles 97 and 99 of the Company Law. In the provisions of Article 97 paragraphs 1 and 5, it emphasizes the concept of good faith from the directors, but based on the article, conclusions can also be drawn regarding the application of the business judgment rule doctrine. The provisions of Article 97 paragraphs 1 and 2 that limited liability company law applies the business judgment rule based on Article 97 paragraph 1 can be concluded that the actions of the directors

¹⁴Bewani Octavianisa Masrurah, *Konsep Itikad Baik Dalam Penerapan Business Judgment Rule Berdasarkan Sistem Hukum Perseroan Indonesia Dan Malaysia*, Jurnal Ilmu Sosial dan Pendidikan Vol. 3. No. 3 November 2019, 187

¹⁵Kinley, D., and Joseph, S. (2002). "Multinational Corporations and Human Rights: Questions about their Relationship: A New Research Project Studying the Evolving Legal and Human Rights Responsibilities of Corporations". *Alta Law Journal*, 9.



towards the company are based on the principle of good faith being responsible for the interests of the company without any aspects of due skill or professionalism attached to it. While the implementation of good faith in Malaysian legal arrangements is based on Section 132 (1) Companies Act 1965 of Malaysia and Section 213 Companies Act 2016 of Malaysia, the concept of good faith is an act of director accompanied by honesty in making decisions by accompanying consideration of the situation within the company and interests that exist between the parties in it. In the provisions of this Article, the Board of Directors is obliged to exercise their authority by considering the existence of a company situation where a Director is obliged to be able to position himself so that he can be free from his will to avoid conflicts of interest. Based on the explanation above, it is known if the Board of Directors can decide to do or not do whatever is in the rules of the Articles of Association or approve or even not approve it. The difference is that in the Malaysian company legal system, the application of the concept of good faith in the business judgment rule of directors must fulfill the complete elements namely: due of care, due of skill, good faith, and for the best interest of the company. While in the Limited Liability Company Law, the element of due skill or the professionalism of the directors is not considered, Article 97 paragraph (5) of the Company Law does not mention the principle of professionalism/due skill, in contrast to the provisions of Section 132 (1) of the Companies Act 2016 of Malaysia through The author traces that in the provisions of Law Number 40 of 2007 concerning Limited Liability Companies, there is no use of the term Business Judgment rule, there are 4 aspects in applying to produce a business judgment rule that will protect directors namely due of care, due of skill, good faith, and for the best interest of the company.

The next difference lies in the application of the Business Judgment Rule principle in the Company Law on Limited Liability Companies which also applies to the Company's Board of Commissioners as contained in the provisions of Article 114 and Article 115 of the Company Law. Meanwhile, in the common law legal system, such as Malaysia, there is no Business Judgment Rule for the Board of Commissioners because this common law system is not based on written rules, and adheres to a single board officer, which means management and supervision is carried out by the chief officer of the company, then another difference is that Indonesia as countries that adhere to the continental European system or the civil law system where the source of law lies in statutory regulations, the judge in court must interpret the doctrine because there is no comprehensive, clear and specific regulation regarding the business judgment rule in the Limited Liability Company Law.

That it is very necessary to have comparisons with other countries regarding corporate criminal responsibility, especially regarding the Business Judgment Rule doctrine, so that it can provide an overview of its application in society, as stated by John C. Coffee Jr, "No Soul to Damn: No Body to Kick": An Unscandalized Inquiry into the Problem of Corporate Punishment, 1981, that: Corporate probation is an area where courts undoubtedly should proceed cautiously, and this Article has intended more to scout the perimeters of that remedy than to recommend it as a mandatory sentence. But in an economy characterized by imperfect competition, organizational slack, and innumerable obstacles that interfere with the expected impact of penalties for corporate misbehavior, direct judicial intervention in certain areas of the firm's decision-making processes will at times be necessary. It is a curious paradox that the civil law is better equipped at present than the criminal law to authorize these interventions. Corporate probation could fill this gap and, at last, offer a punishment that fits the corporation.¹⁶

¹⁶John C. Coffee Jr, "No Soul to Damn: No Body to Kick": An Unscandalized Inquiry into the Problem of Corporate Punishment, Michigan Law Review, volume 79, 1981, 459

Table 1. Respondent's knowledge of the Business Judgment Rule doctrine in Indonesia and the Indonesian Supreme Court Regulations regarding corporate criminal liability.

n = 35 Respondents

Question	A %	B %	C %
How is the application of corporate criminal responsibility related to the Business Judgment Rule doctrine in Indonesia?	Know 35/100%	Don't Know 0/0%	No Answer -

Data Source: Respondent's Answers

Analysis :

All respondents were aware of the Business Judgment Rule doctrine in Indonesia and the Indonesian Supreme Court Regulation regarding corporate criminal responsibility. If analyzed carefully, the Business Judgment Rule doctrine in Indonesia has started to be recognized even though it has not been explicitly stated in the laws and regulations.

Regarding the imposition of sanctions for perpetrators of corporate corruption, in addition to being subjected to Principal Crimes and Additional Crimes in the form of repairing the company and conducting training for employees (What do you think regarding this matter)?

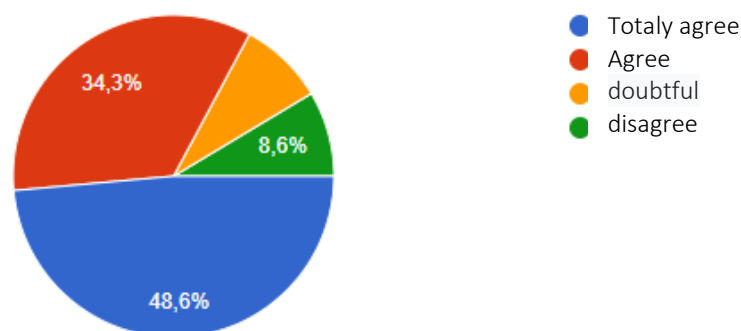


Figure 1. Description of respondents when applied regarding additional punishment/sanctions for perpetrators of corporate crimes

4. Conclusion

Whereas from an analysis of Corporate Criminal Liability related to the Business Judgment Rule doctrine in Indonesia and in other countries, in this case the state of Malaysia there are several things that differentiate both in terms of rules and their application as well as strict regulation in legislation. Business Judgment Rule criminal liability in the Indonesian company law system is regulated in the provisions of Article 97 paragraph (5) and Article 104 paragraph (4) of the Limited Liability Company Law to protect good faith directors, and is included in Article 114 paragraph (5) for the Law The Limited Liability Company Law protects the board of commissioners in good faith. If the directors can prove the things mentioned in Article 97 paragraph (5) of the Limited Liability Company Law, then the directors cannot be held accountable for compensating the company for losses arising from their decisions. The emergence of BJR principle provisions in Article 97

paragraph (5) of the Limited Liability Company Law to address concerns about Article 97 paragraph (1) and paragraph (2) of the Limited Liability Company Law.

Whereas in Malaysia, Malaysian company law is regulated in the Companies Act 1965 of Malaysia Section 132 and Companies Act 2016 of Malaysia Sections 213 and 214. Then the difference lies in the Malaysian company law system that the application of the concept of good faith in the business judgment rule must fulfill elements -elements namely due of care, due of skill, good faith, and for the best interest of the company. Whereas the Indonesian Limited Liability Company Law has not stated that this is what is meant by the business judgment rule, then the Company's Commissioners in the Indonesian legal system can also apply the business judgment rule, while the common law system such as Malaysia does not regulate the application of the business judgment rule to the Company's Commissioners.

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