

Kajian kritis terhadap pelaksanaan kriteria iktikad baik dan tanggung jawab anggota direksi dalam pengurusan PT: Studi Putusan Pengadilan Tinggi Bandung No. 94/Pdt/2015/PT.BDG = A critical study of the implementation of the good faith criteria and responsibilities of members of the board of directors in the management of PT: Bandung High Court Decision Study No. 94/Pdt/2015/PT.BDG.

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Abstrak

Tesis ini menganalisis bagaimana kriteria anggota Direksi yang telah melaksanakan pengurusan PT dengan iktikad baik dan penuh tanggung jawab, secara khusus menilai kriteria tersebut pada Putusan Pengadilan Tinggi Bandung No. 94/Pdt/2015/PT/BDG. Penelitian ini merupakan yuridis normatif dengan pendekatan konseptual, kasus dan perbandingan. Tesis ini menyimpulkan, sesuai dengan peraturan dan prinsip-prinsip hukum PT di Indonesia, anggota Direksi telah melakukan pengurusan PT dengan iktikad baik jika memenuhi setidaknya 5 (lima) kriteria: kejujuran/ketulusan anggota Direksi; tidak melanggar hukum yang berlaku; bertindak sesuai dengan norma dan kewajaran dalam bisnis; memiliki kompetensi dan bertindak sesuai kompetensi Direksi; tidak ada konflik kepentingan. Adapun kriteria penuh tanggung jawab anggota Direksi jika memenuhi setidaknya 5 (lima) kriteria: menjalankan tugas dan wewenang sesuai dengan Anggaran Dasar PT; sesuai dengan hukum dan norma yang berlaku; tidak melampaui wewenang sebagai Direksi; memberikan informasi yang akuntabel kepada segenap stakeholder; terbuka dalam mengambil keputusan PT. Dalam Putusan Pengadilan Tinggi Bandung No. 94/Pdt/2015/PT/BDG, pertimbangan Majelis Hakim menyatakan apabila anggota Direksi dalam pengurusan PT tidak selaras dan bertentangan dengan kewajiban hukumnya sebagaimana ditentukan dalam Pasal 92 ayat (2) UUP No.40 Tahun 2007, maka dapat dikategorikan tidak melakukan tugasnya dengan iktikad baik, sehingga dapat dipandang dan dipersamakan telah melakukan perbuatan melawan hukum. Oleh karena itu, Putusan No. 94/Pdt/2015/PT/BDG, yang menyatakan Tn. HC, selaku anggota Direksi tidak mempunyai iktikad baik dan tidak bertanggung jawab, telah sesuai dengan ketentuan perundang-undangan dan prinsip-prinsip hukum perseroan terbatas.

.....This thesis analyzes how the criteria for members of the Board of Directors who have carried out the management of PT in good faith and full responsibility, specifically assess these criteria in the Bandung High Court Decision No. 94/Pdt/2015/PT/BDG. This research is a normative juridical research with conceptual, case and comparison approaches. This thesis concludes, in accordance with the regulations and legal principles of PT in Indonesia, members of the Board of Directors have managed the PT in good faith if they meet at least 5 (five) criteria: honesty/sincerity of members of the Board of Directors; do not violate applicable laws; act in accordance with the norms and fairness in business; have competence and act in accordance with the competence of the Board of Directors; no conflict of interest. The criteria for full responsibility for members of the Board of Directors if they meet at least 5 (five) criteria: carry out their duties and authorities in accordance with the Articles of Association of PT; in accordance with applicable laws and norms; does not exceed the authority as the Board of Directors; provide accountable information to all stakeholders; open in making decisions PT. In Bandung High Court Decision No. 94/Pdt/2015/PT/BDG,

the consideration of the Panel of Judges stated that if a member of the Board of Directors in managing a PT is not in line with and contrary to their legal obligations as stipulated in Article 92 paragraph (2) of the Company Law No. 40 of 2007, it can be categorized as not performing their duties properly. good faith, so that it can be seen and equated with having committed an unlawful act. Therefore, Decision No. 94/Pdt/2015/PT/BDG, which states that Mr. HC, as a member of the Board of Directors does not have good faith and is not responsible, has complied with the provisions of the legislation and the legal principles of a limited liability company.