

# Application of business judgement rule in the management of multinational companies

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## ABSTRACT

This research aims to identify and analyse the implementation of the Business Judgement Rule principle in the management of multinational company which includes the regulatory position and the application of the Business Judgement Rule principle policy which is the standard and values of the company specifically applied from the leadership to employees at Multinational Company. This research uses normative juridical legal research methods and is conducted with a statutory approach, namely with library materials and secondary data including laws and regulations, legal principles and comparative legal research. This research also takes a conceptual approach, namely analysing the concept of policies and standards in companies using legal logic reasoning. The results of this study indicate that the position and internal management policies of multinational companies, which have implemented general principles in accordance with the principles of the Business Judgement Rule (BJR) as stated in Article 97 paragraph (5) of Law No. 40 of 2007 concerning Limited Liability Companies. In terms of the application of the Business Judgement Rule (BJR) principle, multinational companies have specifically issued comprehensive local standards and guidelines to regulate and drive the expected behaviour of employees from the board of directors to the staff level in making strategic and operational decisions for business continuity in Indonesia.

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## 1. INTRODUCTION

The term multinational corporation was popularized by David E. Lilienthal around 1960 in his research on management and held companies *oleh "Carnegie Institute of Technology on Management and Corporation"*. From the research, the term *The Multinational Corporation (MNC)* which has the meaning of a company that has a position in a country but operates and runs its company based on the laws and customs of other countries (Chandrawulan, 2011).

In an effort to encourage the creation of a positive and conducive national business and investment climate for investment in order to strengthen the competitiveness of the national economy and accelerate the increase in investment, multinational companies in Indonesia are required to form business entities in the form of Limited Liability Companies based on Indonesian law and domiciled within the territory of the Republic of Indonesia as stated in the Investment Law No. 25 of 2007. The concept of Limited Liability Company which is a legal entity is further regulated in Law No. 40 of 2007

concerning Limited Liability Companies, hereinafter referred to as a company, is a legal entity that is a capital partnership, established based on an agreement, conducts business activities with authorized capital that is entirely divided into shares and meets the requirements set out in this law and its implementing regulations.

The development of modern corporate law doctrines in corporate law is known as the concept of legal immunity, namely *Business Judgement Rule* or the Business Consideration Rules which are a development of the Common Law system. Business Consideration Rules are a decision rule on policies that are taken or not taken in relation to both strategic and operational business approaches within the scope of the company (Company Act Australia, 2001). This concept further states that if the directors make a decision after deliberate, prudent and careful consideration, the directors will get legal immunity which means that they cannot be held personally accountable even if the decision turns out to be detrimental to the company. The substance of the policy taken by the board of directors will be protected, unless it is decided irrationally in managing risks, then if there is a loss due to the negligence of the results of the decision-making, it will drop legal immunity for the directors as the head of the corporation (Sjawie, 2017).

The principle of *Business Judgement Rule* is not a new concept in the Common Law legal system. This concept is implicitly accommodated by the Indonesian legal system contained in Article 5 of the Limited Liability Company Law which stipulates that members of the board of directors are free from liability due to losses suffered by the company. This is further explained in Article 97 paragraph 3 further proof is needed: a. Losses do not arise due to fault or negligence; b. Has carried out management with good faith and prudence for the benefit and in accordance with the purposes and objectives of the Limited Liability Company. c. Do not have a direct or indirect conflict of interest over the actions of the teacher that results in losses; d. Have taken action to prevent the occurrence or continuation of such losses. Reflecting on the Terbatgas Company Law above, the foundation of the establishment of a company is mandated to carry out business activities. Therefore, as long as the decision is based on the principle of *Business Judgement Rule*, the board of directors does not need to be afraid of legal risks, especially if it causes losses to the company.

Multinational companies that are included in the category of manufacturing industries owned by foreign private individuals engaged in the economic sector related to the production of consumer goods, namely the management of tobacco products that produce cigarettes in Indonesia. The company has been acquired by Japan Tobacco Inc. as a corporate action of a multinational cigarette company that owns 100% of the shares of GG's subsidiary worth 667 US dollars or equivalent to 9 trillion rupiah in August 2017. A multinational company operating with a Japanese corporate management system approach with a high work ethic in building a commitment to a continuous improvement and management system to ensure the best operating standards, quality and service of the products produced.

As a multinational company in Indonesia, also called GSC Indonesia which is one entity and integrated with Japan Tobacco International, is committed to implementing an integrated management system in order to ensure consumer satisfaction by producing products that meet quality requirements and applying the principle of "Quality Based on Consumer" to ensure consumer loyalty. Committed to eliminating hazard risks and OHRC and ensuring safe and healthy working environment conditions to prevent occupational accidents and diseases, prevention of work-related injuries and poor health with consultation and work participation. Minimise negative impacts on the environment, according to the organisational context, including the nature, scale and environmental impact of activities, products and services. Protecting the natural environment from impacts by preventing pollution, mitigating climate change, adapting and protecting ecosystems wherever they are. Multinational companies also always strive to improve the performance of resource conservation, This is related to the scale of utilization and consumption of natural resources by companies. As well as actively maintaining and improving the strengthening of industrial control and automation systems from manipulation efforts and security threats that impact the safety, reliability, and quality of industrial control and automation systems.

In line with the commitment of the Multinational Company above, the company also implements strict corporate cultural values in order to ensure a healthy corporate governance mechanism by promoting corporate culture and "our way" behavior which is the business standard for all workers at various levels from leadership to employees and operators to be able to comply with the framework of behavior in every policy-making process in the context of business implementation in the context of business implementation in the company.

In the operational management of a manufacturing company, there are authorities, duties and responsibilities given to the company's internal stakeholders. The determination of a top management team at the same level as the Director or Head of Division in the manufacturing industry has the main obligation, namely *the Duty of Care*. *Duty of Care* in the context of company management is a director who not only has professional and integrity standards of leadership, expertise, experience and knowledge, but also has knowledge of global standards of conduct and business ethics that have been set by the top management of the parent organization. In this case, it is related to careful and appropriate decision-making by prioritizing good faith and prioritizing the interests of the company rather than personal interests in all operational aspects, namely risk management starting from production planning, namely financial management, resources and production schedules, the quality of production machines, qualifications and competencies of workers, to the performance of utilities and supporting facilities in ensuring the implementation of quality production, Safe in compliance with regulations to achieve the standards of qualification and product quality that consumers want.

In line with the above operational activities, the legal position of the directors as an organ of the Limited Liability Company has very complex responsibilities and obligations that are specifically associated with the ability of the directors to manage risks. Risks must be managed systematically so that as little risk as possible can be avoided as one of the rationalities of the emergence of *the concept of Business Judgement Rule* in corporate governance.

Based on this background writing, the author is interested in discussing "The Application of *Business Judgement Rule* in the Management of Multinational Companies". This is very interesting for the author in exploring and deepening the position of policy positions and regulations of the corporate law doctrine, namely the principle of *Business Judgement Rule* in the management of multinational companies."

## 2. METHOD

The research rules seek to identify, further study and analyze a fact both in legal research and the provisions used to obtain solutions and answers to identified problems with the following systematic steps:

### 2.1 Research Type

This type of research uses the Juridical-Normative method. The Juridical-Normative Method is by using legal research which is carried out by researching literature materials or provisions with research materials in the form of theories, provisions related to laws, court decisions, legal principles, legal literature, legal journals, legal systematics, legal synchronization in legal history about a subject of discussion in research or in other terms a normative research is research that uses sources of provisions or information about a norm and concept of a research object.

### 2.2 Research Approach

This type of approach focuses on 2 approach concepts, namely the legal approach that is researched from various legal rules (Statute Approach) and the legal concept approach with legal objects (Conceptual Approach), namely by analyzing legal concepts with the regulation of legal systems and norms in the company using legal logic reasoning.

### 2.3 Legal Ingredients

The use of legal materials in this study considers primary and secondary legal materials in the form of:

- a. Primary Legal Materials: Law No. 40 of 2007 concerning Limited Liability (UUPT), Law No. 25 of 2007 concerning Investment, Regulation of the Indonesian Investment Coordinating Board No. 6 of 2020 concerning Guidelines and Procedures for Controlling the Implementation of Investment, Law No. 13 of 2003 concerning Manpower, Law No. 11 of 2020 concerning Job Creation, Company Articles of Association, Multinational Corporations.
- b. Secondary Legal Materials: Legal Journals, Literature Books, Research Results and Scientific Papers.

### 2.4 Legal Material Collection and Processing Procedures

To collect legal materials obtained from literature studies, the author uses the collection of legal materials by analyzing and studying textbooks as library materials and previous research to obtain facts and legal norms by studying and citing from textbooks and the provisions of the Law related to

research and various legal materials and other legal studies that are in accordance with the author's research.

## 2.5 Legal Material Analysis

The analysis of legal materials in the research uses a qualitative approach, with normative juridical research that is qualitative. This research aims to use the legal norms contained in the Law as well as the provisions and regulations of the company which are the norms that live in society.

## 3. RESULTS AND DISCUSSION

### 3.1 The Position of the Concept of Business Judgement Rule in the Policy of Multinational Companies in Indonesia.

#### 3.1.1 Position of *Business Judgement Rule* in Indonesia

The concept of *Business Judgement Rule* has a very fundamental and inseparable position in one modern corporate legal system in Indonesia. In general, the management of a company has a structure of organ management in a Company which is managed by the board of directors. The Business Judgement Rule serves as a concept that generally provides protection and immunity for members of the board of directors from individual liability for losses that may occur as a result of making and considering business decisions with certain criteria.

The position of the principle of *Business Judgement Rule* is implicitly stated in Law No. 40 of 2007 article 97 concerning Limited Liability Companies paragraph (5). This article generally states that members of the board of directors cannot be held liable for the Company's losses if they can prove:

- a. The loss is not due to error or negligence.
- b. Has conducted management in good faith and prudence for the benefit and in accordance with the Company's intentions and objectives.
- c. There is no direct or indirect conflict of interest over the management actions that result in losses.
- d. Have taken action to prevent the occurrence or continuation of such losses.

In the increasingly dynamic and complex business world in Indonesia, the application of this concept provides an "immunity" or legal immunity to the board of directors. This mechanism also has the sense that the court will not "re-examine" the decision-making set by the board of directors, even if the policy turns out to result in losses for the company. Furthermore, this concept is here to encourage the board of directors to dare to take the necessary business risks for the company's growth and progress, without being haunted by the fear of personal lawsuits if the decision does not succeed. Therefore, every business decision that basically contains a risk charge in every decision that results in a loss does not mean, the directors have made mistakes or negligence.

The position of the Business Judgement Rule in multinational companies in Indonesia emphasizes important principles in the context of managing cross-border companies with direct accountability at the board of directors. This is a concern for the fulfillment of global compliance standards by considering local business regulations and universally applicable standards of corporate governance practices, in order to ensure legal certainty in the business world. This will create a balance between the responsibility and authority of the board of directors in making a decision by taking into account the obligations of the following:

- a. *Duty of Care*: The Board of Directors must run the company with reasonable prudence and diligence.
- b. *Duty of Loyalty*: The Board of Directors must act in the best interests of the company, not personal interests, and be free from conflicts of interest.
- c. *Duty of Skill*: The Board of Directors must manage the company to the best of their ability.
- d. *Good Faith*: Decisions are made with honest and sincere intentions for the sake of the company (Bainbridge, S. M., 2006, 83-114).

In practice, the *concept of Business Judgement Rule* encourages more than 1 member of the board of directors to carry out a *check and balance* procedure. This procedure is carried out to ensure that any obligations based on professionalism, expertise, experience and skills in managing risks can be minimized in such a way. The concept of *Business Judgement Rule* has a board of directors accountability system that adheres to joint responsibility if there is more than one member of the board of directors in a Company. As affirmed through Article 97 paragraph (4) of the Limited Liability Company Law 40 of 2007. This provision basically closes the possibility for the members of the board of directors to be able to behave indifferently if there is a division of duties between them. In the case

of the division of duties as the directors are collegial in nature, it cannot be used as a tool to defend themselves by saying that because a particular field is not their duty, there is no legal obligation on the board of directors to care about areas that are not his duty in a business decision-making. In this case, the concept of *Business Judgement Rule* is very important in the context of responsible decision-making between the directors as a team to achieve the Company's goals.

The position of the Business Judgement Rule in Indonesia in its challenges and application in SOEs or State-Owned Enterprises which often face significant obstacles as well as dilemmas between 2 factors, namely the Interpretation of State Losses and Business Losses-. Losses to SOEs, the majority of which are owned by the state, are often considered as state losses based on the Corruption Crime Law (Corruption Law) and the Law in relation to the performance of State Finance. This makes SOE directors more vulnerable to investigations and criminal prosecutions, even if business decisions are made in good faith and meet the concept of *Business Judgement Rule* in Indonesia.

In addition, the overlapping authority of law enforcement in Indonesia which has the potential for intervention from law enforcement agencies through the Prosecutor's Office, Police and KPK which interprets the losses of SOEs as an indication of corruption, makes the directors of SOEs in a difficult position. The Board of Directors has the responsibility to maintain a balance in implementing the principles of *the Business Judgement Rule* between running a business with risk and avoiding legal entanglements.

Following the development of the Constitutional Court Decision No. 32/PUU-XVII/2019, where this Decision affirms the issue of state losses in the context of SOE competition. The Constitutional Court emphasized that in order to determine the existence of state losses in acts of corruption in SOEs, it must first be proven that the company in question has been declared bankrupt under the provisions of the Bankruptcy Law or dissolved under the SOE Law or the Limited Liability Company Law, or that the criminal act has directly harmed the state's finances. However, the implementation of this decision in the field still requires strong understanding and coordination between the relevant parties.

### **3.1.2 Consequence of the Business Judgement Rule in Multinational Company Policy**

*The Business Judgement Rule* is a concept of modern corporate law doctrine that seeks to protect the structure of a Company's organs, namely the company's board of directors. This concept has personal responsibility for business decision-making that brings losses to the company. Exceptions in this case can be applied if the business decision taken has gone through a series of conditions, namely good faith, prudence, without conflict of interest and based on adequate business information and justification. Multinational corporations are entities that have a complex business spectrum and global environment in each of their operations. The application of *the concept of Business Judgement Rule* in the development of internal company policies is actually in line with various jurisdictions and operating standards in a place of business. The difference in the legal system in a country, for example, Indonesia which adheres to *the Civil Law* legal system which also adopts this concept, with different approaches and interpretations from countries that adhere to *Common Law* such as the United States and the United Kingdom. Multinational companies need to adapt to the development patterns in the economic and political fields of a country that also have an impact on the joints of social, environmental and moral life of the community. This certainly results in a policy approach from the subsidiary that is also able to adapt to the policies of the parent company. Documentation and control standards in the decision-making process which include a thorough risk analysis to ensure that the decisions taken have gone through a review of legal principles such as the values of integrity, professionalism and business ethics in the company in accordance with regulations in Indonesia.

One of the main challenges for multinational companies in Indonesia is the difference in the standard of duties, principals and fiduciary *duties* in the global management scheme and the standards of interpretation in the countries where the company operates. Overlapping local regulations and lack of synchronization plus bureaucratic inefficiency are considerations and concerns for business actors in multinational companies in understanding the nuances of the government and political system in Indonesia. This encourages Multinational Companies to harmonize and configure in order to adjust Corporate Governance policies in the context of applying the *Business Judgement Rule* concept to be in line with local laws while maintaining global management operating standards.

On the other hand, there are differences in the standards and values of the company's business culture and ethics related to the "good faith" or "conflict of interest" approach, for example, practices that are considered normal in one country may be considered unethical in another. Therefore, multinational companies need to develop a clear code of ethics and internal corporate culture policy that has universal values, which also accommodate cultural differences and norms without sacrificing the value of corporate integrity.

Other implications in relation to the *Business Judgement Rule* for Multinational Companies are related to the growth and dynamics of business in following the trend of globalization and digitalization of the economy and technology as well as changes in the rules of the game and regulations, in the context of law enforcement which has priority in maintaining national interests both in the growth of business competition, the scope of investment and business policies related to schemes The Domestic Component Level (TKDN) is in order to ensure economic continuity in access to human resources that support equality, especially multinational companies in Indonesia. (E. Widodo, 2024, 4). It is of critical concern for the board of directors to monitor and adapt quickly to regulatory and regulatory changes in each jurisdiction in an effort to make business decisions that continue to prioritize good faith, prudence and integrity to ensure consistent and sustainable compliance for all business operations through collaboration and alignment with a structured and systematic global compliance team.

Multinational companies have a global matrix and management structure with a complex network of subsidiaries in various countries. On the one hand, this structure offers flexibility and efficiency in several aspects, on the other hand, it can pose challenges in the implementation of uniform corporate governance policies. In the context of *the Business Judgement Rule*, a clear communication structure and matrix from the head office organization to all its entities is required through the arrangement of a system of delegation of authority and responsibility in decision-making that is well documented in the management system, global operating standards and international organization standards.

Multinational companies also give subsidiaries considerable autonomy or authority to be able to adapt and manage local market conditions that are operationally profitable, while still running within the corridor of norms in good corporate governance practices and reflecting the concept of *Business Judgement Rule* in accordance with global standards.

To answer various challenges in the effort to implement an effective corporate governance harmonization strategy by considering the concept of *Business Judgement Rule* within Multinational Companies, efforts are needed to promote the development of a culture of transparency and accountability. This effort encourages the development of corporate cultural norms and values where the board of directors and management at every level feel safe to disclose potential conflicts of interest and report their concerns. Such as *safe, confidential and reliable whistleblower* reporting by ensuring timely and accurate disclosure of information to all stakeholders. This is one of the effective means and forum of communication in the concept of *Business Judgement Rule* in an effort to enforce the values in multinational companies.

Investment in information systems in the development of a legal platform system has an important role for Multinational Companies as an integrated information access service for monitoring legal compliance and document management which can then become access to continuous training and education for the board of directors and management at all levels regarding the concept of *Business Judgement Rule*, *fiduciary duties*, the company's code of ethics and the applicable laws in their respective jurisdictions.

### **3.1.3 Mitigation of Legal and Reputational Risks of Multinational Companies in the concept of Business Judgement Rule.**

The failure of the board of directors to comply with the concept of *the Business Judgement Rule* in the company's strategic decision-making carries significant legal and reputational impacts and risks. Legal and reputational risks will affect the level of public trust and the performance of the stock market value in Indonesia. *The Business Judgement Rule* basically has the concept of protecting the board of directors from personal liability for losses arising from business decisions taken while still paying attention to the principles of good faith, reasonable prudence, and in the best interests of the company.

Observing the increase in business risks and legal vigilance in the development of the context of compliance and compliance with both legal standards in a country in relation to multinational companies operating in various jurisdictions with different legal systems, namely *civil law and*

*common law*. Each jurisdiction has different interpretations in the application of *the Business Judgement Rule* with different nuances, as well as the development of specific laws and regulations related to corporate governance, anti-corruption, consumer protection, the environment, and employment. The high legal risk of large fines, lawsuits, or criminal charges will force the board of directors to ensure that every business decision not only meets the standards of the *Business Judgement Rule*, but also complies with all applicable laws and regulations in each country in which the business operates.

Shareholders and third parties, namely customers and suppliers, can file civil to criminal lawsuits against the board of directors if they feel that the decisions taken are detrimental to the company or related parties. This threat of lawsuit encourages directors to carefully document in every of their decision-making processes, including the information considered, analyze the advantages and disadvantages with the reasons behind the choices made to show that their directors have acted with the principles of prudence and good faith.

Some of the recent cases that have befallen the board of directors of multinational companies face lawsuits even if they are finally protected by *the Business Judgement Rule*, such as several cases of SOEs in Indonesia, are valuable lessons. These cases highlight areas where *the Business Judgement Rule* may be difficult to apply or where directors are particularly vulnerable to allegations of misconduct. This encourages companies to conduct more in-depth legal and risk mitigation studies before making strategic decisions.

In the context of legal risk identification and mitigation, multinational companies are encouraged to integrate a comprehensive risk management approach model into the policy formulation process across vital aspects related to labor management, occupational safety and health (K3), production, product quality, and social and environmental impacts. This includes the identification of possible risks that can be in the form of Company Operational Risks, Occupational Safety and Safety Risks, Compliance Risks and Environmental Impact Risks as well as the assessment of consequences and impacts to the handling and evaluation of risks in the approach of risk-based management systems in multinational companies. The Board of Directors must demonstrate that they have adequately considered these risks in making business decisions under the concept of *the Business Judgement Rule*.

Deeper *Due Diligence* is one of the measurable and systematic approaches in the management of performance achievement indicators using *the SMART* (Specific, Measurable, Achievable, Relevant and Time-Bound) method approach and Risk Matrix, *namely indicators of likelihood and consequences*. The risk mitigation analysis is two of several methods and approaches in the context of making big decisions, one of which is related to large corporate transaction actions such as mergers, acquisitions or investments in the latest technology in multinational companies by considering the *Business Judgement Rule* concept approach. Much more in-depth due diligence also includes feasibility studies from legal and risk management aspects. These measures ensure that the board of directors has adequate and relevant information to make informed decisions in good faith, prudence and has no conflict of interest which is one of the essential prerequisites for the protection of the *Business Judgement Rule*.

Increasingly stringent regulatory compliance supervision in various sectors and countries related to *the General Data Protection Regulation* for data privacy, the Anti-Monopoly Law which encourages multinational companies to ensure policies and compliance in this standard. Violations of compliance can lead to huge fines up to the revocation of operational licenses resulting in company losses and negative perceptions of the organization, so the *considerations of the Business Judgement Rule* should always be aligned with regulatory compliance.

Furthermore, the relationship in a more priority context is the company's image in relation to building the trust of stakeholders. Reputation is an intangible asset that is invaluable to multinational companies. Legal or ethical cases can undermine the trust of consumers, investors, employees, and the general public, which in turn can affect competition, sales, stock prices, and a company's ability to attract talent. Therefore, the board of directors will consider the impact of the decision on the company's reputation and image as a key factor in the sustainability of the business, beyond just minimizing legal risks.

*Corporate Social Responsibility (CSR)* is a form of the company's commitment to contribute to sustainable development by mitigating risks in various elements related to social, economic and environmental impacts around the company's operational activities. This is the spotlight and pressure that has recently increased from the surrounding community on investors and companies to act

responsibly in the management of various aspects of the environment in order to manage risks and maintain the reputation of multinational companies. Policies that are not aligned with environmental and social governance principles can lead to a loss of corporate image and increase significant risks, although *the Business Judgement Rule* focuses on the "best interests of the company," this interpretation is increasingly broadened to include business considerations that have social and environmental impacts that ultimately affect the long-term value of the company. Therefore, it is necessary to mitigate the risks from the above points with a strategic approach in building transparency and effective and sustainable communication between business actors in Multinational Companies and elements of the Society to protect the reputation and show that decisions are taken in good faith. It also supports the claim of directors' protection in the context of the *concept of the Business Judgement Rule* with respect to a transparent and accountable decision-making process.

### **3.2 Business Judgement Rule Setting in the Management of Multinational Companies**

#### **3.2.1 Internal Mechanisms of Multinational Companies in Business Judgement Rule Arrangements**

A multinational company is an integrated organizational model that has a systematic position structure in accordance with the standards and guidelines managed by the parent company but still accommodates the rules and standards in which the company operates. The provisions of a company in the form of a legal entity or limited liability company from a country where the multinational company carries out its business operations. This arrangement is made to ensure legal certainty and business legality in every function and element of resources used to run the company's wheels in order to realize the company's vision and mission in the target effectively and efficiently. In relation to the context of the regulation of Multinational Companies in this study, there are a number of basic provisions identified in order to ensure that a company complies with the basic provisions applicable in Indonesia as mandated in Law No. 40 of 2007 concerning Limited Liability Companies. This basic provision is the legal guide and basis for operational activities and business activities carried out by Multinational Companies.

The company's internal mechanism in the *concept of Business Judgement Rule* is also implicitly contained in the Multinational Company Regulation which is the guideline and basic rules for all employees and the board of directors within the Company. As stated in Article 4 of Law No. 40 of 2007 concerning Limited Liability Companies, namely "This Law, the Company's articles of association, and other provisions of laws and regulations apply to the Company". The position of the basic provisions in the establishment of a Multinational Company as a legal entity is one of which is in the form of a business license issuance document, namely the Deed of Establishment and the Company's Articles of Association.

The document of the Deed of Establishment and Articles of Association of the Company is found in Statute Book No. 1903 of 2001 in the form of the Decree of the Minister of Law and Legislation of the Republic of Indonesia Number: C-11263 HT.01.01.TH.2000. In general, the Company's Deed of Incorporation Data in the document has contained the Company's Name, Company's Domicile, Period of Establishment of the Company, Purpose and Objectives as well as the Company's Business Activities, Amount of authorized capital, issued capital and paid-up capital as well as the Company's complete address.

Furthermore, it is regulated in Law No. 40 of 2007 article 92 relating to the position of the Board of Directors which is one of the organs that has exclusive rights in managing the Company, namely "The Board of Directors carries out the management of the Company solely for the benefit of the company and in accordance with the main purpose and objectives of the Company". This is stated in the Deed of Establishment and Articles of Association of the Company of Multinational Companies in Statute Book No. 1903 of 2001 in Article 11 number 1 concerning the Duties and Authorities of the Board of Directors which reads "The Board of Directors is fully responsible in carrying out its duties for the benefit of the Company in achieving its purposes and objectives". This then confirms that the Board of Directors who carry out the management of the Company is the main subject of the *Business Judgement Rule Concept*. As the main subject of the *concept of Business Judgement Rule*, the Board of Directors has the responsibility and authority to carry out the Company's interests concretely, which is manifested by a strategic business decision-making process to ensure business sustainability. Business decisions are closely related to risk management that needs to be comprehensively and fully understood by the board of directors. Risk management is carried out systematically and continuously, in an effort to analyze every opportunity and carefully assess the situation and consider the impact that will arise in order to minimize the potential loss of the Company.

This decision-making can be evaluated by using a risk matrix approach, namely indicators of likelihood, and consequences which can be used as a reference in the consideration of effective and efficient business decisions by the Company's board of directors. This is in line with the concept of *Business Judgement Rule* which aims to provide space for free decision-making by the board of directors, as long as the decision is taken in the interest of the Company.

The internal mechanism of the concept of *Business Judgement Rule* is implicitly contained in Law No. 40 of 2007 article 97 concerning Limited Liability Companies which is contained in paragraph 5, namely "Members of the Board of Directors cannot be held liable for losses as defined in the 3rd paragraph if they can prove in the exception, namely (a) the loss is not due to error or negligence; (b) has conducted management in good faith and prudent for the benefit and in accordance with the Company's intentions and objectives; (c) do not have a direct or indirect conflict of interest in the Management Actions that result in losses and; (d) has taken action to prevent the occurrence or continuation of such losses" Further stated in the Deed of Establishment and Articles of Association of the Company of Multinational Companies in Statute Book No. 1903 of 2001 in Article 11 number 2 concerning the Duties and Authorities of the Board of Directors which reads "Every member of the board of directors is obliged in good faith and full responsibility to carry out his duties by heeding the applicable laws and regulations". The concept of *Business Judgement Rule* in general has been fulfilled in the limited liability company business license document of this Multinational Company.

In line with the commitment of Multinational Companies in compliance with business laws in Indonesia as stated in Law No. 40 of 2007 concerning Limited Liability Companies. Multinational Companies have a *Code of Conduct* or Code of Ethics for Multinational Companies. This code of ethics is a basic policy that is the standard of business ethics and behavior of the Company for all levels of employees, including the board of directors in carrying out their duties and authorities. This code of ethics is a simple guide for all employees at the company level in order to ensure the fulfillment of legal obligations, uphold integrity and reputation and maintain the sustainability of the ongoing business. The *Business Judgement Rule* is further affirmed in the internal mechanism of the Multinational Company Policy contained in the Corporate Code of Ethics Guidelines in the aspect of "Business Integrity" regarding "Avoiding conflicts of interest". Conflicts of interest arise from business considerations decisions influenced by personal interests. Conflicts of interest can encourage the board of directors to make business decisions that do not serve the best interests of the Multinational Company, and may have a negative impact on the Company's reputation. In this case, it shows that there is one of 2 (two) of the 3 standards in the concept of *Business Judgement Rule*, namely "business considerations are taken in good faith and the Director is prohibited from having a *conflict of interest* in making a business decision" which is also implicitly stated in Law No. 40 of 2007 concerning Limited Liability Companies. Thus, the policy of Multinational Companies, namely *the Code of Conduct*, has provided a basis for general behavior in applying the concept of *Business Judgement Rule* in the Company.

### **3.2.2 Business Ethics Relationship of Multinational Companies in Business Judgement Rule Arrangements**

Business ethics is one of the most crucial aspects and has a central role as one of the integral elements in supporting the application of *Business Judgement Rule* in the modern corporate world. Ethics is a "gateway" that becomes the foundation of norms in correct and good human attitudes and behaviors to reach a point of balance in several aspects of intelligence, namely physical, intellectual, social and spiritual. *The Business Judgement Rule* is a device of immunity from the law that is used to protect the interests of leaders from individual direct liability for making erroneous or detrimental business judgments. Business ethics are an absolute requirement to be able to pass and get the protection of *the Business Judgement Rule*.

Multinational companies that have a corporate governance system developed by considering a variety of universal ethical studies from across cultures and societies have a strong foundation in upholding universal values and norms in the business world. The results of the universal study of business ethics become a standard and guideline for behavior in an organization. Some of the key aspects in the *Business Judgement Rule* regulation related to business ethics in Multinational Companies are as follows:

#### **a. Universal Code of Conduct**

Development of a Universal Code of Ethics in Multinational Companies engaged in the production of pulp and paper operating in Indonesia which are also spread across several Asian, American and European countries. Multinational companies provide the view of an organizational culture

with a 'cultural house' that has 2 moral foundations, namely Honesty and Integrity which are universal business ethics and apply globally.

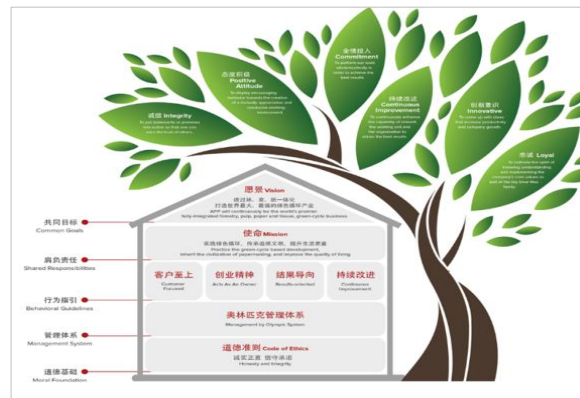


Figure 1. House of Culture

The Global Code of Ethics serves as a written guide to the principles and standards of conduct that are expected to be the ideals of all entities, namely employees, directors and even business partners in supporting the sustainability of the company's business and operations. In general, the code of ethics regulations cover important aspects, namely anti-corruption and bribery, conflicts of interest, confidentiality of information, protection of company assets, human trafficking, fairness in competition, implementation of occupational health and safety standards, and forms of environmental and community responsibility. The global code of ethics is general and not sufficient in providing regulatory guidance and explanation of the technical scope in the operation of business activities in multinational companies.

Multinational companies then translate the code of conduct into more specific operational policies and procedures to ensure that the principles of business ethics can be applied in their day-to-day business activities. Some of the key aspects in the regulation of business ethics in Multinational Companies are as follows:

- a) Anti-Corruption Policy which includes the prohibition of bribery, the receipt of inappropriate gifts and unethical political donations. This policy is carried out by providing increased awareness through digital platforms in the company environment which is an effort to prevent and form an anti-corruption culture and education in the company. (S. Astutik, 2019, 2)
  - b) Human Resources policies which include non-discrimination, equal opportunities, protection of employee rights, prohibition of forced labor and children as well as the promotion of a safe and mutually respectful work environment.
  - c) Environmental Policy which includes standards and limits of operational arrangements in order to reduce environmental impact, air pollution, waste management and encourage production with a sustainable development approach.
  - d) Data Privacy Policy which includes the collection, storage and use of individual personal data in order to build trust between employees and the company.
- b. Ethical Training and Socialization
- The drafting of a code of ethics does not have a significant impact without commitment and consistency from all levels in the organization from employees, management to directors. The implementation of routine training programs at all levels is required to receive regular ethical training to understand the company's standards and how to apply them in real situations. This is a benchmark for the level of knowledge and compliance of all employees in carrying out operations in multinational companies. Along with the progress of the era of digitalization of media and communication networks, the development of digital learning applications will make it easier for every employee to access independent learning and to ensure employees have a channel to communicate about findings or concerns related to violations or ethical dilemmas, they can report violations through a *whistleblower* program established by the company.
- c. Governance and Compliance Structure
- Multinational companies have a strong structure in place to ensure compliance with ethical standards. The presence of the Compliance/Ethics division is a form of seriousness from management to enforce governance and operational compliance based on compliance standards

and business ethics that are responsible for the development, implementation, and supervision of ethics programs. The Board of Directors' Audit/Ethics Committee is tasked with overseeing ethics and compliance programs, as well as ensuring that senior management leads by example. The implementation of internal and external audits is a form of control and evaluation that is carried out periodically to identify potential ethical violations and ensure the effectiveness of internal controls of multinational companies.

d. Reporting and Enforcement Mechanisms

Multinational companies have a clear system for reporting violations and following up on reports received from employees. *Whistleblower* system which is an anonymous and confidential channel for employees to report unethical or illegal behavior. The independent conduct of investigations is carried out to ensure that all reports of violations are thoroughly and impartially. Implementation of a clear and consistent witness system for ethical violations, from reprimands to termination. This shows the company's commitment to business ethics standards in multinational companies.

Multinational companies show a strong commitment in various schemes and approaches as an effort to ensure the application of the regulation of *the Business Judgement Rule* concept which is a universal standard of business morality and ethics in the corporate environment. This is done to promote business practices and guidelines of conduct in an effort to achieve the company's vision and mission.

### 3.2.3 Governance of Multinational Corporations in Business Judgement Rule Arrangement

The principle of *Business Judgement Rule* is one of the important pillars in the implementation of *the Good Corporate Governance* (GCG) system in Indonesia. Along with the challenges and dynamics of competition in the business world as well as the governance of multinational companies, *the Business Judgement Rule* has the ability to encourage innovation and positive business growth, to improve performance in the context of building a modern corporate model based on values and norms for companies in carrying out healthy business practices for stakeholders. The implementation of good corporate governance will directly build trust, business reputation, and sustainable business development in the long term. In Indonesia, GCG principles have been formulated and used as guidelines by various institutions and implemented by multinational companies. There are five basic principles that are the main pillars of GCG that are derived by multinational companies as follows:

a. Transparency

This principle emphasizes the disclosure of information about relevant social activities regarding the company. Multinational companies provide true, clear and easily accessible information through the services of the company profile website by all the public, partners, regulators and stakeholders, such as financial statements, ownership structures, company policies and critical information relevant to business decision-making. The disclosure of information provides convenience in the decision-making process by the company's leadership consisting of top management and the board of directors which must be carried out transparently, with a clear and accountable mechanism. Despite prioritizing openness and transparency, companies are still obliged to maintain information confidentiality and privacy in accordance with applicable standards of regulations and business ethics. This will help build the trust of the public, investors, and other stakeholders. This allows them to make informed decisions and monitor the performance and management of Multinational Companies in accordance with the concept of *Business Judgement Rule*.

b. Accountability

The principle of accountability is a description of the functions, main tasks, and responsibilities of each management in the company structure. This aims to ensure that the company's management runs efficiently and effectively. This principle includes the division of duties and responsibilities for each organ of the company, namely the board of directors, board of commissioners and employees in each work unit that has *a clear job description* and authority. Performance measurement through a measurable performance measurement system to assess whether the company's goals are being achieved and whether each party has performed its role well. The company's internal control system has an integrated internal control system to ensure that all business activities are carried out in accordance with established procedures and policies. There is a mechanism for awarding outstanding employees for performance and sanctions for violations. In multinational companies, looking at the accountability aspect will ensure that each party in the company is responsible for their actions in achieving the company's vision and mission.

c. Responsibility

This principle has the meaning of a company's compliance with the provisions of the law, ethical values, and corporate social responsibility. Compliance with the law is the obligation of multinational companies to comply with all applicable legal standards and provisions, including those related to taxation, employment, environmental protection, business competition, and capital market provisions. Social and environmental responsibility will show that the company has concern for the community and the environment in which the company operates, as well as carrying out sustainable CSR programs. In the principle of responsibility, it will ensure that the company is a good "citizen" as a *good corporate citizen* and is committed to sustainability, not just seeking profit. It also builds a positive reputation for multinational companies.

d. Independence

Multinational companies manage an organization professionally without any internal and external pressure and influence that can affect the objectivity of decision-making. This includes the absence of dominance in the organs of the company or certain parties such as majority shareholders who dominate or suppress other organs. The application of conflict of interest free where members of commissioners, board of directors and employees act freely in decision-making from conflicts of interest that may affect objective assessments. Objectivity and rationality in decision-making: being the main foundation for professional and objective considerations for the benefit of the company, not personal or group interests. Independence in a multinational company will ensure that the decisions taken are in the best interest of the company as a whole, free from influence and interest to achieve the goals within the framework of the main mission and vision within a company.

e. Equality and Reasonableness

Multinational companies guarantee fair and equal treatment for all employees, management, board of directors and all stakeholders in accordance with their rights. This includes efforts to treat employees fairly by providing opportunities in the recruitment process, development in *soft skills training* and career advancement without distinction between ethnicity, religion, race, intergroup (SARA), gender, or physical limitations. Other governance mechanisms carried out by multinational companies are in the process mechanism of procurement of goods and services through digital-based procurement applications and artificial intelligence that carry out the entire transaction process starting from registration, providing information on the scope of goods or services, assessment, evaluation to the appointment of procurement winners to third parties in a fair and transparent manner in an effort to avoid practices that are detrimental to one of the parties. Multinational Companies have a corporate governance system that continues to be developed to support the company's operational activities by considering the study and standards of universal business ethics from across cultures and societies that have a strong foundation in upholding universal values and norms in the business world to achieve the company's vision and mission.

#### 4. CONCLUSION

This study shows that the position and internal management arrangement of Multinational Companies have applied universal principles in accommodating the concept of Business Judgement Rule (BJR) in the company's environment, as contained in Law No. 40 of 2007 Article 97 paragraph 5 concerning Limited Liability Companies. This is identified in the company's legality documents, namely the AD/ART and Company Regulations. The implications of the implementation of the Business Judgement Rule (BJR) are a consequence and challenge for multinational companies in developing policies that are oriented towards universal values but still uphold the integrity values of multinational companies in Indonesia. Multinational companies have maturity in the legal risk mitigation process with various risk management approaches such as Risk Mapping and Due Diligence in ensuring decision-making in accordance with the Business Judgement Rule concept approach. In terms of regulating the Business Judgement Rule (BJR), multinational companies have specifically published internal mechanisms in terms of terms of corporate operational provisions and guidelines comprehensively to regulate employee behavior from the board of directors to staff levels within the framework of business ethics as a basis for global behavior, the implementation of digital-based training and violation reporting mechanisms in the context of law enforcement in the environment company. Multinational Companies apply high standards in the Good Corporate Governance (GCG) system by accommodating the 5 (five) main pillars of GCG in which show

alignment in the application of Business Judgement Rule in the strategic and operational decision-making process for business continuity in Indonesia.

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