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Strategic Regulatory Solutions for Implementing Business Judgment Rule in State-Owned Enterprise Governance

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ABSTRACT: The BJR principle stipulates that the Board of Directors of a company cannot be held responsible for losses arising from a decision-making action, if the action is based on good faith, the principle of prudence, paying attention to applicable laws and prioritizing the principles of good corporate governance (GCG). Unlike private companies, state-owned companies in this case BUMN in running their businesses are bound by a number of regulations related to state management. This characteristic is what sometimes causes fear for BUMN directors to make decisions because of the fear that the business decisions taken are inappropriate decisions or even cause losses. differences of opinion in the application of BJR, where BJR is often faced with the problem of state losses in BUMN. The debate regarding BUMN losses being considered as state losses or not as state losses in practice is still ongoing in the courtroom. This fact can be seen from several court decisions that believe that losses from BUMN or BUMN subsidiaries are state losses, so that the actions of directors that result in such losses become a criminal act. This study uses a form of juridical-normative research, namely research on written legal norms to answer problems regarding the regulation and application of law related to the enforcement of Corruption Crimes supported by literature studies relevant to the problems discussed, namely the application of Business Judgement Rules, then analyzed and concluded in writing. The approach used by the compiler is a conceptual approach and a case approach. The results of the research and discussion obtained that the Application of Business Judgement Rules in Decision Making in the Context of BUMN Business Management, namely the Enforcement of Corruption Crimes in practice is found in the proof of corruption, especially Article 2 and Article 3 of the Corruption Eradication Law which contains elements of unlawful acts. Both unlawful acts in civil law and criminal law as well as regulations in the PT Law clearly state acts that cause losses. In the event of an alleged corruption crime in the BUMN company, this is because the State in terms of asset utilization through BUMN has assets that may not have been fully utilized.

KEYWORDS: Business Judgment Rules, Corruption Crime, Good Corporate Governance.

I. INTRODUCTION

The 1945 Constitution of the Republic of Indonesia (UUD 1945) mandates that the state shall control key sectors of production that are vital to the country and affect the livelihood of the people, based on the principle of popular sovereignty or a mandate from the people. These sectors, as stipulated in Article 33(2) of the Constitution, include land, water, and the natural resources contained therein. The aim of such control and sovereignty is to realize a just, prosperous, and equitable society. The Constitution constructs the collective will of the people as granting a mandate to the state to implement policy (beleid), execute administrative actions (bestuursdaad), regulate (regelendaad), manage (beheersdaad), and supervise (toezichthoudensdaad) for the greatest possible prosperity of the people.[1]

In pursuit of these objectives, the state delegates part of its control to State-Owned Enterprises (SOEs). SOEs are key economic actors in the national economy and play an essential role in national development to promote public welfare. Law Number 19 of 2003 concerning State-Owned Enterprises (hereinafter referred to as the "SOE Law") defines SOEs as business entities in which the state owns all or the majority of the capital through direct investment originating from state-separated assets.[2]

The SOE Law further regulates the form of **Persero**, which is a limited liability company in which the shares are wholly or at least 51% owned by the state. The primary objective of a Persero is to generate profit. SOEs play a strategic role in the Indonesian economy. As one of the pillars of the national economy, SOEs are not only drivers of economic growth but also fulfill various public needs.

[1] Suyanto Edi Wibowo, Jurnal: Memahami Makna Pasal 33 Undang-undang Dasar Negara Republik Indonesia Tahun 1945 Perihal Penguasaan Oleh Negara Terhadap Sumber Daya Alam, 2015.
[2] Pasal 1 angka 1 Undang-undang Nomor 19 Tahun 2003 tentang Badan Usaha Milik Negara

In their operations, SOEs are represented by a Board of Directors, which is responsible for managing the company in accordance with its purposes and objectives. Due to the significance of this role, directors are required to adhere to the principle of **fiduciary duty**, which obliges them to prioritize the interests of the company above personal or affiliated business interests. Furthermore, directors must exercise prudence in making business decisions to avoid financial losses. However, in practice, certain decisions made by directors have led to company losses, and in some cases, to losses for the state.[3]

To a certain extent, in order to accommodate the risks that may arise considering that directors are required to be able to compete in the face of dynamic economic competition, the management of SOEs must be carried out in a professional, transparent and accountable manner, in accordance with the principles of Good Corporate Governance (hereinafter referred to as "GCG"). One of the important elements in the good governance of SOEs is the application of the Business Judgement Rule (hereinafter referred to as "BJR") in decision-making by the board of directors as stipulated in Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as "PT Law").

To accommodate the risks inherent in business decisions—especially given the need for SOEs to remain competitive in a dynamic economic environment—the management of SOEs must be carried out professionally, transparently, and accountably, in accordance with the principles of **Good Corporate Governance** (GCG). A critical element of sound corporate governance in SOEs is the application of the **Business Judgment Rule** (BJR), particularly in decision-making by directors, as stipulated in Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the "Company Law").

The BJR principle provides that directors shall not be held personally liable for losses resulting from business decisions, provided such decisions are made in good faith, with due care, in compliance with applicable laws and regulations, and in line with GCG principles. Accordingly, directors are afforded legal protection without requiring justification from shareholders or the courts for business decisions made in the management of the company.

Unlike private enterprises, SOEs are bound by a range of regulations related to the management of state finances. This unique characteristic presents a challenge, as SOEs are not solely profit-oriented, but also serve national interests. Consequently, SOE directors may hesitate to make business decisions due to concerns that such decisions, if resulting in loss, could later be deemed inappropriate or even criminal.[4]

One of the primary challenges in SOE governance is the differing interpretations of the BJR principle, especially in relation to state losses within SOEs. The legal debate on whether losses incurred by SOEs constitute state financial losses remains ongoing. This ambiguity is reflected in various court rulings, some of which categorize SOE losses and those of their subsidiaries as state losses, thereby criminalizing the actions of the directors. Conversely, other court decisions hold the opposite view. This divergence has given rise to legal uncertainty surrounding the application of BJR and GCG, with some business decisions that resulted in losses being treated as acts of corruption. In many cases, SOE directors are unable to demonstrate compliance with BJR due to the absence of specific guidelines for its implementation, leading courts to disregard BJR considerations during proceedings.

A key issue in the implementation of BJR is the lack of clear and consistent guidelines tailored to the SOE context. As a result, SOE directors are often subject to criminal prosecution on the grounds of causing state losses, even when their decisions were based on sound business judgment. Several cases involving SOE directors in recent years underscore the urgent need for more robust and strategic regulation of the BJR principle.[5]

An illustrative example is the case of **Karen Agustiawan**, former President Director of PT Pertamina (Persero), concerning the 2009 investment in the acquisition of a Participating Interest (PI) in the Basker Manta Gummy (BMG) block in Australia. This transaction was deemed an act of corruption resulting in a state financial loss of IDR 568 billion. While Karen was found guilty and sentenced to eight years in prison at the district court level, the Supreme Court later overturned the verdict on appeal, ruling that her actions did not constitute a criminal offense and were in accordance with BJR principles. Another example is the case of **Hotasi Nababan**, former Director of PT Merpati Nusantara Airlines (Persero) (hereinafter "PT MNA"), involving the lease of two Boeing 737 aircraft from a U.S.-based company, Thirdstone Aircraft Leasing Group (TALG), in 2006. PT MNA paid a Refundable Security Deposit (RSD) of USD 1 million; however, TALG failed to deliver the aircraft. Despite this, the RSD had already been disbursed. Due to the failed transaction, Hotasi was charged with corruption. Although acquitted at the district court level, the Supreme Court later reversed the decision, found him guilty of causing a USD 1 million state loss, and sentenced him to four years in prison.[6]

[3] Pasal 1 angka 2 Undang-undang Nomor 19 Tahun 2003 tentang Badan Usaha Milik Negara

[4] Erman Rajagukguk, 2016, Badan Usaha Milik Negara dalam bentuk Perseroan Terbatas, Jakarta: Universitas Indonesia Fakultas Hukum, hlm. 19

[5] Putusan Mahkamah Agung Nomor 417 K/Pid.Sus/2014

[6] Putusan Mahkamah Agung Nomor 417 K/Pid.Sus/2014

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While criminal law is a crucial instrument of law enforcement, criminal sanctions should be applied as an **ultimum remedium**—a last resort in resolving legal issues. Legal proceedings begin with investigation, prosecution, and trial, during which the accused is entitled to the **presumption of innocence** until a final, binding verdict is rendered. However, in practice, once a person is designated as a suspect or defendant, their rights are often restricted through arrest, detention, asset seizure, and other coercive measures, even if the case does not end in a conviction.

As described above, there is a fundamental divergence in perspectives between law enforcement agencies and the judiciary regarding corruption cases involving SOE directors and their accountability for state financial losses. This divergence centers on whether losses resulting from legitimate business decisions, which should be protected under BJR, are instead being construed as criminal acts, thereby creating legal uncertainty and undermining business decision-making in SOEs.

Another factor that further complicates the situation is the political and public pressure that frequently influences decision-making processes within State-Owned Enterprises (SOEs). SOE directors are often confronted with the dilemma of balancing business interests with state policies, which can lead to conflicts in decision-making. In such circumstances, the application of the **Business Judgment Rule** (BJR) becomes increasingly critical to ensure that directors have the autonomy to make decisions without the fear of facing unfair legal consequences.[7]

Therefore, there is a pressing need to formulate a strategic regulatory solution concerning the implementation of the BJR, particularly within the context of SOE governance. In practice, corporate financial risk management often requires directors to make complex strategic decisions, one of which involves mitigating potential losses from a transaction, a decision commonly referred to as a *cut-loss* policy. According to a *Media Indonesia* article dated April 14, 2024, cut-loss is a preventive measure aimed at avoiding more substantial losses. Although this policy is intended as a preventive strategy, its implementation has often exposed directors to legal risks.

It is undeniable that the sustainability and success of a company largely depend on the quality and decisions of its board of directors. Fundamentally, directors are expected to exercise prudent management and decision-making, ensuring that all corporate actions serve solely the interests of the state and the enterprise, free from personal motives. However, in practice, business decisions inherently carry the risk of potential loss. Consequently, an appropriate strategic regulatory framework is required to anticipate the possibility of corruption charges in the event of such losses.

To date, there remains a lack of clear and consistent guidelines for SOEs regarding the implementation of cut-loss policies that are protected under the BJR. This has resulted in legal uncertainty for directors, who may fear litigation if the decisions they make are later deemed unsuccessful. Therefore, it is imperative to develop a strategic regulatory solution for the application of the BJR, particularly in relation to cut-loss decision-making by SOE directors. Ideally, such a regulation should provide comprehensive legal protection for directors acting in accordance with sound business judgment, without diminishing their responsibility to safeguard the interests of the state and the public.

In light of this background, this study aims to examine the regulation of the **Business Judgment Rule** in the governance of SOEs in Indonesia and to propose strategic solutions that can be implemented to enhance corporate governance and improve overall SOE performance. Accordingly, the research problem is formulated as follows: *How is the Business Judgment Rule applied in decision-making within the context of SOE business management?* The objective of this study is to explore and analyze the implementation of the **Business Judgment Rule** in decision-making processes within SOE business governance.

II. RESEARCH METHODS

Scientific research is an attempt to analyze a problem by constructing methodologically, systematically and consistently.[8] According to Soerjono Soekanto, legal research is a scientific activity, which is based on certain methods, systematics and thoughts, which aims to study one or several certain legal symptoms by analyzing them.[9] This research uses a juridical-normative form of research, namely research on written legal norms to answer problems regarding the regulation and application of laws related to law enforcement of Corruption Crimes supported by literature studies relevant to the issues discussed, namely the application of Business Judgement Rules and then analyzed and concluded in writing.

The author will examine the laws and regulations used as the basis for legal provisions as well as various literatures to analyze Strategic Solutions for Regulating Business Judgement Rules in the Management of SOEs Normative research is research that refers to legal norms contained in laws and regulations as well as norms that live and develop in society. The author uses the Civil Code, Law Number 40 of 2007 concerning Limited Liability Companies and books or other literature in analyzing this research.

The approaches used by the authors are conceptual approach and case approach. The conceptual approach is intended to analyze legal materials so that the meaning contained in legal terms can be known. This is done as an attempt to obtain new

[7] https://mediaindonesia.com/humaniora/759733/cut-loss-pengertian-tujuan-dan-strategi tanggal 14 April 2024

[8] Soerjono Soekanto, 2010, Pengantar Penelitian Hukum, Jakarta: UI Press, Hlm. 3.

[9] *Ibid*, hlm. 17.

meanings contained in the terms studied or test the legal terms in theory and practice.[10] The research was conducted by studying literature (Library Research), namely by using literature by studying books, books and other information that has relevance to the scope of the discussion. So this type of research is also called normative legal research or legal research methods carried out by examining library materials or primary and secondary data.[11]

The case approach is intended to strengthen the conceptual theory contained in the research. The case approach in normative research aims to study the application of legal norms or rules carried out in legal practice. The author uses a case approach because this research aims to see the application of the Business Judgement Rule principle, especially in the context of law enforcement of Corruption and how the directors' decisions can be protected and prevent losses for BUMN. So that it is necessary to describe the problem to support the author to find answers to legal problems in the research. This research will examine the formulation of problems with legal norms and rules then provide solutions in the form of legal risk mitigation with legal doctrines to answer existing legal issues.

III. RESEARCH RESULT AND DISCUSSION

A. The Application Of The Business Judgment Rule Doctrine In Decision-Making Within The Context Of State-Owned Enterprise Management

1. The Application of the Business Judgment Rule in United States Corporate Law

Along with the fast-moving economic conditions accompanied by changes and increasingly fierce business competition, the Board of Directors as an organ responsible for managing the company is required to move quickly, especially in terms of taking a policy for the company in certain conditions and situations. So it does not rule out the possibility that policies taken in certain situations can provide benefits or even losses for the company.

Amidst the rapid development of economic conditions and increasingly intense business competition, directors—who serve as corporate organs responsible for managing the company—are expected to act responsively, especially when making policy decisions under varying circumstances. Consequently, it is not uncommon for such decisions to generate potential benefits while simultaneously exposing the company to the risk of losses.

The *Business Judgment Rule* (BJR) is a doctrine rooted in the *common law* legal system and emerged in the United States during the 1800s as a judicial approach to prevent courts from interfering with business decisions made by directors. However, in its early stages, this doctrine lacked a clear structure and was not yet codified in any specific regulations.[12]

One of the earliest precedents in U.S. corporate law was the 1829 case of Percy v. Millaudon, decided by the Louisiana Supreme Court. This case involved embezzlement committed by a bank president and treasurer.[13] The court held the board of directors jointly liable due to their negligence in oversight, thus breaching the duty of care, which resulted in losses for the company. The ruling sparked debate because the directors were not proven to have had mens rea (criminal intent), and oversight functions were also carried out by other company officers, such as the bank manager. This case marked a significant turning point in judicial analysis of the role and decisions of directors in subsequent cases.[14]

In the 1847 case of Godbold v. Branch Bank, heard by the Alabama Supreme Court, the directors were exonerated from liability for a business policy to raise additional funds for banking operations, despite the resulting losses. The court found that the directors' decision was made not for personal gain, but in the interest of the company.

A major reaffirmation of BJR occurred in the 1985 Aronson v. Lewis case, in which the Delaware Supreme Court emphasized that business decisions made by directors must be based on adequate information, carried out in good faith, and intended to serve the best interests of the corporation. This ruling formally established BJR as a derivative of fundamental corporate law principles and led to its codification in the Delaware Code Annotated Title 8, Section 141(a), which stipulates that directors have the authority to make business decisions and must do so in good faith and with full responsibility for the company's welfare.[15]

The doctrine was further solidified in *Gries Sports Enterprises Inc. v. Cleveland Browns Football Co. Inc.* (1986), in which the Ohio Supreme Court ruled that if a party challenges the applicability of BJR to a board decision, the burden of proof lies with that party to demonstrate that the decision was motivated by personal interests or bad faith on the part of the directors.[16]

The interpretation of BJR was expanded again in *Cede & Co. v. Technicolor, Inc.* (1993), where the Delaware Supreme Court held that the directors' *duty of care* requires them to base decisions on legitimate, lawful, and fraud-free information. Directors must seek out all relevant legal and business information and conduct adequate analysis before making decisions.[17]

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[10] Hajar M, 2015, *Model-Model Pendekatan Dalam Penelitian Hukum,* Pekanbaru: UIN Suska Riau, Hlm. 41.

[11] Bambang Sungono, 2009, Metodologi Penelitian Hukum, Jakarta: PT Raja Grafindo Persada, hlm. 189.

[12] S. Samuel Arsht, The Business Judgment Rule Revisited, Hosftra Law Review 9, 1979, hlm 94

[13] scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=3158&context=flr diakses pada 23 April 2024 pukul 12:26

[14] *ibid*

[15] Bryan A. Garner dan Henry Campbell Black, Black's Law Dictionary, Cet. 8 (St. Paul Minnesota: Thomson West Group), 2015, hlm 545.

[16] Fred W. Triem, Judicial Schizophrenia in Corporate Law: Confusing The Standard of Care with The Business Judgment Rule, Alaska Law Revieew (2007) hlm 26

[17] S 8.30 (b), *The Model Business Corporation Act 2016 Revision, ABA Business Law.*

This principle is clearly outlined in the *Model Business Corporation Act (MBCA) 2016*, which establishes two primary fiduciary duties of directors: the *duty of care* and the *duty of loyalty*. The *duty of care* obliges directors to operate with diligence, prudence, and reliable information, while the *duty of loyalty* requires directors to act in good faith and in the best interests of the corporation, not for personal benefit.[18] Therefore, under the MBCA, if the Director has performed his duties in accordance with the provisions of the MBCA, the Director cannot be sued for his business decisions.[19]

Furthermore, The MBCA 2016 also emphasizes the limitation of protection for Directors in making business decisions as stipulated in Article S 8.31 of the MBCA 2016 which regulates the Standards of Liability for Directors, where the Director cannot be protected when the Director does the following things:[20]

a. Derived improper personal financial gain;
b. Acted in bad faith to the detriment of the corporation;
c. Committed intentional legal violations;
d. Usurped a corporate opportunity for themselves or others without first offering it to the corporation;
e. Engaged in transactions involving conflicts of interest; or
f. Authorized unlawful distributions of corporate assets.

Reflecting the views of American judges, the *American Law Institute* adopted these standards and outlined that a director or corporate officer is deemed to have fulfilled the *duty of care* when making a business decision in good faith, provided that:[21]

a. They have no personal interest in the subject matter of the decision;
b. The decision is based on reasonably reliable and sufficient information under prevailing conditions; and
c. They hold a rational belief that the decision serves the best interests of the corporation.

Based on the precedents set by the Delaware Supreme Court and the *American Law Institute*, the minimum standards for applying the *Business Judgment Rule* include:

a. The decision must be made by the board of directors;
b. No improper personal gain is involved;
c. There is no malicious intent to harm the company or its shareholders;
d. Business opportunities are not personally appropriated without first being offered to the company;
e. The transaction is free of conflicts of interest; and
f. No legal violations are present.

2. The Application of the Business Judgment Rule in Indonesian Corporate Law

The *Business Judgment Rule* has been normatively adopted into the Indonesian legal system through Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the "Company Law"). Its incorporation into positive law in Indonesia is driven by shared characteristics in corporate governance practices between Indonesia and the United States.[22] One such similarity lies in the role of the board of directors (*direksi*) as a corporate organ entrusted with full authority to manage the company, albeit within the limits set by statutory regulations and the company's articles of association. These two sources form the basis for assessing the reasonableness of business decisions.[23]

Directors are entitled to immunity and legal protection provided that their business decisions meet the following four criteria:[24]

a. The business decision must be preceded by a thorough deliberation and evaluation process. A failure to conduct such assessments, or other forms of negligence, disqualifies the director from protection under the Business Judgment Rule.
b. Directors must collect and utilize all relevant information to ensure that the decision is fair and justifiable.
c. The decision must be made in good faith. If the director is aware that the decision violates the law, the protection of this doctrine does not apply.
d. The director must not have a conflict of interest concerning the decision.

Pursuant to the Company Law, directors are required to uphold the *fiduciary duty* principle, which mandates that authority delegated by the company to its management must be exercised within the scope of such authority. In making business decisions, directors must act in good faith, with due care and responsibility, ensuring that their actions align with the company's best interests and constitute sound business judgment aimed at avoiding potential losses. This is explicitly outlined in Articles 92 and 97 of the Company Law:

Article 92

(1) The board of directors shall manage the company for the benefit and in accordance with its objectives and purposes.
(2) The board of directors is authorized to manage the company as referred to in paragraph (1), in accordance with policies deemed appropriate, and within the limits defined by this law and/or the articles of association.

Article 97

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[18] S 8.30 (a) *the Model Business Corporation Act 2016 Revision, ABA Business Law*
[19] *Ibid*
[20] S 8.31 (a) *the Model Business Corporation Act 2016 Revision, ABA Business Law*
[21] Melvin A. Eisenberg, "The Duty of Good Faith in Corporate Law", Delaware Journal of Corporate Law, 2006, hlm 11.
[22] Legal Counsel PT Pertamina, Potret Business Judgment Rule: Praktik Pertanggungjawaban Pengelolaan BUMN, Balai Pustaka, 2022, hlm. 69
[23] *ibid*
[24] Asep N. Mulyana, Business Judgment Rule Praktik Peradilan Terhadap Penyimpangan Dalam Pengelolaan BUMN/BUMD, Grasindo, 2018, Jakarta, hlm. 32

(1) The board of directors is responsible for the management of the company as referred to in Article 92 paragraph (1).
(2) Such management shall be carried out by each member of the board of directors in good faith and with full responsibility.
(3) Each member of the board shall be personally liable if found to have been at fault or negligent in performing their duties as referred to in paragraph (2).

These provisions mandate that directors perform their management functions to the best of their reasonable abilities and with full good faith and accountability, guided by policies considered proper and in accordance with applicable laws and the company's articles. Any act performed by directors in good faith may qualify for legal protection, provided it does not confer personal gain to the director or third parties, and does not result in harm to the company. Conversely, directors may be held personally liable if proven to have breached their fiduciary duty, thereby causing corporate losses. The elucidation of Article 97 paragraph (2) further affirms that "full responsibility" entails careful and diligent attention to the company.

The *Business Judgment Rule* serves as a counterbalance to the fiduciary duty doctrine, which primarily imposes obligations and restrictions on directors. In contrast, the Business Judgment Rule offers protection for business decisions, provided they are made within the bounds of authority, with due care and good faith, and aligned with fiduciary principles—absent any conflict of interest and with appropriate steps taken to avoid company losses. This aligns with the American Law Institute's view that a director is deemed to have exercised sound business judgment if they: "…is informed with respect to the subject of the business judgment to the extent he reasonably believes to be appropriate under the circumstances."

The Business Judgment Rule is explicitly codified in Article 97 paragraph (5) of the Company Law, which states:

A member of the board of directors shall not be held liable for losses as referred to in paragraph (3) if it can be proven that:

a. *The losses were not due to their fault or negligence;*
b. T*hey managed the company in good faith and with prudence, in the best interest and in line with the company's objectives;*
c. *They had no direct or indirect conflict of interest in the management actions resulting in the loss; and*
d. *They had taken measures to prevent the occurrence or continuation of such losses.*

A similar provision is found in Government Regulation Number 23 of 2022 amending Government Regulation Number 45 of 2005 concerning the Establishment, Management, Supervision, and Dissolution of State-Owned Enterprises (hereinafter "GR 23/2022"), particularly in:

Article 27

(1) Each member of the board of directors shall perform their duties in good faith and with full responsibility for the benefit and business of the SOE.
(2) Each member of the board of directors shall be personally liable for losses incurred by the SOE if they are found to be at fault or negligent in fulfilling their duties as referred to in paragraph (1).
(2a) A member of the board shall not be held liable for such losses if it can be proven that:
  a. The loss was not due to their fault or negligence;
  b. They managed the SOE in good faith and with prudence, in line with the interests and objectives of the SOE;
  c. They had no direct or indirect conflict of interest in the management actions that caused the loss; and
  d. They took appropriate action to prevent the occurrence or continuation of the loss.

Accordingly, under GR 23/2022, directors are not automatically held personally liable, as the regulation requires proof of fault and/or negligence. Nevertheless, the interpretation of "fault and negligence" remains abstract in practice, thus necessitating juridical interpretation tailored to the relevant legal domain.[25] To determine these boundaries, reference must be made to provisions concerning the duties and authority of directors, as outlined in the articles of association, internal regulations, and other statutory instruments.[26]

The Company Law also regulates the authority of the board of commissioners to approve certain legal actions by the board of directors, as stipulated in Article 117:

Article 117

(1) The articles of association may stipulate the authority of the board of commissioners to grant approval or provide assistance to the board of directors in carrying out certain legal actions.
(2) If the articles of association require such approval or assistance, any legal action taken without it shall nonetheless bind the company, provided that the counterparty acted in good faith.

This provision establishes key procedural safeguards that directors must heed in executing their responsibilities. Accordingly, the articles of association serve as a vital legal source in defining the extent to which the board of directors must seek approval from the board of commissioners before undertaking specific legal actions.

Moreover, the Business Judgment Rule is firmly enshrined in Law Number 1 of 2025, which amends Law Number 19 of 2003 on State-Owned Enterprises. Articles 9F paragraphs (1) and (2) stipulate the following:

(1) A member of the board of directors shall not be held liable for losses if they can prove that:

[25] Legal Counsel PT Pertamina, Potret Business Judgment Rule: Praktik Pertanggungjawaban Pengelolaan BUMN, Balai Pustaka, 2022, hlm. 78

[26] Indonesia, UU Nomor 40 Tahun 1007 tentang Perseroan Terbatas, Pasal 4.

a. The loss was not caused by their fault or negligence;
b. They managed the SOE in good faith and with prudence, in the best interests and objectives of the SOE;
c. They had no direct or indirect conflict of interest in the management action causing the loss; and
d. They took steps to prevent the occurrence or continuation of the loss.

(2) A member of the board of commissioners or supervisory board shall not be held legally liable for losses if they can prove that:
a. They supervised in good faith and with prudence, in the best interests and objectives of the SOE;
b. They had no direct or indirect personal interest in the board of directors' actions that resulted in the loss; and
c. They provided advice to the board of directors to prevent the occurrence or continuation of the loss.

Hence, in discharging their duties and responsibilities, directors must adhere to the provisions of the articles of association and relevant internal mechanisms. Ignoring these procedures may result in allegations of misconduct, especially when such actions cause corporate harm. It is therefore imperative that directors always refer to the company's internal governance framework before executing legal actions on behalf of the company.

3. Application of the Business Judgment Rule in the Enforcement of Anti-Corruption Law

In both the United States and Indonesia, the *Business Judgment Rule* (BJR) operates as a legal doctrine that grants directors immunity from liability in the context of business decisions, including those scrutinized under criminal proceedings. As outlined in a Hukumonline legal webinar, Rahayu Ningsih, Senior Partner at Makarim & Taira, noted that U.S. courts apply three standards in assessing decisions under the BJR: the decision must be made in good faith, carried out honestly, and in the best interests of the corporation.

In contrast, in Indonesia, the BJR may be disregarded if the business decision in question results in state financial losses. This is consistent with Article 95(3)(a) of the Company Law, which holds directors liable for losses incurred due to their fault or negligence. The terms "fault" and "negligence" are also recognized in civil law as elements of *onrechtmatige daad* (unlawful acts).

Under civil law, unlawful acts are regulated by Articles 1365 and 1366 of the Indonesian Civil Code:

Article 1365:

"Every unlawful act that causes harm to another obliges the person whose fault has caused the harm to compensate for such harm."

Article 1366:

"Everyone is responsible not only for harm caused by their actions but also for harm caused by their negligence."

These provisions clarify that unlawful acts do not arise from contractual obligations, but rather from intentional or negligent conduct with a causal relationship to another party's loss.

The *Hoge Raad* (Supreme Court of the Netherlands), in its landmark decision of 31 January 1919 in *Lindenbaum v. Cohen*, adopted a broad interpretation of unlawful acts, holding that they encompass actions that violate another's rights, contravene legal duties, or offend public morality. This aligns with Aurora Jillena Meliala's assertion in her journal article *"Sosialisme Indonesia dalam Perspektif Konstitusional"*:[27]

"Every individual is free to do whatever they wish as long as it does not harm others. Therefore, government intervention is only necessary to protect society from harm."

From this perspective, liability for state financial losses has broader societal implications, thus justifying the state's obligation to act against individuals whose conduct causes such losses.

The concept of unlawful acts also exists in criminal law under the term *wederrechtelijk*. The distinction between unlawful acts in civil and criminal contexts lies in the consequence: in civil law, it pertains to harm suffered by individuals or legal entities, while in criminal law, it refers to a breach of the prevailing legal order.[28] The elements of an unlawful act in criminal law typically include express prohibition by law, lack of authority, and violation of general legal principles.[29]

The application of the BJR in criminal law often intersects with the evidentiary requirements for corruption offences, particularly under Articles 2 and 3 of the Anti-Corruption Law, both of which contain the element of unlawfulness. Whether under civil, criminal, or corporate law, it is clear that actions resulting in losses are grounds for liability, provided they stem from fault or negligence.

Article 2 of the Anti-Corruption Law states:

"Any person who unlawfully enriches themselves or another person or corporation, which could harm the state's finances or economy, shall be punished with life imprisonment or imprisonment of not less than 4 (four) years and not more than 20 (twenty) years, and a fine of not less than IDR 200,000,000 and not more than IDR 1,000,000,000."

Article 3 provides:

"Any person who, with the intent to benefit themselves, another person, or a corporation, abuses their authority, opportunity, or means available to them by virtue of their position, and thereby causes losses to the state's finances or economy, shall be punished with life imprisonment or imprisonment of not less than 1 (one) year and not more than 20 (twenty) years."

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[27] Aurora Jillena Meliala. (2022). Indonesian Socialism in the Constitutional Perspective, Jurnal Constitutionale, 3 (2), hlm. 90.
[28] Rosa Agustina, *Perbuatan Melawan Hukum*, Jakarta: Program Pascasarjana Fakultas Hukum Universitas Indonesia, hlm. 17
[29] *Ibid*

Article 2 emphasizes that acts of self-enrichment committed unlawfully that potentially cause losses to the state may be punished, even if the loss is not actual but potential. The term "unlawful" in this context includes not only violations of written law but also breaches of general principles of *good governance*. Article 3 focuses on the abuse of authority, opportunity, or means available by virtue of one's office. This element refers to deviations from proper duties and functions and is commonly interpreted in practice as encompassing both administrative and criminal unlawfulness.

In corruption cases, a central debate arises over whether a loss-causing business decision constitutes a reasonable managerial missjudgment or an abuse of power. If the decision was made within the scope of authority and with due care, it should not incur criminal liability—even if it results in loss. Conversely, if the decision was made with intent to enrich oneself, another party, or a corporation, and deviates from established procedures and regulations, it may be classified as a criminal act of corruption.

Articles 2 and 3 of the Anti-Corruption Law underscore that the element of unlawfulness is crucial to proving a corruption offense. However, its application requires a thorough analysis of intent, procedural compliance, and outcomes—particularly in connection with the Business Judgment Rule—to ensure public officials or policymakers are not unjustly criminalized solely due to financial losses, while still holding them accountable for any proven abuse of power.

Further, Article 1(1) of Law No. 19 of 2003 on State-Owned Enterprises (SOEs) defines state capital participation as a separation of state assets. This implies that once state capital is separated, it is governed by private rather than public law. Meanwhile, the elucidation of Law No. 20 of 2001 amending Law No. 31 of 1999 clarifies that "state finances" include all forms of state wealth, whether separated or not, encompassing state financial losses and all rights and obligations arising from:

a. Control, management, and accountability by state officials at the central or regional levels;
b. Control, management, and accountability by SOEs, foundations, legal entities, or companies receiving state capital or utilizing third-party funds under state agreements.

The current Anti-Corruption Law does not explicitly define "state financial loss." This definition is instead found in other statutes such as the State Finance Law and the Audit Board (BPK) Law. Article 1(22) of Law No. 1 of 2004 on State Treasury defines it as:

> "State/regional financial loss is the actual and definite loss of money, securities, and/or goods resulting from an unlawful act, whether intentional or negligent."

From this definition, it may be concluded that:

a. A state financial loss involves a reduction in state assets—monetary or otherwise—from their expected value;
b. The loss must be actual and quantifiable, not merely potential;
c. It must result from an unlawful act, whether intentional or negligent, and must be proven with precision.

This adheres to the concept of materieel delict (material offense), where the loss must be actual and demonstrable. This differs from Article 2(1) of the Anti-Corruption Law, which reflects a formeel delict (formal offense) approach by criminalizing acts solely based on potential losses.

Similarly, Article 1(15) of Law No. 15 of 2006 on the Audit Board (BPK) defines state loss as the actual and definite shortage of money, securities, and/or goods due to an unlawful act. The Government Internal Audit Agency (BPKP) even adds that losses can be either actual or potential, such as unrealized state revenue.

This author argues that a normative framework is needed for determining state losses, whereby such losses are officially identified by the BPK as the authorized institution. This is essential for detecting whether a state official's actions have financially harmed the state. State finances encompass all state rights and obligations that can be valued in money or goods. Indicators for determining state losses may include:

a. Audit findings from the BPK;
b. Supervision by functional oversight bodies;
c. Oversight by the immediate superior of the treasurer or relevant work unit;
d. Ex officio calculations.

The determination of actual and definite state financial losses must be calculated and established to be legally accountable. This is stipulated in Article 10 (1) and (2) of the BPK Law:

(1) The BPK assesses and/or determines the amount of state financial loss resulting from unlawful acts, whether committed intentionally or negligently, by treasurers, SOE/ROE managers, or other institutions managing state finances.
(2) Such assessments or determinations shall be made by BPK decision.

Thus, there is a clear link between SOE business management and state financial losses in cases of suspected corruption within SOEs—particularly when state assets are not optimally utilized, or where wrong purchases or mismanagement occur. Third parties may exploit these assets through mechanisms such as leasing, operational cooperation, or strategic partnerships rather than legitimate acquisition. These assets, whether tangible or intangible, if misused, may result in:

1. The state failing to obtain fair returns aligned with market value; or
2. The state suffering financial harm due to such operational cooperation.

The risk of loss increases when the asset in question is not yet formally recorded as a state asset—for instance, in cases where assets are developed using state funds (APBN) but remain unregistered at either the central or regional government level. As previously discussed, numerous cases have emerged in which SOE directors have faced legal proceedings. The legal challenge of applying the Business Judgment Rule has manifested in various SOEs, including the four cases to be examined further.

a. The Case of Karen Agustiawan (Former President Director of PT Pertamina (Persero)) in the Acquisition of the BMG (Basker Manta Gummy) Block in Australia

In 2009, PT Pertamina allocated funds to acquire oil and gas blocks as a strategic response to a projected national gas deficit, particularly to meet the demands of PLN (the state electricity company) and the fertilizer and petrochemical industries. The acquisition of the BMG Block in Australia, however, was carried out through a process riddled with governance irregularities. These included the absence of adequate due diligence, the disregard of internal investment review procedures, and the formation of an acquisition task force without a formal legal basis.

Negotiations began with an offer from ROC Ltd., mediated by Citibank, which was hastily approved by Pertamina officials such as Ferederick ST. Siahaan and Ir. Bayu Kristanto without full consent from the Board of Directors and Board of Commissioners. Although the Board of Commissioners later expressed disapproval of the investment—deeming it unprofitable and high-risk—the acquisition proceeded, culminating in the signing of the Sale and Purchase Agreement (SPA) in Australia by representatives of PT Pertamina and PT Pertamina Hulu Energi.

The investment in the BMG Block resulted in significant financial losses following the cessation of production in 2010, when the field was declared uneconomical. According to an audit by Ernst & Young, the total loss amounted to IDR 568 billion. Pertamina ultimately withdrew from its 10% Participating Interest (PI) in the BMG Block in 2013. The acquisition process illustrated multiple violations of sound corporate governance principles, including the neglect of feasibility studies, the lack of sufficient legal and technical assessments, and the bypassing of the Board of Commissioners' approval. These actions severely damaged Pertamina's reputation and caused substantial financial harm. The case also exposed weak internal control mechanisms and a failure to adhere to the prudential principles essential for international investments by a strategic state-owned enterprise (SOE).

The Public Prosecutor concluded that Karen Agustiawan was jointly responsible for acts of corruption in the BMG acquisition and charged her under Article 2(1) in conjunction with Article 18(1)(b) of the Anti-Corruption Law, alongside Article 55(1)(1) of the Criminal Code. The charges were based on her approval of the acquisition process without sufficient due diligence, her decision to invest USD 30 million for a 10% PI, and her continued pursuit of the acquisition despite the Board of Commissioners' objections. As a result, even after the BMG Block ceased production in 2010, Pertamina continued to bear operational costs until 2012, exacerbating corporate losses.

However, in its judicial review, the Supreme Court overturned the previous verdict and held that although Karen's actions were proven, they did not constitute a criminal offense as they fell within the scope of the Business Judgment Rule (BJR). The Court reasoned that the impairment loss suffered by Pertamina Hulu Energi was an asset devaluation, not a direct loss to the state, and that losses by SOE subsidiaries did not qualify as state financial losses. Nonetheless, Karen was deemed negligent in fulfilling her fiduciary duties—particularly the duty of care and rational judgment—for ignoring warnings from the Board of Commissioners and the results of external due diligence. Despite these failures, Pertamina's eventual decision to withdraw from the BMG Block was seen as a reasonable mitigation measure consistent with sound business practices.

b. The Case of Hotasi Nababan in the Aircraft Leasing Procurement at PT Merpati Nusantara Airlines

In an effort to rescue PT Merpati Nusantara Airlines (MNA) from financial distress, CEO Hotasi D.P. Nababan and his board planned in 2006 to lease two Boeing 737 aircraft. The aircraft search, led by General Manager Tony Sudjiarto, was conducted through advertisements and negotiations. However, the plan was not included in the 2006 Corporate Work Plan and Budget (RKAP) and lacked the approval of the General Meeting of Shareholders (RUPS), as required by SOE regulations. The leasing transaction was carried out with Thirdstone Aircraft Leasing Group (TALG), including a USD 1 million security deposit wired directly to a lawyer's account without an escrow mechanism, violating prudential standards.

After the aircraft were never delivered and the deposit was not refunded, MNA sued TALG, revealing that the leasing company was also involved in tax violations in the United States.

From a legal perspective, the Public Prosecutor charged Hotasi under Articles 2(1) and 3 of the Anti-Corruption Law in conjunction with Article 55(1)(1) of the Criminal Code, citing a financial loss of USD 1 million to the state. He was found to have violated good corporate governance (GCG) principles by authorizing payment without adequate financial safeguards and without RUPS approval. Furthermore, the deposit was used by TALG to purchase aircraft without formal consent, unjustly enriching third parties and disregarding the company's interests. His actions were deemed an abuse of authority as a SOE official and unlawfully benefited other parties.

Under the Business Judgment Rule (BJR) as stipulated in Article 97(5) of the Company Law, Hotasi was deemed ineligible for protection, as the leasing agreement was made without formal approval or proper risk mitigation—even though there was no indication of personal conflict of interest. While his decision to sue TALG reflected some intent to recover losses, his initial negligence in the business decision-making process precluded the application of the BJR as a defense.

In summary, Hotasi's violations included noncompliance with the RKAP and RUPS, and his failure to protect the company's transactions. Although his intent was to save MNA, his actions were rash and contrary to the duty of care, ultimately weakening his position as a responsible SOE executive. Therefore, his conduct resulted in actual state losses and cannot be shielded by the Business Judgment Rule.

c. The MBZ Elevated Toll Road Project Case (2016–2017)

The Sheikh Mohammed bin Zayed (MBZ) Elevated Toll Road project was constructed above the Jakarta–Cikampek Toll Road to alleviate traffic congestion and facilitate long-distance travel. With a total investment of IDR 16.2 trillion, the project was developed under a joint operation scheme between PT Waskita Karya and PT Acset Indonusa, and managed by PT Jasamarga Jalan Layang Cikampek. Although the toll road became operational in 2019, the Attorney General's Office revealed in 2023 that corruption had tainted the procurement process, favoring the Waskita-Acset consortium without proper evaluation. This included manipulation of technical specifications and a decline in concrete quality.

The state suffered losses amounting to IDR 510 billion, and four defendants, including former JJC CEO Djoko Dwijono, were sentenced to 3–4 years in prison by the Jakarta Corruption Court for violating the Anti-Corruption Law.

From an analytical perspective, the MBZ project employed a Public-Private Partnership (PPP) model under Presidential Regulation No. 38 of 2015, aimed at accelerating infrastructure development by engaging the private sector. However, this scheme created opportunities for corruption during the planning, procurement, and implementation phases due to weak oversight and collusion among SOE insiders, vendors, and auditors. In this case, the manipulation of specifications, cost mark-ups, and subcontracting without proper feasibility studies constituted violations of the Business Judgment Rule. These acts were not rational business decisions but deliberate corrupt acts intended to enrich specific parties and thus do not qualify for legal protection as good faith corporate decisions.

d. The Case of Karen Agustiawan in the LNG Procurement from Corpus Christi Liquefaction, Texas, USA

To address national gas demands, PT Pertamina (Persero), under Karen Agustiawan's leadership, initiated the procurement of LNG from the United States by issuing letters of interest and engaging in negotiations with suppliers such as Cheniere Energy, Inc. Despite the absence of clear implementation guidelines, technical studies, or robust economic analysis, Pertamina continued the negotiations, even after the cancellation of the Central Java FSRU project (which justified the LNG need) and the availability of domestic LNG supply.

In 2013, Pertamina signed a 20-year Sales and Purchase Agreement (SPA) with Corpus Christi Liquefaction LLC, even though no long-term buyers had been secured for the LNG. The contract price was higher than comparable contracts negotiated by other companies, and the process bypassed the Board of Commissioners and did not adhere to internal corporate governance mechanisms such as RKAP and RUPS, as mandated by SOE law.

In its legal reasoning, the court ruled that Karen Agustiawan's actions did not fall within the realm of legitimate business discretion protected by the Business Judgment Rule but instead constituted unlawful conduct. The decision violated formal procedures (not passing through the RKAP or RUPS/Ministry of SOEs), led to state losses amounting to USD 113.8 million, lacked any risk mitigation efforts, and deviated from good corporate governance principles. Karen was also found to have a potential conflict of interest, having personally sought a position at Cheniere Energy, Inc., in breach of Pertamina's Board Manual and SOE Ministerial Regulation No. PER-01/MBU/2011.

The key distinction between legitimate business discretion and unlawful conduct in this context lies in good faith, compliance with internal procedures, risk assessment, absence of conflicts of interest, and the impact on state finances. In Karen Agustiawan's case, none of the criteria for lawful business discretion were met, thus disqualifying her from the protections of the Business Judgment Rule. She failed to demonstrate rational judgment, transparency, and corporate stewardship, and instead acted with gross negligence, resulting in significant losses.

4. Author's Analysis

Based on the cases previously discussed, corruption cases within State-Owned Enterprises (SOEs) in Indonesia can generally be categorized into two main types:

a. Cases involving *dolus malus*, or the presence of malicious intent on the part of the perpetrator to unlawfully obtain personal gain; and
b. Cases related to pure business decisions made by directors in their capacity as corporate organs.

Accordingly, an objective legal standard is necessary to distinguish between these two categories in order to prevent the criminalization of business decisions that are made professionally and in good faith within the scope of corporate management functions.

Based on a legal analysis of the four aforementioned cases, it appears that, normatively, the Business Judgment Rule (BJR) doctrine has not yet received substantial recognition in Indonesian judicial practice. The *Karen* and *Hotasi Nababan* cases illustrate the absence of a consistent judicial standard for evaluating high-risk corporate decisions made within the scope of managerial authority and without malicious intent. In both instances, the burden of proof shifted toward demonstrating state financial loss, rather than examining whether the decision-making process adhered to principles of prudence, independence from conflicts of interest, and the pursuit of corporate objectives.

By contrast, the *MBZ Elevated Toll Road* case cannot serve as a benchmark for the application of the BJR, as it involved clear procedural irregularities, collusion, and conspiracy in the procurement process from the outset—factors which fundamentally negate the core requirements for the application of the BJR. Thus, in this case, the invocation of the BJR is legally irrelevant as a defense mechanism.

In comparison to the legal framework in the United States, the status of the BJR in Indonesia remains declaratory and has not yet been comprehensively codified in statutory regulations or Supreme Court jurisprudence. In U.S. practice, courts have developed a clear and measurable **standard of judicial review** in assessing corporate decision-making, as reflected in the principles of **fiduciary duty**, **duty of care**, and **duty of loyalty**, which have been systematically incorporated into the **Model Business Corporation Act (MBCA) 2016**.

Conversely, the broad formulation of Articles 2 and 3 of Indonesia's Anti-Corruption Law, coupled with a prevailing trend of constitutional nationalism in interpreting Article 33 of the 1945 Constitution, has led to **the criminalization of legitimate corporate policies**. This underscores the urgent need to strengthen the BJR doctrine through more prescriptive regulation, the establishment of consistent jurisprudence, and enhanced commercial literacy among law enforcement authorities.

In conclusion, there remains no discernible trend toward the institutional strengthening of the Business Judgment Rule in Indonesia's legal enforcement landscape. On the contrary, a legal uncertainty persists in safeguarding professional, rational, and corporate interest-oriented business decisions made by directors of state-owned enterprises.

B. The Business Judgment Rule (BJR) in the Context of State-Owned Enterprise (SOE) Governance: Toward a Legal Framework that Balances Accountability and Protection

The doctrine of the Business Judgment Rule (BJR) in the context of State-Owned Enterprise (SOE) governance functions not only as a protective mechanism for rational business decisions but also as an integral component of a corporate governance system grounded in professionalism and accountability. In order to mitigate the risk of criminalizing business decisions that result in financial losses, despite being made in good faith and in the corporate interest, a systematic reformulation of legal and policy approaches is essential.

First, there is a pressing need to codify and normatively elaborate the principles of the BJR within national legislation, either through government regulations or internal ministerial guidelines. These provisions must provide legal certainty regarding the scope of protection afforded to directors, particularly in interpreting the elements of good faith, absence of conflict of interest, and corporate best interest. The current absence of operational definitions has led to discretionary and often subjective assessments by law enforcement authorities when evaluating business decisions.

Second, it is imperative to enhance judicial capacity and commercial literacy among judges, prosecutors, and anti-corruption investigators. The critical distinction between a failed business judgment and a criminal act lies in the understanding of legitimate business risks and objectives. Therefore, integrated training in corporate law, SOE governance, and basic microeconomic principles should be mandatory for handling cases involving alleged financial losses resulting from managerial decisions.

Third, in criminal proceedings involving state losses, the evidentiary process should begin with a preliminary assessment based on an independent and professional audit. Such an audit must evaluate not only financial aspects but also compliance with corporate governance standards and decision-making protocols. The presence of mens rea, such as "personal gain, conflicts of interest, or willful disregard for due diligence", must be a principal requirement before escalating the case to the criminal realm.

Fourth, legal solutions must give due consideration to Indonesia's unique socio-economic characteristics and the social function of SOEs as agents of national development. Not all financial losses can be categorically deemed unlawful. Many decisions, such as infrastructure investments in underdeveloped regions or subsidies for strategic sectors, are guided by public service mandates. Consequently, social value and developmental impact should be incorporated into the criteria for assessing the reasonableness of a director's business decision.

Fifth, to develop a responsive legal framework, it is essential to harmonize the application of the BJR with the provisions of anti-corruption law, particularly Articles 2 and 3 of the Indonesian Anti-Corruption Law (UU Tipikor). Technical guidelines must be formulated to distinguish between financial losses that stem from legitimate business risks and those resulting from intentional misconduct. Such interpretation would not turn the BJR into a tool of impunity, but rather into a normative filter that promotes substantive justice and a balanced approach between legal protection and public accountability.

In conclusion, the reinforcement of the Business Judgment Rule within Indonesia's legal system must be strategically positioned to address both normative challenges and institutional needs for robust, professional, and development-responsive SOE governance. This approach affirms that criminal liability should not be imposed on every business failure, but only on acts that are unlawful, executed with malicious intent, and demonstrably detrimental to the interests of the state.

CONCLUSIONS

The application of the *Business Judgment Rule* (BJR) in the governance of State-Owned Enterprises (SOEs) serves as a critical legal instrument to protect directors from the risk of criminalization for business decisions made professionally, rationally, and in good faith. BJR functions not only as a legal shield but also as a fundamental pillar of corporate governance that upholds the principle of accountability.

To enhance its effectiveness, a systematic reformulation of the legal approach is necessary—starting with the codification of BJR principles into national regulations, the strengthening of judicial capacity to comprehend business logic, and the implementation of evidentiary standards based on independent audits and clear indicators of *mens rea*.

Moreover, the unique socio-economic characteristics of Indonesia and the strategic role of SOEs in national development must be accommodated to ensure that assessments of state financial losses are not solely based on financial metrics but also account for social value and public interest.

The harmonization of BJR with anti-corruption provisions—particularly Articles 2 and 3 of the Anti-Corruption Law—must aim to clearly distinguish between legitimate business risks and deliberate misconduct. In doing so, BJR will function as a fair legal safeguard, not a vehicle for impunity. Thus, the strengthening of BJR must be situated within a responsive legal framework to foster SOE governance that is accountable, professional, and adaptive to the evolving demands of national development.

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