

Application of the Business Judgment Rule in the Responsibility of the Board of Directors of State-Owned Enterprises: the Case Of Business Cooperation (KSU) and the Acquisition of PT Jembatan Nusantara (JN) by PT ASDP

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This study discusses the application of the Business Judgment Rule (BJR) in the responsibilities of directors of State-Owned Enterprises (BUMN) by emphasizing that the directors have a strategic position as a company organ that is fully responsible for the management of the company as regulated in the BUMN Law and the Limited Liability Company Law. Through a normative juridical research method with a statutory approach, a conceptual approach, and a literature study, this study analyzes the extent to which the BJR doctrine can provide legal protection for directors when business decisions taken cause losses or are considered detrimental to state finances. The results of the study indicate that the BJR is an important instrument to ensure that directors are not immediately burdened with responsibility as long as business decisions are taken based on good faith, the principle of prudence, and do not exceed authority, and based on adequate information. This study also found that the different characteristics of SOEs as business entities and bearers of public mandates often cause the implementation of BJR to clash with the paradigm of state losses, creating legal uncertainty for directors. Therefore, consistent implementation of BJR is necessary to provide proportional legal protection and encourage SOE directors to carry out business functions professionally without fear of criminalization of decision-making.

Keywords: Business Judgment Rule, SOEs, Directors, Directors' Responsibilities, State Losses.

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1. Introduction

As a business entity owned by the state, State-Owned Enterprises (BUMN) play an important role in maintaining sustainability and strengthening the foundation of the Indonesian economy. Legally, the existence of State-Owned Enterprises (BUMN) is regulated in Article 1 paragraph (1) of Law Number 19 of 2003 concerning State-Owned Enterprises which states that "State-Owned Enterprises, hereinafter referred to as BUMN, are business entities whose capital is wholly or mostly owned by the state through direct participation originating from separated state assets." This provision confirms that BUMN as a state-owned enterprise plays a strategic role in encouraging social economic development in order to realize community welfare (R. Djuniarsono, Martin Roestamy dan Endeh Suhartini, 2023). BUMN has a significant function and role in maintaining economic stability and can influence the government in determining policies within the scope of state politics (Rizal Choirul Romadhan, 2021).

State-owned enterprises (SOEs) have a dual role: as a business entity to generate profits and as an agent of public service to serve vital public needs. This dual role often creates problems, particularly related to law enforcement against SOE organs, which sometimes violate regulations such as the Limited Liability Company Law (UUPT) or the SOE Law due to a lack of understanding of the meaning and characteristics of legal entities (AmirFirmansyah, ArisMachmud, dan Suparji,2024). This situation demands an internal management mechanism capable of maintaining a balance between corporate and public interests and ensuring that all company organs carry out their functions proportionally and accountably. The board of directors is an internal mechanism in creating good corporate governance. The board of directors acts as a bridge between shareholders as company owners and management as the party that carries out company activities. The board of directors is responsible for all decisions and organizational performance (Lukviarman, 2016). The board of directors is one of the corporate governance mechanisms aimed at achieving company goals. Corporate governance provides a solution to the emergence of agency conflicts (Adelina Citradewi,2025).

In the context of state-owned enterprises (SOEs), the implementation of good corporate governance is increasingly crucial, given that the board of directors is not only accountable to shareholders but also bears public responsibility for the management of state finances. Therefore, the existence of a strong governance mechanism plays a role in ensuring that the Board of Directors' authority is exercised proportionally, accountably, and in accordance with the principle of prudence, while also limiting the potential for abuse of authority in making strategic company decisions. However, it is not uncommon for business decisions to result in losses and give rise to legal issues related to the limits and accountability of the Board of Directors for the business risks inherent in each strategic policy.

This phenomenon is reflected in the Business Cooperation (KSU) Case and the acquisition of PT Jembatan Nusantara (JN) by PT ASDP Indonesia Ferry (Persero). This policy was initially intended as a strategic step in expanding the business network, strengthening its market position, and maintaining the stability of the Company's performance amidst the competition in the ferry transportation industry. However, the Decision later reaped controversy because it was suspected of causing state financial losses and potentially containing irregularities in the decision-making process, thus dragging the Board of Directors into a vortex of legal issues. This situation raises a fundamental question: whether the actions of the Board of Directors of PT ASDP can be qualified as reasonable business decisions protected by the Business Judgment Rule Doctrine or whether they constitute a violation of the principle of prudence and abuse of authority. This urgency is strengthened by the enactment of the National Criminal Code (Law No. 1 of 2023) in 2026, which stipulates that criminal liability applies not only to individuals but also to corporations and their managers for criminal acts within the corporate sphere.

2. Research Methods

This type of research is normative juridical research, which views law as a norm or rule that determines whether or not a legal act can be performed. Normative legal research focuses more on a legislative approach, thus emerging as a paradigm that normative research is the study of laws and regulations. Normative juridical research examines doctrines or principles in legal science. These principles are defined in Articles 5 and 6 of Law Number 10 of 2004 concerning the Formation of Legislation (Muhammad Zainuddin dan Aisyah Dinda Karina,2023). This research examines legal theory, legal principles, and legal doctrines relevant to the application of the Business Judgment Rule to the responsibilities of Directors of State-Owned Enterprises. Through this approach, a systematic analysis of the normative framework is conducted to assess the extent to which the Directors' business decisions are legally accountable in

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accordance with applicable principles, norms, and doctrines (Zainuddin Ali,2019). The data collection method in this research utilizes a literature review of primary and secondary legal materials, such as laws and regulations, court decisions, legal books, and relevant scientific journals.

3. Results And Discussion

The Business Judgment Rule Concept in Indonesian Corporate Law

The Business Judgment Rule is a doctrine within corporate law that protects company directors from liability for losses arising from the consequences of their actions, if they acted in good faith and with due care (Sartika Nanda Lestari,2015). The Limited Liability Company (PT) as it is known today was originally called Naamloze Vennootschap. The term "Company" indicates that the capital in a PT is composed of parts called shares or shares. Meanwhile, the term "limited" describes that the responsibility of shareholders is limited to the value of the shares they own (Muhamad Hafizh Akram dan Nisriina Primadani Fanaro,2019). According to Article 1 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies, a Limited Liability Company, hereinafter referred to as a Company, is a legal entity which is a capital association, established based on an agreement, conducting business activities with authorized capital entirely divided into shares and fulfilling the requirements stipulated in this Law and its implementing regulations. The UUPT does not explicitly contain provisions regarding the Business Judgment Rule (BJR). However, the principle of BJR is implied in the formulation of Article 97 paragraph (5) of the UUPT which states that the Board of Directors cannot be held responsible for losses as referred to in paragraph (3) if they can prove:

- a. the loss was not due to his/her fault or negligence;
- b. he/she has conducted management in good faith and with due care for the benefit of and in accordance with the purposes and objectives of the Company;
- c. he/she has no direct or indirect conflict of interest in the management actions that resulted in the loss; and
- d. he/she has taken action to prevent the occurrence or continuation of the loss.

Thus, Article 97 paragraph (5) serves as legal protection for the Board of Directors in facing potential liability for business risks, as long as decisions are made through the correct channels. One type of State-Owned Enterprise (SOE) is the Limited Liability Company (Persero), which is a limited liability company (Article 1 number 3 of the 2025 SOE Law). The enactment of the 2025 SOE Law brings a significant paradigm shift in state corporate law, particularly regarding risk management and accountability for potential state losses. The 2025 SOE Law regulates 11 (eleven) key provisions, one of which is the Business Judgment Rule (BJR). Article 9F of the 2025 SOE Law states:

- (1) Members of the Board of Directors cannot be held legally liable for losses if they can prove:
 - a. the loss was not due to their fault or negligence;
 - b. they have conducted management in good faith and with due care for the interests and in accordance with the objectives of the SOE;
 - c. they have no direct or indirect conflict of interest in the management actions that result in the loss; and
 - d. they have taken action to prevent the occurrence or continuation of the loss.
- (2) Members of the Board of Commissioners or the Supervisory Board of a State-Owned Enterprise cannot be held legally responsible for losses if they can prove that:
 - a. they have carried out supervision in good faith and with due care for the interests of the State-

- Owned Enterprise and in accordance with the objectives of the State-Owned Enterprise;
- b. they have no direct or indirect personal interest in the management actions of the Board of Directors that result in losses; and
 - c. they have provided advice to the Board of Directors to prevent the occurrence or continuation of such losses.

Article 9G of the 2025 State-Owned Enterprises Law states that members of the Board of Directors, Board of Commissioners, and Supervisory Board of State-Owned Enterprises are not state administrators. This provision explicitly incorporates the Business Judgment Rule (BJR) doctrine into the 2025 State-Owned Enterprises Law, which was previously only implied in Law No. 30 of 2007 concerning Limited Liability Companies and Government Regulation No. 23 of 2022 amending Government Regulation No. 45 of 2005 concerning the establishment, management, supervision, and dissolution of State-Owned Enterprises. The BJR doctrine emphasizes that directors cannot be held personally legally responsible for business decisions they make, even if those decisions result in company losses, as long as those decisions are made in good faith.

The application of the Business Judgment Rule (BJR) in the 2025 State-Owned Enterprises Law and the UUPT shows that this doctrine aims to provide legal protection to directors so that they are not easily criminalized for business decisions that result in losses. In the 2025 BUMN Law, BJR is explicitly regulated as a mechanism to distinguish reasonable business risks from acts of abuse of authority, considering that BUMN directors manage state assets and are therefore very vulnerable to being misinterpreted as state losses and used as a basis for criminalization. Meanwhile, the UUPT through Article 97 paragraph (5) substantively contains the elements of BJR, namely good faith, prudence, absence of conflict of interest, and orientation to the interests of the company, which provide an exception to liability for directors for losses arising from legitimate business decisions. Both emphasize that the main purpose of BJR is to protect directors from undue legal liability, ensure that business risks are not automatically qualified as criminal acts, and maintain the space for directors to make strategic decisions without excessive fear of criminalization.

Board of Directors' Actions in Collaborating and Acquiring Companies to Maintain Stock Stability from a Business Judgment Rule Perspective

Board of Directors' actions in engaging in business collaborations and acquiring companies with the aim of maintaining stock stability constitute strategic business decisions that can essentially be classified as business judgment as long as they are made in the best interests of the company. In Indonesian legal terms, the Business Judgment Rule doctrine is embodied in the Limited Liability Company Law, which regulates the duties and immunities of company directors (Mochammad Abizar Yusro, Ali Ismail Shaleh, dan Hari Sutra Disemadi, 2020). This is reflected in Article 92 of the Limited Liability Company Law, which states:

1. A company director is obliged to manage the company in the best interests of the company in accordance with the company's Articles of Association;
2. A director is given the authority to manage the company in accordance with provisions/policies deemed appropriate within the limits of statutory regulations and the company's Articles of Association;
3. A director must manage the company responsibly and in good faith;
4. A director can be held personally liable for all company losses if they are negligent in carrying out their duties;
5. A Director cannot be held responsible for any company losses if he or she can prove:
 - a. The company's losses were not caused by the Director's negligence in carrying out his or her

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- duties;
- b. He or she has carried out the company's management prudently and in good faith for the benefit of the company and in accordance with the company's Articles of Association;
 - c. There is no conflict of interest in any direct or indirect actions of the company's management that result in losses; and
 - d. He or she has taken preventative measures to minimize or even prevent the losses experienced by the company.

The Board of Directors must be able to make decisions to act when faced with the choice of whether it is better to face the risks that may arise after knowing the possibility of a profitable project financial return or better to avoid risks (Prasetio,2016). This provision emphasizes that risks arising from business decisions, including maintaining stock stability through business cooperation and acquisitions carried out by PT ASDP, do not necessarily become the basis for errors by the board of directors. Good faith is one of the characteristics of whether the Business Judgement Rule can be fulfilled or not. Other characteristics include: decision-making has taken into account the interests of the company (fiduciary duty), based on adequate knowledge/data (informed basis), not done to waste money (duty of care) and not based on personal interests (loyalty) (Franky Ariyadi, 2020).

BJR is contained in Article 97 paragraph (5) of Law Number 40 of 2007 concerning Limited Liability Companies (PT Law):

- a) The loss was not due to his/her fault or negligence;
- b) Management was carried out in good faith and with due care for the benefit of the company and in accordance with the company's purposes and objectives;
- c) He/she has no direct or indirect interest in the management actions that caused the loss; and
- d) He/she has taken steps to stop the loss from occurring or to prevent its continuation.

When linked to the provisions of Article 97 paragraph (5) of the PT Law, the actions of the Board of Directors of PT ASDP in carrying out business cooperation and the acquisition of PT Jembatan Nusantara substantially fulfill the characteristics of a business decision worthy of protection under the Business Judgment Rule. The purpose of this acquisition to maintain stock stability, strengthen business networks, and increase the company's competitiveness are legitimate corporate goals and are in line with the company's interests. In addition, this decision is a strategic decision that is within the discretion of the Board of Directors to develop the business, so it cannot be considered as an action outside the authority of management. The fact that ASDP conducted an asset appraisal, held discussions at the Board of Directors level, and obtained a basis for business considerations shows that the decision was based on relevant information, so that fulfills the elements of an informed decision required by the BJR. On the other hand, there is no evidence to suggest any ill will, abuse of authority, or direct conflict of interest on the part of the board of directors that led to the decision being oriented towards personal gain. Therefore, legally, the KSU and Acquisition decisions are more appropriately understood as part of a normal business risk, not as a form of negligence that negates BJR protection. The ASDP Board of Directors is normatively and factually worthy of Business Judgment Rule protection, because the decisions taken are rational, information-based business decisions and directed towards the interests of the company.

Criminal Liability of Corporations in the National Criminal Code (Law No. 1 of 2023)

In Indonesia, the reform of Indonesian criminal law reflects the recognition of corporations as subjects of criminal law in the 1950s. The criminal liability imposed on corporations is known in criminal law as "corporate criminal liability." The existence of corporations is a double-edged sword: on the one hand,

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corporations can contribute to change and development in a country's economy, while on the other, they can also lead to a decline in a country's economic development, or, more seriously, become the masterminds of crimes (Joey Josua Pamungkas Pattiwael dan Hidayatullahi Hamidi, 2021). Corporations include legal entities in the form of limited liability companies, foundations, cooperatives, state-owned enterprises, regionally-owned enterprises, or similar entities, as well as associations, whether incorporated or not, business entities in the form of limited partnerships, limited partnerships, or similar entities, in accordance with statutory provisions (Sabungan Sibarani dan Faisal Santiago, 2001).

Corporate crime is a violation of law or regulations committed by a corporation, either individually or collectively. Corporations can be legal entities or non-legal entities, and can consist of an organized group of people and/or assets (Meyer Tendean, 2025). The National Criminal Code (KUHP), enacted as Law Number 1 of 2023, is a new codification of criminal law in Indonesia, replacing the old KUHP. This law will come into effect gradually on January 2, 2026. One of its main innovations is the regulation regarding corporate criminal liability, which was previously regulated in sectoral laws such as the Corruption Eradication Law. This reflects the development of international criminal law that recognizes corporations as legally accountable. Article 48 of the National Criminal Code (Law No. 1 of 2023) states that criminal acts by corporations as referred to in Articles 46 and 47 can be held accountable if:

- a. falls within the scope of business or activities as defined in the articles of association or other provisions applicable to the Corporation;
- b. unlawfully benefits the Corporation;
- c. is accepted as Corporate policy;
- d. The Corporation fails to take the necessary steps to prevent, mitigate greater impacts, and ensure compliance with applicable legal provisions to avoid criminal acts; and/or
- e. The Corporation allows criminal acts to occur.

If applied to the ASDP case, the elements of Article 48 of the National Criminal Code are not met, so the actions of the corporation or the Directors cannot be criminalized. First, the decision of KSU and the acquisition of PT JN were clearly within the scope of ASDP's business, so they were not acts beyond their authority. Second, there is no evidence that the acquisition unlawfully benefited the corporation, because the purpose of the decision was directed at business expansion and stability, not to obtain illegal profits. Third, although the decision was a corporate policy, a legitimate business policy cannot be automatically qualified as a crime. Fourth and fifth, ASDP was not proven to have ignored preventive measures or allowed the crime to occur, because the decision process still went through formal mechanisms such as internal reviews. Therefore, based on Article 48, ASDP's actions were business decisions, not criminal acts of corruption.

4. Conclusion

Based on an analysis of the Business Judgment Rule doctrine, as well as the provisions of the State-Owned Enterprises Law, the Limited Liability Law, and the corporate liability provisions in the National Criminal Code, the business collaboration and acquisition of PT Jembatan Nusantara by PT ASDP fall within the scope of business decisions within the authority of the board of directors. These decisions were aimed at strengthening the company's position, maintaining business stability, and supporting corporate interests, thus substantially fulfilling the elements of the Business Judgment Rule, such as good faith, prudence, absence of conflict of interest, and orientation toward the company's goals. In the context of criminal law, the elements of a corporate crime, as stipulated in Article 48 of the National Criminal Code, are not met because ASDP's actions remained within the legitimate business environment, were not aimed at obtaining

unlawful profits, and did not involve any condoning of criminal activity. Therefore, these decisions are more appropriately viewed as part of a normal business risk and not as actions that could give rise to criminal liability for either the corporation or its management.

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