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Business Judgment Rule in Director Liability Indonesia and Australia

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Abstract

Directors of state-owned enterprises (SOEs) face greater risks of criminal prosecution for failed business decisions than private company directors because the Business Judgment Rule (BJR) under Article 9F(1) of the SOE Law does not fully accommodate their position in managing state assets at the intersection of corporate and public law. This article examines whether Indonesia's BJR framework adequately protects SOE directors and whether the dualism of civil and criminal liability in the Karen Agustiawan case reflects a normative weakness compared with Australia's Corporations Act 2001. Using a normative legal methodology with legislative, comparative, conceptual, and case approaches, it analyzes two court decisions in that case. The findings show that Indonesia lacks consistent parameters for applying the BJR to SOE directors, whereas Australia sets four cumulative, objective, and measurable criteria and clearly separates civil penalties from criminal offenses, prioritizing civil mechanisms before criminal liability, an approach Indonesia has yet to recognize. This article proposes a normative reconstruction of the BJR through clearer, measurable provisions in the SOE Law, drawing on the Corporations Act 2001 and adapted to Indonesia's legal system.

Keywords: Business Judgement Rule, Director Liability, Corporations Act 2001, Karen Agustiawan, State-Owned Enterprises.

A. Introduction

The objective of the Indonesian state, as affirmed in the Preamble to the 1945 Constitution of the Republic of Indonesia, is to promote the general welfare. Furthermore, Article 33, paragraph (2) of the 1945 Constitution of the Republic of Indonesia stipulates that sectors of production that are vital to the state and control the livelihoods of the people shall be controlled by the state, including through the establishment of State-Owned Enterprises (SOEs). Under Article 1 of Law No. 1 of 2025 (SOE Law), an SOE is a business entity in which the state owns all or a majority of the capital through direct investment or to which the state grants special privileges. SOEs play a strategic role in driving national economic growth,

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contributing to state revenue, providing goods and services to the public, and serving as pioneers in business sectors that have not yet attracted interest from the private sector or cooperatives.[1] Pertamina is a state-owned enterprise (SOE) organized as both a Public Enterprise, which serves the public interest, and a Persero, which is a for-profit entity.[2]

In conducting its business operations, Pertamina has the same organizational structure as a typical limited liability company, consisting of a board of directors, a board of commissioners, and a General Meeting of Shareholders (GMS). The board of directors bears significant responsibility for managing the company, including making strategic decisions that impact the national economy.[3] The Board of Directors' focus of responsibility lies in the consequences of errors or negligence in management and decision-making (process-based decision-making).[4] The Board of Directors has two primary functions: the management function and the representation function. In its management function, the Board of Directors leads the company's operations and makes strategic decisions in accordance with the company's interests and objectives as set forth in the Articles of Association. Meanwhile, in its representative function, the Board of Directors represents the company both in and out of court, so that any legal action, transaction, or contract entered into on behalf of the company is binding on the company as a legal entity.[5] Directors require consistent legal protection when making business decisions in good faith, exercising due care, acting in the company's best interests, and remaining within their authority. Without such protection, they may avoid strategic risks, hindering innovation, expansion, and corporate growth. Accordingly, business failures arising from decisions that satisfy these standards should not automatically be classified as state losses.

To provide legal certainty and protection for directors in making business decisions, the Business Judgment Rule (BJR) has been established. The fundamental assumption underlying this doctrine is that directors are the most competent and professional parties when it comes to making business decisions for the corporation. Therefore, any profits or losses arising from such decisions are considered part of reasonable business risk.[6] Although Indonesia recognises the BJR under Article 97(5) of the UUPT as the lex generalis and Article

[1] Vidya Kartika Ayuningtias and Elisatris Gultom, "Tata Kelola Perusahaan Yang Baik: Sebagai Upaya Penguatan BUMN," *HAKIM - Jurnal Ilmu Hukum dan Sosial*, ahead of print, December 9, 2023, https://doi.org/https://doi.org/10.51903/hakim.v2i1.1569.

[2] Dyah Hapsari Prananingrum, *ASPEK HUKUM DALAM DAGANG DAN BISNIS* (n.d.), 118–20.

[3] Eunike Petra Rebecca Pariela and Zainal Arifin Hoesein, "Peran Good Governance Risk Management dan Compliance Terintegrasi dalam Menjamin Perlindungan Hukum bagi Direksi dan Mencegah Korupsi di Perusahaan BUMN," *Jurnal Retentum*, ahead of print, February 13, 2023, https://doi.org/http://dx.doi.org/10.46930/retentum.v7i1.5275.

[4] Yaniv Harel and Abraham Carmeli, "A strategic cybersecurity oversight framework: a board's imperative," *Journal of Cybersecurity* 11, no. 1 (2025): tyaf021, https://doi.org/10.1093/cybsec/tyaf021.

[5] Charisa Dwi Santika et al., "Batas Kewenangan Direksi dan Dewan Komisaris dalam Pengelolaan Perusahaan Berkaitan dengan Dicabutnya Izin Usaha Pertambangan: Studi Kasus Putusan No.3/Pdt.G/2023/PN Mgg," *Demokrasi: Jurnal Riset Ilmu Hukum, Sosial dan Politik* 2, no. 4 (2025): 148–62, https://doi.org/10.62383/demokrasi.v2i4.1413.

[6] Tri Budiyono, *TRANSPLANTASI HUKUM* (Griya Media, 2009), 190.

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9F(1) of the SOE Law as the lex specialis, the lack of clear implementation standards creates legal uncertainty, potentially leading to inconsistent judicial decisions and discouraging directors from making strategic business decisions. By contrast, Australia expressly regulates the BJR under Section 180(2) of the Corporations Act 2001, establishing four cumulative requirements: good faith and proper purpose, absence of material personal interest, informed decision-making, and rational belief in the corporation's best interests. Its distinction between civil and criminal liability further clarifies that business failure does not automatically constitute a criminal offence when these requirements are satisfied.

In this regard, the case of Karen Agustiawan as a member of Pertamina's board of directors highlights inconsistencies in the application of the BJR in Indonesia. In the BMG Block case, Supreme Court Decision No. 121 K/Pid.Sus/2020 acquitted Karen Agustiawan, stating that business decisions that comply with the BJR principle cannot be subject to criminal penalties, whereas in the LNG procurement case, Supreme Court Decision No. 1076 K/PID. SUS/2025, on the other hand, imposed a harsher sentence of 13 years in prison. This discrepancy indicates the absence of clear parameters for applying the BJR in Indonesia and simultaneously reinforces the relevance of a comparison with Australia, which has more stringent and comprehensive BJR regulations.

Previous research conducted by Siti Nur Intihani (2023) focused on the application of BJR in the corruption case against Karen Agustiawan, based on Supreme Court Decision No. 121 K/Pid.Sus/2020.[7] However, that study has not examined the latest developments outlined in Supreme Court Decision No. 1076 K/PID.SUS/2025, which sets the direction for the implementation of the BJR, nor has it conducted a comparative analysis with the BJR regulations in Australia. This article makes three contributions: it analyzes both Supreme Court decisions in the Karen Agustiawan case, identifies the normative weaknesses of Indonesia's BJR through comparison with Australia's Corporations Act 2001, and proposes a legal protection model that gives SOE directors greater certaintycompared with Australia's Corporations Act 2001. This paper has two objectives: (1) to examine whether Article 9F(1) of the SOE Law provides adequate BJR protection for SOE directors; and (2) to analyse whether the differing civil and criminal liability outcomes in the two Supreme Court decisions concerning Karen Agustiawan reveal normative weaknesses in the SOE Law compared with Australia's Corporations Act 2001.

B. Research Method

This study employs a normative legal method using statutory, comparative, and case approaches to examine Article 9F(1) of the SOE Law, Section 180(2) of the Corporations Act 2001 (Cth), and the ratio decidendi of Supreme Court Decisions No. 121 K/Pid.Sus/2020 and No. 1076 K/Pid.Sus/2025, focusing on BJR protection and the distinction between civil and criminal liability. The comparative analysis evaluates the BJR elements in both jurisdictions based on protection criteria, their objectivity and

[7] Siti Nur Intihani, "PENERAPAN DOKTRIN BUSINESS JUDGMENT RULE PADA TINDAK PIDANA KORUPSI PERKARA DIREKTUR PT. PERTAMINA - KAREN AGUSTIAWAN," *Jurnal Hukum Jurisdictie*, September 5, 2023.

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measurability, and the relationship between civil and criminal liability to identify normative gaps and formulate reform proposals. The study uses secondary data comprising primary legal materials, including legislation and court decisions, and secondary materials, including books, academic journals, CLERP reports, and OECD Principles of Corporate Governance, collected through library research and analyzed qualitatively using statutory interpretation and legal argumentation.

C. Results and Discussion

a. A Comparison of the Business Judgment Rule in Indonesia and Australia

The BJR doctrine essentially states that members of the board of directors cannot be held personally liable for losses arising from business decisions, provided that such decisions are made in good faith, based on adequate information, and without a conflict of interest.[8] This doctrine originates from the common law system, specifically in the United States and Australia. In the Australian legal system, judicial deference to directors' business decisions is often traced to Harlowe's Nominees Pty Ltd v Woodside (Lakes Entrance) Oil Co NL (1968) 121 CLR 483. Although that case was primarily concerned with the proper purpose doctrine, the court affirmed that a decision made honestly, on rational business considerations and for the company's purposes, is not one that the court will interfere with. The principle was thus developed through judge-made law before it was codified.[9] The Corporate Law Economic Reform Program (CLERP) then proposed the BJR as a doctrine that provides a safe harbor for directors from personal liability for business decisions made in good faith, without a material personal interest, based on adequate information, and in the best interests of the company. The proposal was enacted by the Corporate Law Economic Reform Program Act 1999 (Cth) and is now found in section 180(2) of the Corporations Act 2001 (Cth). This doctrine aims to encourage reasonable business risk-taking while providing legal certainty, given that investors and shareholders are demanding greater accountability from the board of directors, while the board seeks legal certainty regarding its potential liability in corporate civil litigation,[10] As a result, Australia became among the first jurisdictions to codify the BJR expressly. The statutory BJR is confined to section 180(2), with "business judgment" defined in section 180(3). It operates as a safe harbor only for the duty of care and diligence in section 180(1) and its equivalent duties at common law and in equity. It does not extend to the duties in sections 181 to 183 or to the criminal offences in section 184. Australia therefore does not treat the BJR as a general shield against all liability, but as a rule specific to civil liability for negligent

[8] Munazar Umar, *Business Judgment Rule Dalam Uu Bumn 2025: Antara Perlindungan Direksi Dan Celah Impunitas*, 4, no. 2 (2026), https://doi.org/https://doi.org/10.61104/alz.v4i2.4820.

[9] Sugiarto Sugiarto et al., "Comparative Analysis of Business Judgment Rules in Civil Law and Common Law Systems," *Mandub : Jurnal Politik, Sosial, Hukum Dan Humaniora* 2, no. 4 (2024): 151–64, https://doi.org/10.59059/mandub.v2i4.1753.

[10] Commonwealth of Australia, *Directors' Duties and Corporate Governance: Facilitating Innovation and Protecting Investors* (Australian Government Publishing Service, 1997).

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decision-making.

In Australian corporate law, Section 180(2) of the Corporations Act 2001 establishes the BJR as a safe harbour for directors' business decisions. BJR protects directors from liability when decisions are made in good faith for a proper purpose, without material personal interests, on an adequately informed basis, and with a rational belief that they serve the corporation's best interests. Accordingly, directors are protected from liability for adverse business outcomes, provided all statutory requirements are satisfied. In civil enforcement proceedings, the plaintiff bears the burden of proving that the directors do not qualify for BJR protection.[11] Australian courts treat the BJR as a matter the director must establish, placing the burden on the director rather than the plaintiff (ASIC v Rich [2009] NSWSC 1229; ASIC v Cassimatis (No 8) [2016] FCA 1023). Its four cumulative requirements make successful reliance rare, emphasizing documented compliance rather than a presumption in the director's favour. A breach of s 180(1) constitutes a civil penalty provision under s 1317E, attracting declarations of contravention, pecuniary penalties, compensation, and disqualification (ss 1317G, 1317H, and 206C), but no criminal liability. Directors may also seek relief under ss 1317S or 1318 if they acted honestly and ought fairly to be excused.

The first element, good faith and proper purpose, requires genuine intentions and an objectively legitimate corporate purpose, as subjective good faith cannot justify improper conduct. The second, absence of material personal interest, excludes financial or other interests that could reasonably compromise directors' deliberations, independence, or objectivity.[12] The Act does not define material personal interest, and disclosure under Sections 191–195 does not automatically establish immateriality. Informed judgment requires adequate information proportionate to the decision's significance and complexity; reliance on experts under Section 189 must be in good faith, independently assessed, and reasonable, while Section 190 governs delegation. Rational belief requires a reasonable basis for considering the decision to serve the corporation's best interests, assessed at the time and presumed rational unless no reasonable person in the same position could hold it. This protects business discretion from hindsight-based judicial intervention.

Section 181(1) of the Corporations Act 2001 requires directors to act in good faith in the corporation's best interests and for a proper purpose, prioritising corporate interests over personal interests. As established in Walker v Wimborne, Spies v The Queen, and Bell Group, this duty is owed to the corporation as a separate legal entity, rather than directly to shareholders. While shareholder interests generally guide

[11] Dimity Kingsford-Smith, "Australian Directors' Duties: What Does It Mean to Say They Are Public Duties?," *Victoria University of Wellington Law Review* 52, no. 2 (2021): 343–72, https://doi.org/10.26686/vuwlr.v52i2.7122.

[12] Rosemary Teele Langford, "STATUTORY DUTIES AND RATIFICATION: UNTANGLING THE MAZE," *Social Science Research Network)*, ahead of print, 2021, https://doi.org/https:doi/10.3316/agispt.20210803051072.

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corporate decisions, directors must also consider creditors' interests as insolvency approaches. Thus, the corporation's best interests extend beyond shareholder returns to encompass asset protection and obligations to third parties.[13] The proper purpose duty requires directors to exercise their authority consistently with statutory and constitutional objectives; therefore, subjective good faith cannot excuse an improper exercise of power under Section 181. Section 181(1) constitutes a civil penalty provision that does not require proof of dishonesty or recklessness, which are fault elements under the criminal offence in Section 184(1). The BJR under Section 180(2) is not a defence to a breach of Section 181.

Sections 182–183 of the Corporations Act 2001 prohibit improper use of corporate positions or information to obtain personal or third-party benefits or cause corporate detriment. Improper use is assessed objectively (R v Byrnes (1995) 183 CLR 501), while Section 183 continues to apply after tenure ends. Both impose civil liability, whereas Sections 184(2)–(3) criminalise dishonest or reckless misuse, including knowing participation under Section 79 (Yorke v Lucas (1985) 158 CLR 661). More broadly, Section 184 criminalises dishonest or reckless breaches of Sections 181–183, but not negligence under Section 180(1). Dishonesty and recklessness must be proven beyond reasonable doubt, with recklessness assessed under Section 5.4 of the Criminal Code (Cth) and dishonesty under ordinary standards (Peters v The Queen (1998) 192 CLR 493). Each offence carries up to five years' imprisonment, 2,000 penalty units, or both.[14]

The two tracks may arise from the same conduct, and the Act regulates their relationship. Civil penalty proceedings are stayed once criminal proceedings begin for substantially the same conduct, a civil penalty order cannot follow a conviction for substantially the same conduct, and evidence given in civil penalty proceedings is not admissible in criminal proceedings (ss 1317M to 1317Q). The choice between the two tracks is made by ASIC and the Commonwealth Director of Public Prosecutions under published enforcement policy, not through a statutory BJR screening step. The Australian model therefore separates civil from criminal liability through distinct fault thresholds and procedural protections, rather than through a requirement that civil mechanisms be exhausted before criminal liability is considered.

Section 187 provides protection for directors of wholly-owned subsidiaries in Australia. A subsidiary is a separate legal entity with its own assets, capable of contracting independently and managed by directors who are legally responsible for its operations,[15] Section 187 of the Corporations Act 2001 allows directors of wholly-

[13] Lynn Buckley and Susan Watson, "Directors' Positive Duty to Act in the Interests of the Entity: Shareholders' Interests Bounded by Corporate Purpose," *Journal of Corporate Law Studies*, ahead of print, January 2, 2024, https://doi.org/10.1080/14735970.2024.2361507.

[14] Isa Alade, *Section 187 of the Corporations Act 2001 (Cth) and the Enterprise Exception to Directors' Duties: Scope, Limits and the Case for Reform*, 2026, https://doi.org/10.2139/ssrn.6923358.

[15] Daniel S. Andrews et al., "And the Subsidiary Lives on: Harnessing Complex Realities in the Contemporary MNE," *Journal of International Business Studies* 54, no. 3 (2023): 538–49, https://doi.org/10.1057/s41267-022-00552-4.

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owned subsidiaries to act in the holding company's best interests if three cumulative conditions are met: (1) the subsidiary's constitution expressly authorizes such conduct; (2) the director acts in good faith in the holding company's best interests; and (3) the subsidiary remains solvent and does not become insolvent as a result. However, s 187 only deems compliance with the good faith requirement under s 181(1)(a). It does not exempt directors from the duties of care and diligence (s 180), proper purpose (s 181(1)(b)), misuse of position or information (ss 182–183), or criminal liability under s 184. Accordingly, any adoption for Indonesian SOE subsidiaries must incorporate both these conditions and limitations while addressing subsidiaries that are not wholly owned.

Under Indonesian law, the BJR provides limited legal protection for directors. Article 97(5) of the Limited Liability Company Law places the burden on directors to prove the absence of fault or negligence to avoid personal liability for corporate losses. However, this burden is not the main distinction from Australia, where directors must also establish BJR protection. The fundamental difference lies in the clarity and measurability of the assessment criteria. Australia establishes four cumulative statutory requirements and an objective standard of rational belief, whereas Indonesia leaves the interpretation of good faith, prudence, and reasonableness largely to judicial discretion.[16] First, there are no proactive regulations regarding safe harbor provisions. Second, the regulations remain general in nature and give rise to legal ambiguity regarding standards of negligence, conflicts of interest, good faith, and the duty of care of directors; as a result, the application of the BJR still depends heavily on judicial interpretation, and thus has not yet provided objective and consistent parameters for protecting directors from legal liability.[17] Third, the UUPT lacks clear standards for information and due diligence, creating uncertainty in assessing BJR compliance. Fourth, the absence of an objective reasonable person standard invites subjective judicial interpretation and hindsight-based assessments. Fifth, the lack of a civil accountability filter under Articles 2 and 3 of the Anti-Corruption Law risks criminalising business losses without proving intentional misconduct, unlike Section 184 of Australia's Corporations Act 2001. Sixth, the absence of provisions equivalent to Sections 182–184 on misuse of corporate positions and information weakens proportional accountability. Seventh, unclear parent-subsidiary liability rules create uncertainty regarding directors' duties, loss attribution, and creditor protection. Collectively, these gaps expose SOE directors to criminal prosecution for business losses without clear standards distinguishing legitimate risks from criminal conduct.

[16] Miftah Arifin and Zaenal Arifin, "The Influence of the Business Judgment Rule on the Accountability of the Board of Directors for Their Errors or Negligence Based on Eisenberg's Theory of Director's Accountability," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 23, no. 1 (2024): 1368–82, https://doi.org/10.31941/pj.v23i1.4208.

[17] Faisal Santiago, "Reconstruction of the Business Judgment Rule Doctrine in Indonesia: Legal Comparison with England, Canada, the United States, and Australia," *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 1 (2024): 107–21, https://doi.org/10.29303/ius.v12i1.1371.

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Table 1 A Comparison of the Corporations Act 2001 with Indonesia

Aspects	Corporation Acts 2001	Indonesian Law (Company Law + State-Owned Enterprises Law)	Normative Gap
Legal Basis for BJR	Section 180 (2), which is explicit, independent, and comprehensive	Article 97, Paragraph (5), which is implicit and not independent	Indonesia does not have a standalone BJR provision
Characteristics of BJR	Proactive safe harbor, serving as guidance from the outset before a decision is made	Passive defense clause, applicable after charges are filed	Indonesia recognizes BJR solely as a defense, not as guidance
Standard of Care	An objective and contextual "reasonable person" test (Section 180(1))	An abstract concept without measurable parameters	Indonesia lacks verifiable objective benchmarks
Good Faith	Good Faith (Subjective) proper purpose (objective)	Abstract, no parameters, subjective in nature	Indonesia does not distinguish between subjective and objective characteristics
Standard for Adequacy of Information	Regulated under Section 180(2)(c)	Not regulated	Indonesia does not regulate the duty to be informed
Standard of rational belief	Set forth in Section 180(2)(d)	Not regulated	Indonesia does not have an external standard of objectivity for assessing the beliefs of the board of directors

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The Principle of Expert Reliance	Implicitly recognized in case law, the board of directors has the right to rely on independent experts	Not regulated	Indonesia does not provide protection for directors who rely on expert opinions
Burden of proof	The plaintiff must prove that the elements of BJR have not been met	The board of directors must prove compliance with Article 97, Paragraph (5)	Indonesia places the burden of proof on the party that should be protected
Prohibition on Hindsight	As implied in case law, decisions are not evaluated based on retrospective information	Not regulated	Indonesia does not have a normatively enforceable prohibition on hindsight
Separation of Civil and Criminal Matters	Clearly and explicitly defined in Sections 180–183 (Civil only) and Section 184 (Criminal)	Not regulated; losses incurred by state-owned enterprises may potentially be subject to the Corruption Eradication Law	Indonesia lacks a jurisdictional firewall between business failures and criminal offenses
Mens rea as a requirement for criminal liability	whether reckless or intentionally dishonest must be proven independently	The law is not strictly defined, so financial loss is sufficient as a basis for corruption charges	Indonesia allows financial loss to be the sole evidence of misconduct by directors
Grading of sanctions	Gradually, liability begins with a civil penalty and escalates to a criminal penalty if the offense meets	There's no middle ground it goes straight from business failure to the threat of prison	Indonesia does not have proportionate sanctions

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	the criteria for a more serious offense.		
Prohibition on Abuse of Position	Section 182 as a general civil provision that is self-contained	No provision is self-contained; it is directly subject to Article 3 of the Anti-Corruption Law	Indonesia does not have a civil law framework for abuse of position
Prohibition on the Misuse of Information	Section 183 continues after the term of office ends	Not regulated	Former executives of state-owned enterprises are free to use information obtained during their tenure after leaving their positions
Subsidiary Rules	Section 187, dengan tiga unsur kumulatif yang jelas untuk kepentingan induk perusahaan dan anak perusahaan	Section 187, with three clear cumulative elements in the interests of the parent company and its subsidiaries	Indonesia does not have a clear mechanism for attributing losses between parent companies and subsidiaries
Protection of a Subsidiary's Creditors	Section 187(c) as an explicit solvency requirement that protects creditors	Not regulated	Creditors of subsidiaries of state-owned enterprises are not protected by law
Single regulator	As the primary regulator, the ASIC prevents forum shopping and duplicate prosecutions,	The BPK, BPKP, the Attorney General's Office, and the KPK, operating independently, have the potential to	Indonesia is vulnerable to repeated prosecutions for the same incident by different

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	thereby ensuring more consistent law enforcement and providing legal certainty	cause overlap in law enforcement and reduce legal certainty	institutions

b. The Dual Nature of the Board of Directors' Accountability in State-Owned Enterprises in the Karen Agustiawan Case

SOEs have a dual legal character, combining private and public law elements. Although their business activities are governed by the Company Law, their capital originates from segregated state assets, creating debate over whether losses incurred by SOE subsidiaries automatically constitute state losses.[18] Article 4B of the State-Owned Enterprises Law stipulates that SOE profits and losses do not constitute state profits and losses. Similarly, Constitutional Court Decision No. 01/PHPU-Pres/XVII/2019 clarifies that capital participation in a subsidiary does not automatically confer SOE status upon that entity.[19] Constitutional Court Decisions No. 48/PUU-XI/2013 and No. 62/PUU-XI/2013 recognize separated state assets in SOEs as part of state finances for certain purposes, creating legal uncertainty regarding their financial status. This reflects the absence of a bridging norm harmonizing private and public law regimes. While directors' liability is assessed under Article 97(5) of the UUPT through the BJR principle, the anti-corruption regime may associate corporate losses with state financial losses, creating potential criminal liability.[20] The situation is further complicated by overlapping oversight from BPK, BPKP, the Attorney General's Office, and KPK, which may independently assess the same business decisions. Consequently, regulatory uncertainty and overlapping supervision create a chilling effect, discouraging directors from taking innovative business risks due to concerns that legitimate business failures may be criminalized.[21]

Karen Agustiawan's cases illustrate the complexity of SOE directors' liability for business decisions. In Supreme Court Decision No. 121 K/Pid.Sus/2020, concerning Pertamina's acquisition of a participating interest in Australia's BMG Block through PHE and alleged state losses of Rp568 billion, the Supreme Court

[18] Hasrul Benny Harahap et al., "Ambiguity of the Position of Directors of State-Owned Enterprises (Persero): Achievements of Profits and Allegations of Corruption:," paper presented at Second International Conference on Public Policy, Social Computing and Development (ICOPOSDEV 2021), 2022, https://doi.org/10.2991/assehr.k.220204.024.

[19] Fauzan Prasetya et al., *The Losses of State-Owned Subsidiaries That Are Equal to State-Owned Enterprises in the Perspective of Corruption in Indonesia After the Third Amendment to the Law on State-Owned Enterprises*, 24 (2025), https://doi.org/https://doi.org/10.31941/pj.v24i2.6312.

[20] Fona Kartika Listiyapuji et al., "Shifting Meaning of State Losses in BUMN Based on the Business Judgment Rule Principle," *Rechtenstudent* 6, no. 2 (2025): 183–96, https://doi.org/10.35719/rch.v6i2.361.

[21] Harahap et al., "Ambiguity of the Position of Directors of State-Owned Enterprises (Persero)."

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overturned her eight-year conviction and granted ontslag van alle rechtsvervolging under Article 191(2) KUHAP, recognising the transaction as a business risk protected by the BJR.[1] The Court applied Article 97(5) UUPT, as Article 9F of the SOE Law was not yet in force. However, in Decision No. 1076 K/Pid.Sus/2025, Karen was convicted in a separate case involving Pertamina's long-term LNG procurement from Corpus Christi Liquefaction (CCL), with alleged state losses of Rp2.1 trillion.[22] In Decision No. 1076 K/Pid.Sus/2025, the District Court sentenced Karen Agustiawan to nine years' imprisonment, a sentence upheld by the appellate court. However, the Supreme Court increased it to 13 years at cassation, despite the petition reportedly being filed solely by the defendant, raising concerns under the principle of reformatio in peius. The Court applied Article 3 of the Anti-Corruption Law, focusing on personal interests, inadequate examination of the international transaction, and deficiencies in the due diligence process, without systematically assessing whether the BJR requirements had been satisfied. Although some aspects of its reasoning touched on BJR elements (see Table 2), the Court did not explicitly adopt the doctrine as an analytical framework or explain its departure from Supreme Court Decision No. 121 K/Pid.Sus/2020. While Indonesia's civil-law tradition does not make Supreme Court decisions strictly binding precedents, unexplained differences in judicial reasoning may undermine consistency and legal certainty.

Decision No. 1076 K/Pid.Sus/2025 also needs to be assessed against the limits of cassation review. Under Article 253(1) KUHAP, the Supreme Court examines whether a rule of law has not been applied or has been applied incorrectly, whether the trial was conducted in accordance with the law, and whether the court has exceeded its authority. The criticism that the panel did not examine the BJR is therefore strongest when framed as a failure to apply a rule of law correctly (the elements of Article 3 of the Anti-Corruption Law read together with the director's standard of conduct) and as insufficient reasoning (Article 197(1)(d) KUHAP), rather than as a disagreement with the Court's assessment of the facts. A second issue is the temporal law: the LNG transactions took place before the 2025 amendments to the SOE Law that introduced Articles 4B and 9F, so the analysis must state which BJR rule applied to the conduct (Article 97(5) UUPT), and whether Article 9F can be relied on under the more-favourable-law principle (Article 1(2) of the former Criminal Code, or the corresponding provision of the new Criminal Code, Law No. 1 of 2023).

Table 2 Comparison Of Judgments

BJR Elements	Supreme Court Decision No. 121	Supreme Court Decision No. 1076

[22] Sayit Bandung Bondowoso and Dian Afrilia, "Pertanggungjawaban Direksi BUMN Terhadap Kerugian Negara Berdasarkan Regulasi Pemerintahan Sektor Perusahaan Dan Pidana," *LEX STRICTA JURNAL ILMU HUKUM*, July 26, 2025.

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	K/Pid.Sus/2020	K/Pid.Sus/2025
Good Faith	Considering that the investment decision was made to increase Pertamina's oil and gas reserves as part of its business strategy, no evidence was found that Karen derived personal gain or acted with malicious intent. Therefore, the element of good faith is deemed to have been met.	The ruling states that, from the outset, Karen was aware that the domestic LNG supply situation did not require additional LNG; although she was aware of the domestic LNG supply situation, she nevertheless approved the Corpus Christi SPA, and is therefore deemed to have abused her authority and caused harm to the state. The ruling places greater emphasis on intent rather than business motives.
No Conflict of Interest	No personal conflicts of interest or financial benefits received by Karen from the BMG transactions were found. All transactions are considered to have been conducted on behalf of the Company.	There was no evidence that Karen accepted bribes or had a direct financial interest in the LNG contract. However, the Court did not cite the absence of a conflict of interest as a justifying factor. In other words, this element was not explicitly analyzed, even though the indications of a personal conflict of interest were also not strong.
Due Care/Due Diligence	The assessment of acquisition decisions is	The LNG procurement process was not

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	based on due diligence, legal review, investment analysis, approval by the Board of Directors, and discussions with the Board of Commissioners. Business risks are viewed as a normal consequence of investment, so the principle of prudence is considered to have been met.	supported by an adequate assessment of national needs, disregarded the supply demand balance, and was carried out despite information indicating an oversupply. Therefore, the principle of prudence is deemed not to have been met.
Rational Belief (benchmark: s 180(2)(d) Corporations Act) and Loss Mitigation (Article 97(5)(d) UUPT)	The Board of Directors has a reasonable belief that the BMG investment will provide long-term benefits for Pertamina, even if the project does not proceed as expected. Losses are viewed as business risks, not automatic evidence of criminal activity.	That belief is irrational because the LNG contracts were entered into when there was no domestic demand, which actually resulted in an LNG surplus and losses for the state. The losses were considered a foreseeable consequence from the outset, so the decision was deemed ineligible for BJR protection.

This article argues that Supreme Court Decision No. 1076 K/Pid.Sus/2025 inadequately applies the BJR by emphasizing resulting state losses rather than the decision-making process. Karen's knowledge of domestic LNG supply conditions must be assessed in its contemporaneous context, as it does not alone establish bad faith or intent to benefit another party. Considering the long-term nature of LNG procurement, securing future energy supplies may constitute a rational business strategy. Thus, financial losses cannot automatically prove mens rea or abuse of authority under Article 3 of the Anti-Corruption Law. The panel's failure to adequately consider the absence of bribery or direct financial interests also raises concerns under Articles 197(1)(d) and (f) KUHAP regarding

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the sufficiency of its factual, evidentiary, and sentencing considerations.[23] The absence of personal conflicts and material benefits is relevant to assessing BJR, while suspected family affiliations alone are insufficient to establish a material interest. The prosecution must prove Article 3's elements beyond reasonable doubt (Articles 183–184 KUHAP), as directors' evidentiary obligations under Articles 97(5) UUPT and 9F(1) of the SOE Law do not reverse the burden of proof. This article proposes adopting expert-reliance protection under Section 189 and ex ante rationality assessment under Section 180(2) of Australia's Corporations Act 2001. Accordingly, LNG procurement supported by contemporaneous studies should not be deemed irrational merely because it results in losses. Article 3 requires purposive intent to confer an unlawful benefit, while Constitutional Court Decision No. 25/PUU-XIV/2016 requires actual state losses causally linked to abuse of authority. Without proof of these elements, managerial failures do not constitute corruption. The appropriate verdict is ontslag van alle rechtsvervolging under Article 191(2) KUHAP if the act is proven but non-criminal, or vrijspraak under Article 191(1) if the act is unproven. Criminalising business losses risks deterring legitimate risk-taking, while increasing Karen's sentence despite being the sole cassation petitioner raises reformatio in peius concerns.[24]

The increase of Karen's sentence to 13 years raises questions regarding the cassation petitioner, reformatio in peius, and compliance with Articles 197(1)(d) and (f) KUHAP. More broadly, the divergent Supreme Court decisions No. 121 K/Pid.Sus/2020 and No. 1076 K/Pid.Sus/2025 expose gaps in preliminary BJR screening, objective standards of good faith and due diligence, anti-hindsight protection, and institutional authority to determine state losses. This article proposes adopting Australia's four BJR elements under Section 180(2) of the Corporations Act 2001 and establishing preliminary screening to distinguish business failure, civil breaches, and intentional criminal misconduct. Supported by expert-reliance protection and inter-agency coordination, this framework would prevent losses alone from triggering prosecution while preserving accountability for proven criminal conduct.

c. A Normative Reconstruction of the BJR in Indonesia from the Perspective of Australia's Corporations Act 2001

The two Karen decisions reveal weaknesses in Indonesia's application of the BJR, particularly in distinguishing business risks from directors' legal liability. Australia's Corporations Act 2001 provides a comparative framework that more clearly separates business failure, breaches of directors' duties, and criminal

[23] Hylke Jellema, "Reasonable Doubt, Robust Evidential Probability and the Unknown," *Criminal Law and Philosophy* 18, no. 2 (2024): 451–70, https://doi.org/10.1007/s11572-023-09685-5.

[24] Agnieszka Skóra, "The Prohibition of Reformatio in Peius and Its Justification of in the Administrative Proceedings in the Habsburg Succession Countries," *Journal of Modern Science* 49, no. 2 (2022): 444–62, https://doi.org/10.13166/jms/156333.

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offences. Accordingly, transplanting Australia's BJR framework through the theory of legal transplantation offers a potential basis for developing Indonesia's legal framework.[25] This reconstruction draws on Radbruch's theory of legal certainty, requiring clear ex ante standards to prevent hindsight-based judgments, and OECD governance principles supporting a BJR safe harbour for directors acting in good faith, with adequate information, due diligence, and no conflicts of interest. Such protection enables reasonable business risk-taking while maintaining accountability. For SOEs, the OECD's emphasis on functional separation and independent oversight further supports a jurisdictional firewall between business decisions and criminal liability.[26] Furthermore, the safe harbor paradigm guides BJR toward providing proactive protection that offers certainty before a dispute arises. The BJR's four elements should be codified through measurable standards: (1) good faith and proper purpose, assessed subjectively through directors' intentions and objectively through corporate objectives, with concealment, side payments, and self-dealing as negative indicators; (2) absence of material personal interest, established through objective conflict-of-interest disclosure, without excluding disclosed immaterial interests; (3) informed decision-making, assessed contextually based on the decision's significance, available time, and information reliability, supported by documented deliberations and reasonable reliance on independent experts; and (4) rational belief, assessed against a reasonable person in the same position, considering directors' responsibilities and company characteristics. An anti-hindsight principle should ensure decisions are evaluated based on information available when made, preventing business failure from automatically constituting a breach of duty.

Article 9F of the SOE Law and its implementing regulation should codify seven BJR parameters: (1) good faith, demonstrated through written corporate rationale and the absence of concealment, side payments, or self-dealing; (2) conflict of interest, requiring prior written disclosure, recording in meeting minutes, and abstention from voting, without disqualifying disclosed immaterial interests; (3) adequate information, requiring feasibility studies, risk analyses, legal or independent expert opinions, and documented deliberations for decisions exceeding a prescribed materiality threshold; (4) rational belief, assessed against a reasonable person in the same position and documented in meeting minutes; (5) anti-hindsight, preventing losses alone from disproving BJR compliance; (6) burden of proof, requiring directors to submit supporting documentation, after which investigators or prosecutors must establish grounds

[25] E. N. Trikoz and E. E. Gulyaeva, "The Communicative Function of Legal Transplants in Mixed Legal Systems," *Kutafin Law Review* 10, no. 3 (2023): 515–43, https://doi.org/10.17803/2713-0533.2023.2.25.515-543.

[26] OECD, *G20/OECD Principles of Corporate Governance 2023* (OECD Publishing, 2023), https://doi.org/10.1787/ed750b30-en.

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to displace BJR protection; and (7) exclusions, denying protection for bribery, embezzlement, fraud, and other intentional criminal conduct to prevent impunity.

In addition to reforming the regulatory framework governing BJR, it is also necessary to establish a clear separation between civil and criminal matters as a jurisdictional firewall to prevent the criminalization of business decisions—as seen in the Karen case—and to ensure a clear distinction between civil and criminal liability. Indonesia can implement a cascading test, namely: (1) first, determining whether the four elements of BJR are met; (2) if they are not met, assessing liability based on damages and causation; and (3) only if there are indications of fraud, a material conflict of interest, or intentional dishonesty—along with independently proven mens rea—can the case proceed to the criminal realm. Financial loss alone should not be the sole basis for criminal liability; thus, the jurisdictional firewall serves to prevent an automatic shift from business failure to criminal offense while also avoiding repeated investigations or prosecutions regarding the same facts and business decisions.

To make the cascading test operational, the preliminary BJR screening should meet the following parameters: (a) it is conducted in writing with reasoned findings on each of the four elements; (b) it is carried out by the investigating authority with input from an independent expert or an authorized oversight body; (c) it is completed within a fixed period set by regulation so that it does not delay the legal process; (d) the screening report is included in the case file; and (e) its consequences are specified, namely that if the four elements are met and no indication of intentional misconduct is found, the matter is not escalated to the criminal stage; if the elements are not met but there is no intent, the matter is resolved through civil or administrative liability (compensation, dismissal, or administrative sanctions); and only if there are indications of fraud, a material conflict of interest, or intentional dishonesty can the case proceed to criminal investigation. The same parameters also apply to a business decision that has been assessed once, so that it cannot be re-examined by another institution without new material facts.

Institutional restructuring is necessary to prevent divergent assessments, forum shopping, and serial prosecution arising from fragmented pre-prosecution coordination among the BPK, BPKP, Attorney General's Office, and KPK. Drawing on Australia's clearer separation between ASIC's regulatory role and the CDPP's prosecutorial function, Indonesia should establish a coordination mechanism involving BP BUMN, OJK, BPK/BPKP, and law enforcement agencies, with preliminary BJR screening as a mandatory step before criminal prosecution. Its findings should guide subsequent proceedings, while OJK should provide BJR guidelines and administrative interpretations for SOEs organised as limited liability companies, ensuring more consistent standards for directors' business decisions.

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Thus, BJR reconstruction entails three fundamental shifts: from a defensive doctrine to a safe harbour, from abstract-subjective standards to cumulative-objective criteria, and from an ambiguous liability regime to a clear distinction between civil and criminal liability. The proposed "jurisdictional firewall" extends BJR beyond limiting directors' liability into a normative mechanism for preventing the criminalization of lawful business decisions. Its implementation requires amending Article 9F(1) of the SOE Law to establish measurable BJR elements and mandatory preliminary assessment before criminal liability may be pursued. Accountability should prioritize civil remedies, reserving criminal proceedings for cases involving proven intent, conflicts of interest, abuse of authority, or other criminal conduct. This reform must be supported by harmonizing the SOE Law, the Limited Liability Companies Law, and anti-corruption regulations, alongside Supreme Court guidelines to ensure consistent judicial standards. Together, these measures would strengthen legal certainty, protect good-faith business decisions from unwarranted criminalization, and align SOE governance with international corporate governance practices.

In terms of legislative implementation, the proposed parameters can be adopted in stages: (1) in the short term, through a Supreme Court circular letter (SEMA) or guidelines on the application of BJR, and a joint regulation among law enforcement agencies on pre-prosecution coordination; (2) in the medium term, through a government regulation implementing Article 9F that sets the materiality threshold, documentation standards, and screening procedure; and (3) in the long term, through an amendment to Article 9F(1) of the SOE Law that codifies the four cumulative elements, the anti-hindsight principle, the burden of proof, and the exclusions, harmonized with the BJR provision in the Limited Liability Companies Act and the anti-corruption legislation.

D. Conclusion and Recommendations

The comparison between Supreme Court Decisions No. 121 K/Pid.Sus/2020 and No. 1076 K/Pid.Sus/2025 reveals inconsistent BJR application in assessing SOE directors' business decisions. While the former recognises BJR as protection for decisions made within authority, in good faith, and with due diligence, the latter emphasises resulting losses without systematically examining BJR criteria before criminalisation. This inconsistency reflects the absence of objective standards for good faith, prudence, information adequacy, and rationality, as well as preliminary screening and anti-hindsight mechanisms, creating legal uncertainty and discouraging strategic decision-making. In contrast, Section 180(2) of Australia's Corporations Act 2001 (Cth) provides a more measurable safe-harbour framework, complemented by the distinction between civil and criminal liability under Sections 180–184.

Accordingly, this article proposes five reforms to the SOE Law: (1) codifying four cumulative BJR elements under Article 9F(1), supported by objective indicators and

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documentary evidence; (2) adopting an anti-hindsight principle that prevents losses alone from establishing liability; (3) mandating preliminary BJR screening before criminal proceedings, without protecting intentional criminal conduct; (4) establishing a three-tier liability framework distinguishing business failure, corporate-duty breaches, and criminal misconduct; and (5) strengthening inter-agency coordination to prevent overlapping investigations and duplicative prosecution. These reforms would transform BJR into a preventive legal safeguard that strengthens legal certainty while preserving accountability for proven criminal conduct.

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Sinta 3; decree No.0173/C3/DT.0500/2025

Referensi

A. Legislation

Australia. Corporations Act 2001 (Cth)

Indonesia. *Undang-Undang tentang Perseroan Terbatas*. UU No. 40 Tahun 2007.

_____. *Undang-Undang tentang Perubahan atas Undang-Undang Nomor 19 Tahun 2003*. Tentang badan Usaha Milik Negara. UU No. 1Tahun 2025

_____. *Undang-Undang tentang Pemberantasan Tindak Pidana Korupsi. UU No. 31 Tahun 1999.*

_____. *Undang-Undang tentang Administrasi Pemerintahan*. UU No. 30 Tahun 2014.

B. Journal

Afita, Rina, and Veta Lidya Delimah Pasaribu. "Comparative Analysis of Risk-Based Decision-Making Theory and Value-Based Decision-Making Theory in UMKM Business." *Indonesian Journal of Entrepreneurship and Startups* 3, no. 2 (2025): 123–36. https://doi.org/10.55927/ijes.v3i2.14797.

Alade, Isa. *Section 187 of the Corporations Act 2001 (Cth) and the Enterprise Exception to Directors' Duties: Scope, Limits and the Case for Reform*. 2026. https://doi.org/10.2139/ssrn.6923358.

Andrews, Daniel S., Phillip C. Nell, Andreas P. J. Schotter, and Tomi Laamanen. "And the Subsidiary Lives on: Harnessing Complex Realities in the Contemporary MNE." *Journal of International Business Studies* 54, no. 3 (2023): 538–49. https://doi.org/10.1057/s41267-022-00552-4.

Arifin, Miftah, and Zaenal Arifin. "The Influence of the Business Judgment Rule on the Accountability of the Board of Directors for Their Errors or Negligence Based on Eisenberg's Theory of Director's Accountability." *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 23, no. 1 (2024): 1368–82. https://doi.org/10.31941/pj.v23i1.4208.

Ayuningtias, Vidya Kartika, and Elisatris Gultom. "Tata Kelola Perusahaan Yang Baik: Sebagai Upaya Penguatan BUMN." *HAKIM - Jurnal Ilmu Hukum dan Sosial*, ahead of print, December 9, 2023. https://doi.org/https://doi.org/10.51903/hakim.v2i1.1569.

Bagus, Dimas, Lammarasi Sihaloho, Putri Jesika Purba, and Tina Amelia. *Tanggung Jawab Pribadi Direksi atas Kepailitan Perseroan Terbatas Akibat Kelalaian dalam Pengurusan (Upaya Penerapan Doktrin Piercing the Corporate Veil)*. June 30, 2026. https://doi.org/https://doi.org/10.54209/judge.v6i11.2418.

Buckley, Lynn and Susan Watson. "Directors' Positive Duty to Act in the Interests of the Entity: Shareholders' Interests Bounded by Corporate Purpose." *Journal of Corporate Law Studies*, ahead of print, January 2, 2024. https://doi.org/10.1080/14735970.2024.2361507.

Commonwealth of Australia. *Directors' Duties and Corporate Governance: Facilitating Innovation and Protecting Investors*. Australian Government Publishing Service, 1997.

Deny Panjaitan, Hulman Panjaitan, and Paltiada Saragi. "Legal Consequences and Liability of Actions by Directors and Commissioners After Term Expiry." *International Journal of Law, Crime and Justice* 2, no. 2 (2025): 54–62.

Volume 12, Number 03, July-September 2026, Pages 414-435
e-ISSN:2614-1485
p-ISSN:2716-0440
Doi: https://doi.org/10.33751/palar.v12i2
Sinta 3; decree No.0173/C3/DT.0500/2025

https://doi.org/10.62951/ijlcj.v2i2.568.

Dyah Hapsari Prananingrum. *ASPEK HUKUM DALAM DAGANG DAN BISNIS*. n.d.

Harahap, Hasrul Benny, Hikmahanto Juwana, and Mahmul Siregar. "Ambiguity of the Position of Directors of State-Owned Enterprises (Persero): Achievements of Profits and Allegations of Corruption:" Paper presented at Second International Conference on Public Policy, Social Computing and Development (ICOPOSDEV 2021). 2022. https://doi.org/10.2991/assehr.k.220204.024.

Harel, Yaniv, and Abraham Carmeli. "A strategic cybersecurity oversight framework: a board's imperative." *Journal of Cybersecurity* 11, no. 1 (2025): tyaf021. https://doi.org/10.1093/cybsec/tyaf021.

Jellema, Hylke. "Reasonable Doubt, Robust Evidential Probability and the Unknown." *Criminal Law and Philosophy* 18, no. 2 (2024): 451–70. https://doi.org/10.1007/s11572-023-09685-5.

Kingsford-Smith, Dimity. "Australian Directors' Duties: What Does It Mean to Say They Are Public Duties?" *Victoria University of Wellington Law Review* 52, no. 2 (2021): 343–72. https://doi.org/10.26686/vuwlr.v52i2.7122.

Langford, Rosemary Teele. "STATUTORY DUTIES AND RATIFICATION: UNTANGLING THE MAZE." *Social Science Research Network)*, ahead of print, 2021. https://doi.org/https:doi/10.3316/agispt.20210803051072.

Listiyapuji, Fona Kartika, Dyah Ochtorina Susanti, and Firman Floranta Adonara. "Shifting Meaning of State Losses in BUMN Based on the Business Judgment Rule Principle." *Rechtenstudent* 6, no. 2 (2025): 183–96. https://doi.org/10.35719/rch.v6i2.361.

OECD. *G20/OECD Principles of Corporate Governance 2023*. OECD Publishing, 2023. https://doi.org/10.1787/ed750b30-en.

Pariela, Eunike Petra Rebecca, and Zainal Arifin Hoesein. "Peran Good Governance Risk Management dan Compliance Terintegrasi dalam Menjamin Perlindungan Hukum bagi Direksi dan Mencegah Korupsi di Perusahaan BUMN." *Jurnal Retentum*, ahead of print, February 13, 2023. https://doi.org/http://dx.doi.org/10.46930/retentum.v7i1.5275.

Prasetya, Fauzan, Milda Istiqomah, and Bambang Sugiri. *The Losses of State-Owned Subsidiaries That Are Equal to State-Owned Enterprises in the Perspective of Corruption in Indonesia After the Third Amendment to the Law on State-Owned Enterprises*. 24 (2025). https://doi.org/https://doi.org/10.31941/pj.v24i2.6312.

Santiago, Faisal. "Reconstruction of the Business Judgment Rule Doctrine in Indonesia: Legal Comparison with England, Canada, the United States, and Australia." *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 1 (2024): 107–21. https://doi.org/10.29303/ius.v12i1.1371.

Santika, Charisa Dwi, Nyulistiowati Suryanti, and Rai Mantili. "Batas Kewenangan Direksi dan Dewan Komisaris dalam Pengelolaan Perusahaan Berkaitan dengan Dicabutnya Izin Usaha Pertambangan: Studi Kasus Putusan No.3/Pdt.G/2023/PN Mgg." *Demokrasi: Jurnal Riset Ilmu Hukum, Sosial dan Politik* 2, no. 4 (2025): 148–62. https://doi.org/10.62383/demokrasi.v2i4.1413.

Volume 12, Number 03, July-September 2026, Pages 414-435
e-ISSN:2614-1485
p-ISSN:2716-0440
Doi: https://doi.org/10.33751/palar.v12i2
Sinta 3; decree No.0173/C3/DT.0500/2025

Sari, Yuliana Dewi Purnama, and Arista Candra Irawati. *Business Judgement Rule dalam UU BUMN 2025: Payung Hukum atau Celah Impunitas?* 2025. https://doi.org/https://doi.org/10.56799/jceki.v5i1.12410.

Sayit Bandung Bondowoso and Dian Afrilia. "Pertanggungjawaban Direksi BUMN Terhadap Kerugian Negara Berdasarkan Regulasi Pemerintahan Sektor Perusahaan Dan Pidana." *LEX STRICTA JURNAL ILMU HUKUM*, July 26, 2025.

Siti Nur Intihani. "PENERAPAN DOKTRIN BUSINESS JUDGMENT RULE PADA TINDAK PIDANA KORUPSI PERKARA DIREKTUR PT. PERTAMINA - KAREN AGUSTIAWAN." *Jurnal Hukum Jurisdictie*, September 5, 2023.

Skóra, Agnieszka. "The Prohibition of Reformatio in Peius and Its Justification of in the Administrative Proceedings in the Habsburg Succession Countries." *Journal of Modern Science* 49, no. 2 (2022): 444–62. https://doi.org/10.13166/jms/156333.

Sugiarto Sugiarto, Sapta Eka Yanto, Sudiyanto Sudiyanto, et al. "Comparative Analysis of Business Judgment Rules in Civil Law and Common Law Systems." *Mandub : Jurnal Politik, Sosial, Hukum Dan Humaniora* 2, no. 4 (2024): 151–64. https://doi.org/10.59059/mandub.v2i4.1753.

Tri Budiyono. *TRANSPLANTASI HUKUM*. Griya Media, 2009.

Trikoz, E. N., and E. E. Gulyaeva. "The Communicative Function of Legal Transplants in Mixed Legal Systems." *Kutafin Law Review* 10, no. 3 (2023): 515–43. https://doi.org/10.17803/2713-0533.2023.2.25.515-543.

Umar, Munazar. *Business Judgment Rule Dalam Uu Bumn 2025: Antara Perlindungan Direksi Dan Celah Impunitas*. 4, no. 2 (2026). https://doi.org/https://doi.org/10.61104/alz.v4i2.4820.

D. Court Decision

Mahkamah Agung Republik Indonesia. Putusan Mahkamah Agung Nomor 121 K/Pid.Sus/2020.

Mahkamah Agung Republik Indonesia. Putusan Mahkamah Agung Nomor 1076 K/Pid.Sus/2025.

Mahkamah Konstitusi Republik Indonesia. Putusan Mahkamah Konstitusi Nomor 01/PHPU-PRES/XVII/2019.

Mahkamah Konstitusi Republik Indonesia. Putusan Mahkamah Konstitusi Nomor 48/PUU-XI/2013.

Mahkamah Konstitusi Republik Indonesia. Putusan Mahkamah Konstitusi Nomor 62/PUU-XI/2013.