
Reconstruction of the Application of the Business Judgment Rule Principle from the Perspective of Corruption Crimes as an Effort to Overcome the Ambiguity of Norms in the Accountability of Directors

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ABSTRACT

The increasing complexity of corporate management has created challenges in determining the legal accountability of directors, particularly when business decisions resulting in losses are associated with corruption offenses. The application of the Business Judgment Rule principle, which is intended to protect directors who make decisions based on good faith, due care, and the best interests of the company, often encounters normative ambiguity when interacting with the corruption law regime, particularly in companies involving state finances. This study aimed to reconstruct the application of the Business Judgment Rule principle from the perspective of corruption offenses in order to establish clearer boundaries between legitimate business risks and actions that constitute criminal violations by directors. This research employed a normative juridical method using statutory and conceptual approaches. Legal materials were obtained through the examination of primary legal sources, including laws and regulations governing corporations, state-owned enterprises, and corruption eradication, as well as secondary legal sources consisting of legal literature and academic studies. The analysis was conducted qualitatively using prescriptive legal analysis. The findings indicated that normative ambiguity arose from the lack of harmonization between corporate law principles and corruption law provisions, resulting in the potential interpretation of business losses as state financial losses without adequate consideration of the decision-making process undertaken by directors. The study concluded that legal reconstruction was required by strengthening the Business Judgment Rule as an assessment standard for determining directors' liability, establishing clearer parameters of good faith and the duty of care principle, and developing judicial guidelines to distinguish legitimate business risks from corruption-related conduct. This reconstruction was expected to provide greater legal certainty for directors while maintaining effective enforcement of corruption laws.

Keywords: Business Judgment Rule; directors' accountability; state losses; corruption

INTRODUCTION

Modern corporate management places the board of directors as a corporate organ with strategic authority in determining company policies and making business decisions (Fasya, 2025). This authority requires directors to make various strategic decisions, including those related to investment, financing, and business expansion (Sjawie, 2017). In practice, every business decision contains elements of uncertainty and potential risks because market dynamics, economic changes, and other external factors cannot always be predicted with certainty (Marsella, 2016). Therefore, losses arising from business decisions cannot automatically be considered errors or negligence by directors but may represent consequences of ordinary business risks (Fikriya, 2020). From the perspective of good corporate governance, directors are required to make rational and measured decisions to support the company's sustainability and growth (Wardani, 2023). Accordingly, not all corporate losses can automatically be classified as unlawful acts or as forms of abuse of authority by directors.

The Business Judgment Rule is a corporate law doctrine developed to protect directors in exercising their authority to make business decisions. This doctrine establishes that, as

long as directors make decisions based on sufficient information, act in good faith, avoid conflicts of interest, and prioritize the interests of the company, courts should not interfere with or reassess the substance of those decisions (Akram & Fanaro, 2019). This principle originated from corporate law practices in common law jurisdictions and has been adopted in various modern corporate legal systems as a mechanism to protect directors from liability arising from reasonable business risks (Januarsyah, 2022). However, the application of the Business Judgment Rule requires directors to demonstrate that they acted without conflicts of interest and took appropriate measures to prevent or mitigate potential losses (Priyono, 2022). Nevertheless, the regulation of the Business Judgment Rule in Indonesian positive law remains limited and implicit, particularly regarding its application in relation to criminal liability.

The issue becomes more complex when business policies made by directors, particularly in companies involving state finances, such as State-Owned Enterprises (SOEs), become associated with the criminal law regime on corruption (Alhakim, 2019). In law enforcement practice, losses arising from business policies are not uncommon to be interpreted as state financial losses that may result in criminal liability for directors. This interpretation is related to corruption law provisions, which regulate unlawful acts involving the enrichment of oneself or others, as well as abuse of authority that may cause losses to state finances (Alfianda, 2024). In certain circumstances, these provisions may be interpreted broadly, causing unsuccessful business policies that result in losses for SOEs to be perceived as forms of state financial loss. Consequently, business decisions that are essentially part of corporate risk-taking may potentially be brought into the scope of corruption offenses, raising concerns regarding the criminalization of directors' business policies (Faturachman, 2024).

This situation highlights a normative conflict between the corruption law enforcement framework and the corporate law doctrine of the Business Judgment Rule. On the one hand, the Business Judgment Rule provides protection for directors by allowing them to perform corporate management functions independently and professionally without excessive concern over legal consequences arising from reasonable business decisions. On the other hand, the corruption law regime emphasizes the protection of state finances and the enforcement of abuse of authority resulting in state financial losses. The disharmony between these two legal regimes creates normative challenges because clear parameters distinguishing reasonable business risks from corruption-related conduct remain absent. Consequently, law enforcement practices often involve differing interpretations among investigators, prosecutors, and judges in determining whether a director's business decision constitutes a corporate policy protected by the Business Judgment Rule or an abuse of authority resulting in criminal liability (Setiawati, 2025).

This normative ambiguity ultimately creates uncertainty in determining the boundaries of directors' liability for losses arising from corporate business policies. The ambiguity is reflected in the absence of clear legal indicators for assessing whether directors made decisions in the best interests of the company, acted in good faith, and complied with the duty of care principle. Furthermore, the relationship between corporate law provisions, the State-Owned Enterprises Law Number 19 of 2003, and corruption legislation remains insufficiently integrated, creating uncertainty for directors in carrying out their corporate management duties. Under these circumstances, directors may face criminal liability risks even when their

decisions represent rational business judgments made for the benefit of the company (Syaharani).

The impact of this unclear standard extends beyond directors' legal accountability and affects legal certainty and the broader business environment. The unclear distinction between business risks and corruption offenses may contribute to the overcriminalization of business policies, encouraging directors to adopt defensive and risk-averse decision-making patterns despite the necessity of calculated risks for corporate growth. Such conditions may ultimately hinder innovation, investment, and business expansion, particularly in SOEs that hold strategic roles in national economic development. Therefore, reconstructing the application of the Business Judgment Rule from the perspective of corruption offenses is necessary to establish clearer boundaries between legitimate business risks and criminal conduct. This reconstruction can be achieved through systematic examination of corporate and criminal law regulations, strengthening legal norms governing directors' accountability, and developing clearer judicial assessment standards for evaluating directors' business decisions. Accordingly, this reconstruction is expected to provide greater legal certainty for directors while maintaining effective enforcement of corruption laws.

METHOD

The research instrument consisted of a legal document review framework used to identify and analyze relevant legal provisions, judicial interpretations, and conceptual arguments concerning directors' responsibility for business decisions. The validity of the analysis was maintained through verification of legal sources by comparing relevant primary and secondary legal materials to ensure consistency and legal accuracy. Reliability was maintained through systematic documentation and review of legal materials to support consistent interpretation in accordance with the research objectives. Data were collected through library research involving the inventory, classification, and analysis of legislation, legal doctrines, judicial interpretations, and scholarly publications related to the Business Judgment Rule and corruption offenses.

The research procedure was conducted through several stages, including the identification of legal issues concerning the ambiguity of norms in the application of the Business Judgment Rule, the collection and classification of relevant legal materials, the analysis of interactions between corporate law and corruption law provisions, and the formulation of legal reconstruction regarding directors' accountability standards. The collected materials were analyzed qualitatively using a prescriptive-analytical method to interpret legal norms and formulate recommendations for strengthening legal certainty in assessing directors' business decisions. The analysis applied statutory, conceptual, and comparative approaches to examine the boundaries between legitimate business risks and corruption-related conduct. As this study employed normative legal analysis, it did not involve statistical software; however, legal reference management tools were used when necessary to organize research materials systematically.

RESULTS AND DISCUSSION

Position and Application of the Business Judgment Rule Principle in the Corporate Legal System in Indonesia

A fundamental concept in corporation law, the Business Judgment Rule has developed to safeguard directors in performing their corporate management duties. In nations with common law systems, this theory first emerged in corporate law practice, particularly in the United States, as a form of limitation on court intervention in assessing business decisions made by directors. The Business Judgment Rule essentially asserts that courts should not evaluate the substance of business decisions made by directors as long as they are made rationally, in good faith, and within the best interests of the company. This doctrine arose from the recognition that business activities always involve uncertainty and the risk of loss that cannot always be avoided. Therefore, directors, as company managers, must be given discretion in making strategic decisions without the fear of lawsuits if those decisions ultimately result in losses for the company. In this context, the Business Judgment Rule serves as a legal protection mechanism that allows directors to exercise their corporate management authority independently, professionally, and responsibly. (Hadi, 2021)

The Business Judgment Rule has evolved throughout time to be recognized as a component of sound corporate governance as well as a theory for safeguarding directors. This idea is strongly tied to the idea of fiduciary obligation, which is a fundamental aspect of directors' role as company administrators tasked with running the business. Directors have a moral and legal commitment to operate in the company's best interests and refrain from abusing their power as part of their fiduciary duty. Directors are subject to a number of significant concepts within the context of fiduciary obligation, such as the duty of care and the duty of loyalty. While the duty of loyalty compels directors to put the company's interests ahead of their own or others', the duty of care requires directors to perform their company management responsibilities with a reasonable degree of care, as befits responsible managers. Therefore, the purpose of the Business Judgment Rule is to guarantee that directors can only be held legally liable if there is proof that they acted in bad faith, were seriously negligent, or had a conflict of interest when making business decisions, rather than to grant them complete legal immunity. (Anshari, 2025)

According to Law Number 40 of 2007, which governs Limited Liability Companies, the Corporate Judgment Rule has rules governing the power and accountability of directors in corporate management. According to the law's Article 92, paragraph (1), the board of directors manages the business for the benefit of the company and in line with its goals. Gunadi (2024). This clause demonstrates how Indonesian company law has embraced the idea of protection for directors who make responsible and professional business judgments. (Prasetyo, 2023) With this provision, losses arising from a business decision cannot automatically be used as a basis for holding directors accountable as long as the directors can demonstrate that the action was carried out in good faith and with due care.

The application of the principle of prudence in business decision-making is also a crucial aspect in the performance of the duties of directors. The principle of prudence requires directors to consider various aspects before making a business decision, including analyzing the risks that may arise from that decision. In corporate governance practices, the application of the principle of prudence is typically manifested through a decision-making

process based on adequate information, rational analysis, and objective professional judgment. Therefore, directors cannot be deemed to have violated their legal obligations simply because a business decision they make results in losses for the company. Instead, the assessment of directors' liability must be based on the directors' decision-making process, including whether the choice was made in good faith, free from conflicts of interest, and with appropriate consideration for the prudential principle. (Ersya, 2023)

The relationship between the authority of directors and legal liability for company losses essentially reflects a balance between the company's need to provide directors with discretion in making business decisions and the need to ensure accountability mechanisms for corporate management actions. Within the corporate legal framework, directors are granted broad authority to manage the business, in accordance with Law Number 40 of 2007 respecting Limited Liability Companies, Article 92. However, this power is constrained by the need to behave prudently, in good faith, and in the company's best interests. As a result, the Business Judgment Rule functions as a principle that strikes a balance between safeguarding directors in the performance of their corporate management responsibilities and imposing legal liability in the event that directors are found to have misused their power or acted carelessly. Thus, the Indonesian corporate law system's application of the Business Judgment Rule principle is essential for giving directors legal clarity and fostering the development of sound corporate governance. (Yunus, 2021)

Ambiguity of Norms in the Application of the Business Judgment Rule from the Perspective of Criminal Acts of Corruption

The main issue in applying the Business Judgment Rule principle in the context of Indonesian law arises when directors' business policies are linked to the criminal law regime for corruption, particularly in cases related to the management of state finances or state-owned enterprises. In law enforcement practice, there is often a shift in the interpretation of corporate losses to state losses, particularly when the company has ties to the state through state capital participation. This shift in interpretation results in losses arising from a business decision no longer being viewed solely as a corporate loss, but rather as a state financial loss, potentially giving rise to criminal liability. However, in the corporate law system, losses arising from business decisions are part of the business risks inherent in corporate activities. When these losses are directly linked to state losses without considering the nature of the business decision, a tension arises between the principles of corporate governance that grant directors discretion and the criminal law regime that emphasizes the protection of state finances.

This shift in interpretation also has implications for the potential criminalization of business decisions taken by directors. Business policies that were first implemented within the scope of business strategy are frequently found to be harmful to state finances when it comes to the administration of state-owned businesses. Additionally, Article 3 of the law states that anyone who abuses authority or opportunity in order to profit themselves or another individual, or means afforded them by their position, thereby harming state finances, may be subject to criminal penalties. This provision is primarily intended to address abuse of authority in managing state finances, but in practice, it is often used to assess the business policies of directors that result in company losses.

The problem is further complicated by the broad interpretation of the element of "harming state finances" in corruption cases by law enforcement officials. This broad interpretation blurs the line between state losses resulting from criminal acts and losses arising from business risks. The inclusion of state capital in the capital structure of state-owned businesses exacerbates this problem. According to Law Number 19 of 2003 respecting State-Owned Enterprises, capital for SOEs comes from distinct state assets. Conceptually, this separation of assets should place SOE assets as corporate assets subject to the corporate legal regime. However, in the practice of enforcing criminal corruption laws, losses experienced by SOEs are often still viewed as state losses. This situation raises normative issues because losses arising from legitimate business policies can be interpreted as state losses, potentially giving rise to criminal liability.

This disharmony reflects the differing perspectives between the corporate legal regime and the criminal legal regime in viewing the business decisions of directors. Under corporate law, According to Law Number 40 of 2007 regarding Limited Liability Companies, Article 92 paragraph (1), directors are allowed to manage the company for its benefit and in line with its goals and objectives. Additionally, directors are shielded from accountability for corporate losses under Article 97 paragraph (5) of the statute as long as they can demonstrate that the losses were not the result of their carelessness or mistake and that they acted in good faiths. In contrast, in the criminal law regime for corruption, the main focus lies on protecting state finances and taking action against abuse of authority that results in state losses. This difference in perspective results in a business decision that, in corporate law, can be viewed as part of managerial discretion, but from a criminal law perspective can be viewed as a form of abuse of authority.

This situation demonstrates the unclear norms in determining the boundary between legitimate business risks and actions that can be classified as criminal corruption. To date, there are no clear legal indicators that can be used to assess whether a loss arising from a business decision is a consequence of reasonable business risk or a criminal offense. The absence of these legal indicators means that the assessment of directors' business decisions relies heavily on the interpretation of law enforcement officials. In certain situations, a business policy made based on professional considerations and rational analysis can be viewed as an abuse of authority if the decision ultimately results in losses for the company. It demonstrates that the protection provided by the Business Judgment Rule principle in corporate law has not been fully integrated into criminal law enforcement practices.

The disharmony between corporate law, criminal corruption law, and regulations regarding the management of state-owned enterprises ultimately creates legal uncertainty in determining directors' accountability for business policies adopted in company management. Meanwhile, State-Owned Enterprises Law Number 19 of 2003' BUMN provisions stress the division of state assets in state-owned businesses. The lack of synchronization between these three legal regimes causes the line between company losses and state losses to become blurred, thus potentially leading to the criminalization of the directors' business policies and hampering the directors' courage in making strategic decisions necessary for the company's development.

Reconstruction of the Application of the Business Judgment Rule in Determining the Accountability of Directors in Corruption Cases

Reconstructing the application of the Business Judgment Rule principle in determining the accountability of directors in corruption cases is important to overcome the unclear boundaries between legitimate business risks and actions that can be qualified as criminal acts. The condition of disharmony between the corporate law regime and the criminal law regime of corruption shows the need for efforts to harmonize norms so that both legal regimes can run in harmony without eliminating each other's functions. In order to prevent the implementation of criminal law from ignoring the intrinsically dangerous nature of business actions, legal reconstruction is therefore required. Integrating the Business Judgment Rule principle as a legal issue in determining whether or not there are elements of abuse of authority in corruption cases pertaining to directors' business policy is one practical step that might be taken.

Reconstruction measures must also be directed at formulating a clear boundary between legitimate business risks and criminal acts of corruption. This boundary needs to be formulated through a normative approach that combines the principles of corporate law with elements of criminal corruption law. In this context, corporate losses arising from business decisions should not automatically be viewed as state losses, which would imply criminal liability. As a concrete measure, interpretive guidelines that emphasize the component of "Articles 2 and 3 of Law Number 31 of 1999 about the Eradication of Corruption and Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, which stipulate that "causing loss to state funds" are required. Only in situations where there is evidence of unlawful action, abuse of power, or a deliberate conflict of interest by the board of directors may these rules be implemented. Therefore, losses arising from business decisions made rationally, professionally, and based on adequate analysis should not be classified as criminal corruption.

Strengthening the application of the Business Judgment Rule in assessing the board of directors' business decisions is also an important part of the necessary legal reconstruction. This principle must be recognized as the legal standard for assessing the actions of directors in the administration of the company. A concrete action that can be taken is to make this provision a basis for consideration in investigations, inquiries, and court hearings when corruption cases relate to the business policies of directors. This way, criminal law enforcement can be carried out more proportionally without neglecting the principles of corporate law.

Furthermore, Alongside the rebuilding of the Business Judgment Rule's application, precise legal guidelines are being developed to determine whether directors have acted prudently and in good faith. These parameters could include several indicators, including whether business decisions were made through legitimate mechanisms within the company's organs, whether the decisions were based on adequate information and analysis, whether there were any conflicts of interest in the decision-making process, and whether the directors had taken risk mitigation measures before making the decisions. As a concrete step, these parameters could be formulated in the form of guidelines or operational standards for law enforcement officials in assessing directors' business policies that have the potential to cause company losses. With clear parameters, the assessment of business decisions is not solely

based on the final outcome, namely, company losses, but also on the decision-making process undertaken by the board of directors.

A methodical interpretation of numerous laws and regulations pertaining to business management and state finances can also be used to reconstruct the Indonesian legal system's Business Judgment Rule standard. Law Number 19 of 2003 concerning State-Owned Enterprises, Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, and Law Number 40 of 2007 concerning Limited Liability Companies all contain regulations governing the management of state-owned enterprises that must be interpreted methodically. One concrete action that can be taken is to formulate a legal policy that emphasizes that state assets separated within a State-Owned Enterprise must be treated as company assets subject to the principles of corporate law. Thus, losses arising from a State-Owned Enterprise's business activities are not automatically classified as state losses without an element of abuse of authority.

Additionally, creating judicial review standards that law enforcement officials can employ to evaluate directors' business judgments in corruption situations is necessary to reconstruct the application of the Business Judgment Rule. This judicial review can encompass several assessment stages, including examining the legality of directors' decision-making authority, examining the existence of conflicts of interest, examining the decision-making process based on adequate information, and examining indications of abuse of authority or unlawful acts. A concrete action that can be taken is to encourage the development of judicial guidelines or law enforcement guidelines that integrate the principles of the Business Judgment Rule as one of the standards for assessing directors' business policies. With these assessment standards, law enforcement officials can more objectively distinguish between business decisions that constitute business risks and actions that genuinely satisfy the requirements of a criminal act of corruption, giving directors legal security to do their company management duties without undermining the efficacy of measures to eradicate corruption.

CONCLUSION

Based on the preceding discussion, it can be concluded that the Business Judgment Rule is an important doctrine in corporate law that provides legal protection for directors in exercising their authority to manage and oversee the company, particularly when making business decisions involving uncertainty and risk. However, in law enforcement practices, especially in corruption cases, normative ambiguity often arises due to the interpretation of corporate losses as state financial losses. This issue is particularly relevant in companies associated with state finances, where business policies made by directors may be assessed without adequately considering the inherent risks of business decision-making. This situation demonstrates a disharmony between the corporate law regime and the corruption law regime, resulting in legal uncertainty in distinguishing legitimate business risks from conduct that may be classified as corruption offenses.

To address this normative ambiguity, reconstructing the application of the Business Judgment Rule within the Indonesian legal system through harmonization between corporate law and corruption law is necessary. Such harmonization can be achieved by emphasizing

that the assessment of directors' business decisions must consider the Business Judgment Rule as recognized within the framework of Law Number 40 of 2007 concerning Limited Liability Companies, particularly as a legal parameter in determining whether directors have committed an abuse of authority. Furthermore, clear assessment guidelines should be developed for law enforcement authorities to distinguish between losses arising from legitimate business risks and losses resulting from unlawful conduct under Law Number 31 of 1999 concerning the Eradication of Corruption in conjunction with Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption. Concrete measures include formulating judicial guidelines for judges and law enforcement officials in evaluating directors' business decisions, establishing clearer legal parameters concerning good faith and the duty of care principle in corporate decision-making, and strengthening systematic interpretation of regulations related to corporate law, corruption law, and the governance of state-owned enterprises. Therefore, the proper application of the Business Judgment Rule can provide greater legal certainty for directors in performing their corporate management duties while maintaining the effectiveness of corruption law enforcement.

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