



# CRIMINAL LIABILITY FOR IMPLEMENTATION DOCTRINE *BUSINESS JUDGEMENT RULE* AGAINST DECISIONS OF DIRECTORS STATE OWNED ENTERPRISES LINKED TO CORRUPTION CRIMINAL CASES

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| <p><b>Received</b> 14<sup>th</sup> December 2023<br/><b>Accepted:</b> 10<sup>th</sup> January 2024<br/><b>Published:</b> 20<sup>th</sup> February 2024</p> | <p>Discussion regarding criminal liability for the application of the business judgment rule doctrine to the decisions of directors of state-owned enterprises in cases of criminal acts of corruption. The approach method used in this legal research is a normative juridical approach supported by empirical juridical with detailed descriptions, namely: a research that begins deductively with an analysis of the articles in the statutory regulations that regulate the issue of criminal liability for the application of the business judgment doctrine. rules regarding decisions of directors of state-owned enterprises in cases of criminal acts of corruption. The results of criminal liability research on the application of the business judgment rule doctrine to the decisions of directors of state-owned enterprises in cases of criminal acts of corruption are: that directors' liability due to losses due to errors or negligence in making business decisions is a civil responsibility and does not necessarily cause harm to state finances. perspective of criminal acts of corruption. The business judgment rule doctrine should be considered in every corruption case related to the decisions of BUMN directors because apart from the different state financial management paradigms in BUMNs, this doctrine also has similarities with the doctrine of men's areas which lies in the attitude of directors when making business decisions. The obstacles in implementing the business judgment rule doctrine include the substance of legislation (legal substance) and the perspective of legal officials (legal structure).</p> |

**Keywords:** Criminal Responsibility, Business Judgment Rule Doctrine, Director's Decision and Corruption Crimes

## A. INTRODUCTION

In the era of globalization moment this , bear it The state's role is becoming increasingly greater to life inhabitant his country . In a welfare state or normal called *welfare state* , the duty of the state is not only limited as guardian of order and security but also responsible for welfare its people . State functions do not only limited as regulator , supervisor and controller to the market, however can also play a role as perpetrator active economic and market players Act through BUMN. Therefore, the existence of BUMN in a *welfare state* plays a very strategic role, tasked with carrying out a dual function as *an agent of development* and *a social function* for the welfare of its people. This dual function causes various activities carried out by BUMN to pose risks, both business risks and risks that have criminal implications.

The Board of Directors is the Company's organ with authority and full responsibility for managing the Company for the interests of the Company, in accordance with the Company's aims and objectives and representing the Company, both inside and outside the court in accordance with the provisions of the articles of association.<sup>3</sup>

The Board of Directors, as one of the organs that is quite important in carrying out the Company's activities, is said to be quite important, because it is the directors who control the company and its daily activities.<sup>4</sup>

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<sup>3</sup>Article 92 paragraph (2) Law Number 40 of 2007 concerning Limited Liability Companies.

<sup>4</sup> Sentosa Sembiring , *Law Company About Company Limited* , CV. Nuance Aulia , Bandung, 2006, p a 1. 43.

In carrying out their duties and authority, directors must base their duties and positions on the basis of two basic principles, namely the first is the trust placed in them by the Company ( *fiduciary duty* ), and the second is the principle that refers to the ability and prudence of the directors' actions ( *duty of skill and care* ).<sup>5</sup>

These two principles require that directors, as important organs in the company, as administrators and representatives of the Company, must act carefully, appropriately and act in good faith and with full responsibility in accordance with the Company's articles of association as well as the aims and objectives of the company they lead.

doctrine or principle of *fiduciary duty* can be found in Law no. 40 of 2007 concerning Limited Liability Companies (UUPT). The management of the Company is entrusted to the directors, this is clearly stated in Article 97 paragraph (1) of the Company Law which states that the Directors are responsible for the management of the Company. Meanwhile, Article 97 paragraph (2) of the Company Law stipulates that every member of the Board of Directors is obliged to carry out their duties in good faith and with full responsibility for the interests and business of the company.<sup>6</sup>

Based on this article, it clearly creates liability consequences for the directors. If there is a violation of this in relation to managing the Company and making decisions, a director can be held personally responsible if the person concerned is guilty or careless in carrying out their duties. <sup>7</sup>From this explanation, the author can conclude that a Director in carrying out the Company's business activities is always haunted by business risks, and these risks may arise beyond their capabilities.

In connection with the actions of Directors who take action for the interests and profits of the Company, there is also a theory in corporate law that protects Directors who have good intentions, namely the *business judgment rule doctrine* . This doctrine aims to protect the Board of Directors for every business decision that constitutes a Company transaction, as long as it is within the limits of authority, with full prudence ( *duty of care* ) and in good faith.

As long as the Directors are able to manage the Company carefully, in good faith and in accordance with the authority given to them within the limits according to applicable regulations, the Directors remain protected by the *Business Judgment Rule Doctrine* . But until now there is no limit to determining what good faith and prudence looks like. Examples of how to limit good faith are as follows:<sup>8</sup>

1. Must be trusted;
2. Must carry out management for reasonable purposes;
3. Must comply with statutory regulations;
4. Must be loyal to the company; And
5. Must avoid conflicts of interest.

In reality, Directors who manage Limited Liability Companies are vulnerable to being prosecuted by law enforcement officials, especially Directors who manage State-Owned Enterprises and Directors who manage companies that have collaborative relationships with government projects. Criminalization of directors is also closely related to corporate criminal acts, although corporate criminal acts can originate from the authority of other organs within the company, such as the General Meeting of Shareholders and Commissioners.<sup>9</sup>

This condition shows that now the risks and legal demands faced by a member of the Board of Directors are not limited to risks or civil lawsuits, but also criminal lawsuits. More and more laws contain criminal responsibility for corporations, such as the Environmental Law and then this expands to the realm of business law. The constellation of mature legal regimes is now increasingly bringing together public law and private law, which in turn also creates legal and procedural uncertainty both from the perspective of corporate law and criminal law. Moreover, recently there has been widespread news regarding the criminalization of corporate policies which can create a bad image for law enforcement and human rights and can disrupt economic stability and the creation of a conducive business climate. This also raises concerns among business people, especially decision makers , that there will be lawsuits or criminalization related to corporate strategic decision making.

*Business Judgment Rule* so it is not a criminal act. implementation of the doctrine or principles of the *Business Judgment Rule* (BJR) in the Limited Liability Company Law. This principle is a reflection of the independence and discretion of the company's directors in making business decisions and is also a protection for the directors in carrying out their duties.

According to provisions of Article 92 and Article 97 of Law no. 40 of 2007 concerning Limited Liability Companies (UU PT) that directors No can requested his responsibility only Because wrong reasons inside decide ( *mere error of judgment* ) or only Because reason loss company , that is if at all directors company in case *aquo* , considered there is mistake in decision business and raises loss to company or even to state losses due to BUMN , so according to Constitution company limited that has been adhere to BJR principles , directors \_ No can asked accountability .

<sup>5</sup> Chatamarrasjid Ice , *Breakthrough Veil Company and Questions Actual Law Company* , Citra Aditya Bandung, Bandung, 2004, p a l. 71.

<sup>6</sup>Article 97 paragraph (3) Law Number 40 of 2007 concerning Limited Liability Companies.

<sup>7</sup>Sulistiowati , *Aspect Law and Reality Business Company Groups in Indonesia* , Erlangga , Jakarta , 2008, p . 98.

<sup>8</sup>M. Yahya Please , *Law Company Limited* , Ray Graphics , Jakarta , 2009, p . 374-377.

<sup>9</sup> *Ibid* , p. 97

In the research, the author raised the issue of Decision Number: 41 PK/Pid.Sus/2015, that the suspect Hotasi Nababan was a Director of PT. Merpati Nusantara Airlines (PT. MNA) collaborates with *Thirdstone Aircraft Leasing Group* (TALG). PT. MNA wants to lease *the* B737-500 MSN 24898 and B737-400 MSN 23869 aircraft. The rental price for each unit is US\$ 135,000 (One Hundred and Thirty-Five Thousand United States Dollars) per month. Furthermore, Merpati is required to place a *Refundable Security Deposit* (RSD) for each aircraft of US\$ 500,000 (Five Hundred Thousand United States Dollars) which can be withdrawn if there is a problem. So the total RFS is US\$ 1,000,000 (One Million United States Dollars). The million dollar fund was sent via Bank Mandiri *Letter of Credit* (L/C). Even though *security deposits* in the form of cash are common in the aviation business, Merpati is still trying to bargain for *security deposits* in the form of *letters of credit* (L/C) or *escrow accounts*. But, again, because Merpati's financial credibility was low, TALG refused and continued to ask for *a security deposit in cash*.<sup>10</sup>

To prevent risks, Merpati requested that the money not be handed over directly to TALG, but to an independent party as deposit keeper (*custodian*). TALG agreed and proposed *Hume and Associates*, a law office led by *Ted Hume and Jon C Cooper*, to become *Custodian*. Merpati also checked *Hume and Associates*, which is also located at 1924 N Street, Washington. This law office specializes in *International Trade Law and Litigation in Federal Court*. Convinced that the law office was not fictitious, on December 20 the *security deposit funds* were sent to *the Hume and Association account*. However, along the way, it turned out that TALG had broken its promise. The two planned aircraft failed to be handed over to PT. MNA.

The court finally won Merpati's lawsuit. On July 8 2007, a judge at the District of Columbia Court, Washington DC, declared TALG and *Hume and Associates* guilty of default and ordered them to pay Merpati US\$ 1,000,000 (One Million United States Dollars), according to the amount of the *Security Deposit funds*. The court also ordered them to pay interest accrued on the funds. Even though Merpati won the lawsuit, the defendants did not carry out their obligations. Merpati just received the return of the deposit amounting to US\$ 4,793 (Four Thousand Seven Hundred and Ninety Three United States Dollars) which was sent to Merpati's account at Bank Mandiri. Merpati itself continues to strive for TALG and *Hume & Associates* to pay these obligations.

The accountability mechanism for directors in managing BUMN has been regulated in the BUMN Law. Apart from other provisions regulated in the Company Law. The responsibility of directors is not limited to civil liability, but if it can be proven that there has been a criminal act such as fraud, *then* the directors can be held criminally liable.

## B. RESEARCH METHODS

The approach method used in this research is a normative juridical approach. The juridical approach is an approach that refers to applicable laws and regulations, while the normative approach is research on secondary data in the legal field.<sup>11</sup>

Secondary data consists of primary legal materials, secondary legal materials and tertiary legal materials, so that in processing and analyzing these legal materials one cannot escape from various interpretations known in legal science.

## C. DISCUSSION

### Criminal Liability of Directors in Implementing *the Business Judgment Rule Doctrine* for Corruption Crimes

Criminal liability of directors in the application of *the business judgment rule doctrine*, in operate company actions taken by the board of directors For save company from loss have consequences law Good civil nor criminal .

Criminal acts only refer to prohibited and punishable acts with a criminal threat. Whether the person who commits the act is then sentenced to a crime depends on whether the person committed the act was guilty. Thus, discussing criminal responsibility must inevitably be preceded by an explanation of the criminal act. Because a person cannot be held criminally responsible without first committing a criminal act. It is felt to be unfair if suddenly someone has to be responsible for an action, even though he himself did not carry out the action.<sup>12</sup>

Criminal liability ( *toerekenbaarheid* -Bld or *criminal liability* -Ing), actually does not only concern legal matters, but also concerns moral values or general decency adhered to by a society or groups in society.

The rapid development of society and technology in the 21st century has led to developments in society's views or perceptions regarding general moral values, although in principle general moral values have not changed, especially regarding acts such as murder, rape, abuse or crimes against soul and body as well as property. Changes in society's views regarding private conduct, *especially* western society, are experiencing rapid changes. This is different from

<sup>10</sup> Hotasi Nababan , *Don't Take Civil Crimes, Suing Pigeon Rentals* , Q Communication, Business Journal, June 2012, p.31

<sup>11</sup>Amiruddin, et al, *Introduction to Legal Research Methods*, PT. Raja Grafindo Persadahal, Jakarta , 2004, p . 163.

<sup>12</sup>Moeljatno, *Principles of Criminal Law* , Eighth Edition, Rineka Cipta, Jakarta, 2008, matter . \_ 165 .

eastern society, especially society in several ASEAN countries, which has not experienced much change in views regarding the values of public decency regarding *private conduct*.<sup>13</sup>

In criminal law, the concept of "responsibility" is a central concept known as the doctrine of error. In Latin the doctrine of error is known as *mens rea*. The doctrine of *mens rea* is based on an act that does not make a person guilty unless the person's thoughts are evil. In English, this doctrine is formulated as *an act does not make a person guilty, unless the mind is legally blameworthy*. Based on this principle, there are two conditions that must be fulfilled in order to convict someone, namely that there is a prohibited external act/criminal act (*actus reus*), and there is an evil inner attitude/ reprehensible (*mens rea*).<sup>14</sup>

Criminal liability is defined as continuing the objective blame that exists for a criminal act and subjectively that meets the requirements to be punished for that act. The basis for a criminal act is the principle of legality, while the basis for the perpetrator being punished is the principle of error. This means that the perpetrator of a criminal act will only be punished if he is guilty of committing the criminal act. When is someone said to have made a mistake regarding criminal liability?<sup>15</sup>

Criminal liability is a person's responsibility for the criminal act he or she commits. Strictly speaking, what the person is responsible for is the criminal act he committed. Criminal liability occurs because a criminal act has been committed by someone. Criminal liability is essentially a mechanism built by criminal law to react to violations of an "agreement to reject" a particular act.<sup>16</sup>

According to Sudarto, it is not enough to punish someone if that person has committed an act that is contrary to the law or unlawful. So even though the act fulfills the definition of an offense in the law and is not justified, it does not meet the requirements for a criminal sentence. For punishment, there is still a requirement for criminal imposition, namely that the person who committed the act has a fault or is guilty. That person must be held accountable for his actions or if seen from the perspective of his actions, new actions can be held accountable to that person.<sup>17</sup>

In trouble Decision Number: 41 PK/ Pid.Sus/2015, that the suspect Hotasi Nababan was a Director of PT. Merpati Nusantara Airlines (PT. MNA) collaborates with *Thirdstone Aircraft Leasing Group* (TALG). PT. MNA wants to lease the B737-500 MSN 24898 and B737-400 MSN 23869 aircraft. The rental price for each unit is US\$ 135,000 (One Hundred and Thirty-Five Thousand United States Dollars) per month. Furthermore, Merpati is required to place a *Refundable Security Deposit* (RSD) for each aircraft of US\$ 500,000 (Five Hundred Thousand United States Dollars) which can be withdrawn if there is a problem. So the total RFS is US\$ 1,000,000 (One Million United States Dollars). The million dollar fund was sent via Bank Mandiri *Letter of Credit* (L/C). Even though *security deposits* in the form of cash are common in the aviation business, Merpati is still trying to bargain for *security deposits* in the form of *letters of credit* (L/C) or *escrow accounts*. But, again, because Merpati's financial credibility was low, TALG refused and continued to ask for a *security deposit in cash*.<sup>18</sup>

Even though the RKAP of PT. The MNA was ratified in October 2006, while the process of leasing 2 (two) Boeing 737-400 and Boeing 737-500 aircraft began in May 2006, Defendant HOTASI DP NABABAN as Main Director of PT. MNA did not report or propose changes or re-approval to the GMS on the previously approved RKAP so that the rental plan for 2 (two) Boeing 737-400 and Boeing 737-500 aircraft which had started in May 2006 was included in the RKAP' even though it was in accordance Article 22 paragraphs (1) and (2) Law Number 19 of 2003 concerning State-Owned Enterprises in conjunction with Article 35 paragraphs (1), (2), and (3) PP Number: 45 of 2005 concerning Establishment, Management, Supervision and Dissolution of State-Owned Enterprises,

Defendant HOTASI DP NABABAN as President Director is obliged to submit the Draft Company Work Plan and Budget to the GMS to obtain approval;

In the process, it turned out that the Petitioner for Judicial Review/Convict carried out the aircraft rental not in accordance with the applicable provisions and procedures, namely every action of the Company's Directors which burdened the company's budget had to be approved by the shareholders through ratification of the Acting RAK. In this case the Petitioner for Judicial Review/Convict did not go through a direct process by using funds sourced from operational funds;

In its implementation it turned out that PT. MNA failed and suffered huge losses and last known PT. MNA was cheated by TALG and Hume & Associate PC;

The substance of the case being processed in the USA has been revealed in the trial and the essence of the problem actually makes the problem clearer and clearer, namely because the Petitioner for Judicial Review/Convict was not careful and did not heed the provisions of the Law, the PT. MNA experienced major losses, namely loss of money/ *assets* PT. MNA of USD \$1,000,000;

<sup>13</sup>Widyo Pramono, *Corporate Criminal Liability Copyright a*, First edition, ctk. First, PT. Alumni, Bandung, 2012, p a l. 78-89

<sup>14</sup>Hanafi, "*Criminal Accountability System Reform*", Law Journal, Vol. 6 No. 11 of 1999, p a l. 27.

<sup>15</sup>Roeslan Saleh , *Criminal Acts and Criminal Responsibility* , Aksara Baru, Jakarta, 2003 , p . 102

<sup>16</sup>Chairul Huda, *From No Crime Without Fault To No Criminal Accountability Without Fault* , Second Printing, Kencana, Jakarta, 2006, p al . 68.

<sup>17</sup>Sudarto, Criminal Law I, Agency for Providing Lecture Materials, FH UNDIP, Semarang, 1988, p al . 85

<sup>18</sup>Hotasi Nababan , *Don't Take Civil Crimes, Suing Pigeon Rentals* , Q Communication, Business Journal, June 2012, p.31

That there is no conflict between *the Judex Juris decision* and the decisions in question because what is being tried by the United States Court is not the act committed by the Judicial Review Petitioner/Convict, whereas the acts committed by the Judicial Review Petitioner/Convict have been tried as stated in the Judex Juris decision. accurately and correctly that the Applicant for Judicial Review/Convict is guilty of committing the crime of Corruption jointly;

Thus, the reasons for legal considerations and the Judex Juris decision are appropriate and correct regarding the proof that the Petitioner for Judicial Review/Convict is legally and convincingly guilty of committing the criminal act as charged in the Primair indictment, therefore the *a quo decision* is declared to remain valid; Considering, that therefore the reasons for the request for reconsideration are not included in one of the reasons for Judicial Review as intended in Article 263 paragraph (2) of the Criminal Procedure Code;

Based on Article 266 paragraph (2) a of the Criminal Procedure Code, the request for review must be rejected and the decision requested for review is declared to remain valid;

Justification of the legal parameters regarding *the Business Judgment Rule* can be seen in Article 97 paragraph (5) which states that members of the Board of Directors cannot be held responsible for losses as intended in paragraph (3) if they can prove:<sup>19</sup>

1. The loss was not due to his fault or negligence;
2. Has carried out management in good faith and *prudence* for the benefit and in accordance with the aims and objectives of the Company ;
3. Have no conflict of interest, either directly or indirectly, regarding management actions that result in losses (loyalty ); And
4. Have taken action to prevent the occurrence or continuation of such losses.

Meanwhile, for the Board of Commissioners, Article 114 paragraph (5) applies which explains that members of the Board of Commissioners cannot be held responsible for losses as intended in paragraph (3) if they can prove:

1. Has carried out supervision in good faith and prudence for the interests of the Company and in accordance with the aims and objectives of the Company;
2. Have no personal interest, either directly or indirectly, in the management actions of the Board of Directors which result in losses; And
3. Has provided advice to the Board of Directors to prevent the occurrence or continuation of such losses.

Company. The management of BUMN is carried out by the Directors, and the Directors are fully responsible for managing the BUMN for the interests and objectives of the BUMN, both inside and outside the court .

Criminal Responsibility recognizes the existence of 3 (three) doctrines, namely direct criminal responsibility or identification theory, *vicarious criminal responsibility* , and *strict criminal responsibility*.

In the theory of *corporate criminal liability* , people who are identical to a corporation depend on the type and organizational structure of a corporation, but generally include *the board of directors, the chief executive officer* , or officers or corporate administrators at the same level as these two officers. .<sup>20</sup>

Meanwhile, Yedidia Z. Stern expands the scope of people who are synonymous with corporations to include *the general meeting, board of directors, managing director, general manager, chief executive, and possibly individual directors, secretaries, and shop managers*.

The reason they are included as synonymous with corporations is because corporations are in many ways equated with the human body. Corporations have brains and nerve centers that control what they do. It has hands that hold tools and act according to directions from the nervous center.

Some people in the corporate environment are just employees and agents who are nothing more than hands in doing their work and cannot be said to be the inner attitude or will of the company. On the other hand, directors or officials of the same level represent an inner attitude that directs, represents the will. company and control what it does. Their inner attitude is the inner attitude of the corporation.<sup>146</sup>

Regarding people who are identified with a corporation, there are five approaches that can be used to determine when the actions of certain people in a corporation are said to be corporate actions, namely:<sup>21</sup>

1. Vague description

The organ theory established through a British court decision chose to be careful in not defining organs in legal terms. For many years, English courts have preferred to use terms from medicine and psychology to describe the relationship between a corporation and its management, both physical and non-physical. They are actually not satisfied with terms such as "*very ego and center*", "*directing mind and will*" or "*control center*". An analogy to these terms is the term "*corporate body*", where a corporation cannot be punished for serious criminal acts committed by its management if the action did not originate from the mind of the corporation. This condition means that legal experts do not yet have a clear distinction between organs and people who are merely corporate employees.

<sup>19</sup>Juwana, H. (2019). *Business Judgment Rule: Application of Legal Protection to Company Organs in Company Business Activities Online Legal Workshop Papers*.

<sup>20</sup>Mahrus Ali. " *Basics of Criminal Law, First Edition*", print. Second: Sinar Graphics, Jakarta, 2012. p al . 107

<sup>21</sup>*Ibid*, p. 108

2. Formal criteria

There are four criteria in it, namely *primary organs test*, *delegation test*, *authorized acts test*, and *corporate selection test*. According to *the primary organs test*, corporate criminal responsibility is imposed only on actions carried out by primary organs, namely those who have the power to carry out activities in a corporation based on official documents and regulations within the corporation. Meanwhile, what is meant by main organs are corporate officials who can act based on the direct authority of official documents and corporate rules without any intervention from other human actions. Meanwhile, based on *the delegation test*, what is meant by organs are people who have power based on the delegation contained in the company's official documents.

In the *authorized acts test*, the determination of corporate organs is based on the actions of certain people in a corporation who have the mandate of the main organs. What is important here is not who carries out the action, but whether the action has received a mandate from the main organs of the corporation. As for *the corporate selection test*, the determination of corporate organs is based on direct appointment from the corporation, which is carried out every management period.

3. Pragmatic approach.

According to this approach, those who are corporate organs so that their actions are identical to corporate actions are "*superior agents*", "*responsible agent*", "*important official*", "*primary agent*", "*top management*", and "*a directive*".

4. Hierarchical analysis.

According to this approach, determining corporate organs is based on identifying people who have important positions in the organizational structure where their will and actions are considered the will and actions of the corporation.

5. Function analysis.

If hierarchical analysis focuses on certain people who have high positions in the organizational structure to determine corporate organs, then functional analysis places more emphasis on the functional aspects of the behavior of corporate officials. These criteria of course do not specifically indicate what functions make someone acting in the interests of the corporation considered a corporate organ. What is important is that a person's actions, regardless of who they are, as long as those actions fulfill the functional aspects of corporate action, then that person's actions are considered corporate actions. In *the theory of corporate criminal liability*, the existence of corporations has an independent nature in terms of criminal liability so that it cannot be equated with the *vicarious liability model*.

Where the actions taken by individuals do not essentially represent the corporation, but are considered to be the actions of the corporation itself. When the individual makes a mistake, that mistake is basically the corporation's fault. In short, individual mistakes are identical to corporate mistakes.

## D. CONCLUSION

Making high-risk decisions or inaccuracies in calculating the risks to be borne, which results in the company experiencing losses, will have an impact on the management (directors and commissioners) and their staff to be held accountable for these risky decisions, either in the form of a civil liability lawsuit. even criminal charges. Even in Article 97 paragraph (3) of the PT Law, it is stated that members of the Board of Directors are personally responsible for the company's losses if they are guilty or negligent in carrying out their management duties in *good faith* and full responsibility. In Article 155 of the PT Law, the responsibility of Directors or Commissioners for errors and negligence does not reduce responsibility in the criminal field. In the case of PT Asuransi Jiwasraya, this is also the case. Decisions taken by management (directors or commissioners) should have gone through the stages as mentioned above, in particular a risk, business review and most importantly compliance with applicable *standard operating procedures (SOP)*. By looking at all this, shareholders can quickly assess whether the decision taken falls into the *Business Judgment Rule category* or not. Every decision taken by the directors and commissioners has its own record for the majority shareholders: whether the existing management will be retained or must be replaced. Justification of the legal parameters regarding *the Business Judgment Rule* can be seen in the Limited Liability Company Law (UU PT) which regulates certain limitations regarding when directors and commissioners cannot be held responsible for risks .

## E. SUGGESTION

In running the Company, the directors as the Company's management implements principle careful be careful , because in management company do not chase quick profits in a short time. Business concepts such as "The higher the risk taken in a business, the higher the profits that a Company may obtain" (*High Risk, High Return*) make management always be careful in running the Company. Mistakes in managing the Company, without taking into account the risk

factors faced, resulting in the company losing money will provide the opportunity for the Company's management and its staff to be held accountable for the decisions they have taken, both civilly and criminally.

BUMN Law, State Finance Law, BPK Law, Limited Liability Company Law. Inconsistent with regard to State Finances is State Assets which are separated in the form of shares in the Company. When it happens Losses in the form of BUMN/BUMD debt are NOT State losses /debts , but losses in the form of BUMN /BUMD debts themselves. Juridically, capital included in a company is no longer the wealth of the person who invested the capital, but becomes the wealth of the company itself. This results in a separation of wealth between the wealth of shareholders and the company. In connection with the suspicion and prosecution of a number of former directors or directors of Persero for their actions which were detrimental to Persero so that they were categorized as detrimental to state finances, it is necessary to provide an in-depth understanding because Persero's finances are based on legal theory and the environmental theory of legal counsel and are not state finances, so losses to Persero are not losses. country.

Definition and Sources of State Finance that have been become form there are statements in the Company's shares as national wealth and some not agree as riches personal holder There is no similarity or unity in Persero shares between experts, so it is appropriate to recommend amendments related to State Finance in: UUPT, BUMN Law, State Finance Law, BPK Law.

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14. Republic of Indonesia Government Regulation Number 72 of 2016 concerning Amendments to Government Regulation Number 44 of 2005 concerning Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies.
15. Republic of Indonesia Government Regulation no. 27 of 2021 concerning BUMN Corporate Governance .

16. Republic of Indonesia Government Regulation (PP) No. 23 of 2022 concerning Amendments to Government Regulation (PP) no. 45 of 2005 concerning the Establishment, Management, Supervision and Dissolution of State-Owned Enterprises (BUMN) .
17. Financial Services Authority Regulation no. 21/POJK.04/2015 concerning Public Company Governance .
18. Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations .
19. Supreme Court of the Republic of Indonesia Fatwa Number WKMA/Yud/20/VIII/ 2006 dated 16 August 2006 at the request of the Minister of Finance of the Republic of Indonesia.
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21. Civil Code (*Burgerlijk Wetboek*), accompanied by an explanation. (2014). Sinarsindo Utama. Mold I.
22. Criminal Code (KUHP). As well as complete comments, article by article. R. Soesilo. (1996). Bogor: Politeia, Rewritten.

#### **DECISIONS COURT ACT CRIMINAL CORRUPTION**

##### **1. GALAILA KAREN KARDINAH aka KAREN GALAILA AGUSTIAWAN Aka KAREN AGUSTIAWAN:**

- Central Jakarta District Court Decision Case Number 15/Pid.Sus-TPK/2019/PN Jkt.Pst Date 10 June 2019.
- PT JAKARTA Appeal Decision Number 34/PID.TPK/2019/PT DKI Dated 24 September 2019
- RI Supreme Court Cassation Decision Number 121 K/Pid.Sus/ 2020 March 9, 2020

##### **2. HOTASI DP NABABAN**

- Central Jakarta District Court Corruption Court Decision Number 36/Pid.B/ TPK/2012/PN.Jkt.Pst Date 19 February 2013.
- RI Supreme Court Cassation Decision Number 417 K/Pid.Sus/ 2014 May 7, 2014.
- Judicial Review Decision of the Supreme Court of the Republic of Indonesia Number 41 PK/Pid.Sus/2015 Dated 4 September 2015.