

# The business judgment rule as a criminal defense for state-owned enterprise directors in Indonesian corruption cases

<sup>1</sup>Tohom Hasiholan, <sup>2</sup>Abdul Madjid, <sup>3</sup>Nurini Aprilianda & <sup>4</sup>Adi Kusumaningrum

## Abstract

This article critically examines the application of the business judgment rule (BJR) as a defense mechanism for directors of Indonesian State-Owned Enterprises (SOEs) who face criminal charges. The BJR, widely recognized in corporate law, traditionally protects directors from liability for decisions made in good faith, informed judgment, and absence of conflict of interest. However, in Indonesia, the BJR's applicability remains contested, especially in criminal proceedings involving SOE directors. The paper explores the doctrinal and comparative legal perspectives on the BJR, analyzing how jurisdictions such as the United States, Australia, and several European countries incorporate the rule into both corporate and criminal law frameworks. Using a qualitative legal research method involving normative juridical approaches and comparative analysis, this study finds that Indonesia lacks a coherent legal doctrine integrating the BJR into its criminal justice system. Judicial decisions in Indonesia display inconsistency in applying the rule, often disregarding directors' business judgment and managerial discretion. The article recommends the formal codification of the BJR within Indonesia's criminal law context, especially concerning SOEs, to provide legal certainty and protect directors acting in good faith. Such a move would align Indonesia with global corporate governance standards and prevent criminalization of legitimate business decisions.

**Keywords:** *business judgment rule, fiduciary duty, corruption law, state-owned enterprises*

## Article History:

*Received:* May 26, 2025

*Accepted:* July 17, 2025

*Revised:* July 14, 2025

*Published online:* August 2, 2025

## Suggested Citation:

Hasiholan, T., Madjid, A., Aprilianda, N. & Kusumaningrum, A. (2025). The business judgment rule as a criminal defense for state-owned enterprise directors in Indonesian corruption cases. *International Review of Social Sciences Research*, 5(3), 79-94. <https://doi.org/10.53378/irssr.353236>

## About the authors:

<sup>1</sup>Corresponding author. Doctor of Law Program, Faculty of Law, Universitas Brawijaya, Indonesia. Email: [hasiholantohom@gmail.com](mailto:hasiholantohom@gmail.com)

<sup>2</sup>Doctor of Law, Graduate Program, Faculty of Law, Universitas Brawijaya, Indonesia. Email: [majid@ub.ac.id](mailto:majid@ub.ac.id)

<sup>3</sup>Doctor of Law, Graduate Program, Faculty of Law, Universitas Brawijaya, Indonesia. Email: [nurini.aprilianda@ub.ac.id](mailto:nurini.aprilianda@ub.ac.id)

<sup>4</sup>Doctor of Law, Graduate Program, Faculty of Law, Universitas Brawijaya, Indonesia. Email: [adi\\_ningrum@ub.ac.id](mailto:adi_ningrum@ub.ac.id)

## 1. Introduction

Although the Business Judgment Rule (BJR) principle has been recognized as a form of legal protection for corporate directors in various jurisdictions, there has been no explicit codification of this principle in Indonesia's legal system to date. This lack of clarity causes legal uncertainty, particularly for directors of state-owned enterprises who face criminal risks as a result of business decisions they make despite acting in good faith.

The Business Judgment Rule (BJR) is a doctrine in corporate law that protects directors from liability for losses arising from business decisions made in good faith, based on adequate information, and within their authority (Lestari, 2015; Zulmawan, 2019). In the context of Indonesia's SOEs, understanding this principle is critical, as directors are often criminally pursued for business decisions that fail, even if taken prudently. In order to determine the extent of directors' legal responsibility for a business decision that leads to financial losses, it is crucial to be familiar with the concept of the BJR (Ojolo & Singh, 2024). The absence of explicit BJR regulation in Indonesia has led to legal uncertainty, as evidenced in two similar cases: Karen Agustiawan (PT Pertamina), who was acquitted based on BJR principles, and Hendrisman Rahim (PT Jiwasraya), who was convicted despite similar arguments. This disparity underscores the inconsistency in applying BJR and the urgent need for normative clarity

In criminal law, defenses are divided into justification and excuse. The BJR concept aligns with *excuse*, as it may remove culpability when business decisions are made in good faith but result in losses (Baihaqi et al., 2024; Purwoleksono, 2014). This theoretical linkage is central to evaluating whether directors should be criminally liable in corruption cases.

Several previous studies have made important contributions to understanding the normative and conceptual context of the BJR principle, both in common law and civil law jurisdictions. In the United States, for example, this principle has been firmly embedded in corporate law systems and reinforced by Supreme Court decisions in states like Delaware (Rajagukguk, 2009). Rissy (2020) emphasizes that this doctrine not only provides protection but also encourages responsible risk-taking by directors. However, most of these studies are limited to civil contexts and have not explored the relevance of BJR as a form of excuse in criminal law.

In the Indonesian context as a civil law system, BJR has not been explicitly regulated. Although Article 97 paragraph (5) of the Limited Liability Company Law provides room for protection of directors who act in good faith, its implementation in courts remains inconsistent

(Ersya, 2023; Gunawan & Gunadi, 2023). Systematic comparison by Bachri et al. (2023) emphasizes the importance of explicit codification to prevent multiple interpretations. However, literature connecting this gap with criminal liability of state-owned enterprises (BUMN) directors in corruption cases has not yet been found.

In criminal law discourse, doctrines of criminal defenses such as justification (*rechtvaardigingsgronden*) and excuse (*schulduitsluitingsgronden*) become important parts in assessing perpetrator accountability. Moeljatno (2002) and Purwoleksono (2014) explain that excuse defenses eliminate the perpetrator's fault even though their actions still violate the law. Purwoleksono (2014) suggests that the concept of excuse can be applied in the context of directors' business decisions, although its application in corporate corruption cases has not been comprehensively discussed. This is where the main theoretical contribution of this research lies.

The regulatory gap of BJR in Indonesia creates legal uncertainty, as seen in two similar cases: Karen Agustiawan (PT Pertamina) who was acquitted based on BJR principles, and Hendrisman Rahim (PT Jiwasraya) who was sentenced despite using similar defense. This difference shows the inconsistent application of BJR and the urgency of normative clarity. Simbolon and Pramarta (2023) highlight that these different decisions are not only based on legal facts but are also influenced by the lack of interpretation standards for BJR. Meanwhile, Nulhakim and Novianto (2023) note that non-legal factors such as public opinion also influence court decisions in corruption cases involving state-owned enterprises officials. These literatures have not explicitly built a normative framework that positions BJR as a criminal law protection tool for directors. Unlike previous studies that discuss BJR in the context of directors' responsibility normatively (Black et al., 2006; Rahardjo, 2017), this research emphasizes aspects of its application in the Indonesian criminal law context which still lacks exploration. By comparing two conflicting Supreme Court decisions, this article shows that inconsistency is not an exception but an indication of weak doctrinal construction in the state-owned enterprise context. Therefore, although various literatures have examined BJR and excuse defenses separately, there has been no study that systematically unites both in the context of criminal liability of state-owned enterprise directors in corruption cases. This research aims to fill this gap by formulating a juridical framework that makes BJR a legitimate and proportional basis for defense.

Based on this background, this research specifically aims to analyze whether the BJR principle can be used as an excuse in corruption criminal cases involving directors of state-owned enterprises, especially when business decisions are made without malicious intent or legal violations. This research also aims to analyze whether the BJR principle can be used as an excuse in corruption criminal cases involving directors of state-owned enterprises, especially when business decisions are made without malicious intent or legal violations. It also aims to identify factors causing disparities in decisions in similar cases using BJR principles as defense basis and formulate a comprehensive juridical framework to provide legal certainty and fair protection for state-owned enterprises directors in carrying out their managerial functions. To answer these objectives, deep understanding of the BJR principle in both common law and civil law systems, as well as the concept of excuse in criminal law, is needed. Therefore, the following section examines several relevant main literatures, grouped into several themes: (1) BJR in common law systems, (2) BJR in civil law systems, (3) excuse defense doctrine in criminal law, and (4) SOE directors' responsibility framework in Indonesia.

This research not only reveals judicial inconsistency in applying the BJR doctrine but also offers an initial conceptual framework for evaluating court decision consistency. The study proposes what can be called the BJR Judicial Consistency Index (*Indeks Konsistensi Yudisial BJR* or IKY-BJR), which is a set of indicators including (1) clear separation between business risks and legal violations, (2) explicit use of duty of care standards in legal considerations, and (3) presence of BJR principle references in final decisions. Although this framework is still exploratory, its application to two case studies shows that both decisions fail to meet indicators consistent with each other. Thus, this research's contribution is not merely descriptive but also normative-conceptual as a basis for developing evaluative indices for similar future decisions.

### **3. Methodology**

This research uses normative juridical method because it aims to examine the application of BJR principles in the Indonesian legal system, particularly in alleged corruption cases by state-owned enterprises directors. This method focuses on analysis of written legal norms, legal principles, and relevant judicial practices, so it can provide strong theoretical and normative foundations in answering the legal issues raised (Marzuki, 2017).

The approaches used in this research include three types:

*Statute approach*, by examining provisions in Law Number 40 of 2007 on Limited Liability Companies and Law Number 31 of 1999 jo. Law Number 20 of 2001 on Corruption Eradication.

*Case approach*, by analyzing two relevant court decisions, namely the PT Pertamina case with defendant Karen Agustiawan and the PT Jiwasraya case with defendant Hendrisman Rahim.

*Comparative approach*, by comparing the application of BJR in Indonesia with other countries' legal systems, particularly the United States, which already has established legal frameworks regarding this principle.

Case selection was conducted purposively based on juridical substance similarity criteria: (1) both defendants are SOE directors, (2) decisions taken resulted in company losses, and (3) there are differences in final decisions (acquitted vs convicted). Meanwhile, data analysis was conducted through normative interpretation of legislation and court decisions, as well as legal construction to build arguments that the BJR principle deserves to be used as a criminal excuse in corruption law contexts, as long as no elements of intent and unlawful acts are found.

The PT Pertamina and PT Jiwasraya cases were chosen because both represent high legal significance, both involving state-owned enterprises directors who made strategic business decisions but produced contradictory court decisions. This difference reflects ambiguity in applying BJR principles in Indonesian law. To maintain objectivity, analysis was conducted using double-coding techniques on decisions, and source triangulation between legal documents, scientific literature, and academic opinions. Additionally, as a complement to the normative approach, this research considers adding structured interviews or surveys of practitioners and academics to strengthen empirical foundations and obtain a more complete picture of legal practice.

Potential bias in case selection and analysis is anticipated through two methods. First, by comparing data sources from various perspectives, such as judges' considerations, legal counsel defense, and academic opinions in literature. Second, by recognizing the socio-political context accompanying cases, such as public pressure or media scrutiny that may influence legal decision-making independence (Marzuki, 2017). This research does not assess the correctness of decisions but focuses on differences in legal principle application in two cases with similar factual characteristics.

## 4. Findings and Discussion

The panel of judges must first relate the action to the fiduciary duty principle before stating that a defendant has acted in accordance with the BJR principle. This is important to determine whether the defendant has met the standard of responsibility inherent in his position. Once this relationship has been evaluated, the judge can determine if the directors erred in their business decisions by applying the BJR principle.

In determining whether directors can be released from responsibility for business decisions taken, benchmarks are used as stated in Article 97 paragraph (5) of Law Number 40 of 2007 concerning Limited Liability Companies. These benchmarks cover four main aspects: The loss incurred is not the result of the directors' fault or negligence; The board members have fulfilled their management responsibilities sincerely and prudently based on the objectives and goals of the organization; The directors are not involved in any conflicts of interest, whether it be through direct or indirect means, regarding the management decisions that result in financial setbacks for the company; The directors have implemented measures to avoid or lessen the impact of potential losses. However, the exemption of directors from responsibility does not fully refer to the applicable Company Law. This is because there are additional requirements, namely there are no elements of intentional loss and no violations of applicable law so that what is tested in the directors' actions are the elements of Intent and Unlawful Acts. Violating fiduciary duty could lead to individual liability for the directors. For example, if a director invests company funds in good faith and only for the interests and profits of the company, and based on considerations from professional investment analysts who work according to professional standards, but the investment turns out to cause losses to the company, then the directors are not necessarily personally responsible for these losses (Maryam, 2023; Muarif, 2024).

As a comparison, in the United States, as described in Chapter II, courts in recent years have recognized that directors' decisions in a number of risky business cases can cause losses to the company. Directors are protected from personal liability if they act in good faith when making decisions, according to the BJR doctrine (Lesmana & Yustiawan, 2023). The regulations surrounding the BJR vary slightly in each state within the United States legal system (Wijaya, 2020; Wijayanto & Andini, 2024). The state of Delaware, for example, has no single formulation that has been in effect for nearly two centuries. The Delaware Supreme Court, starting in 1984, has established that a director's decision resulting in a loss without

being made in good faith can qualify as a breach of the BJR principle. The following statement is a direct excerpt from the Delaware Supreme Court's ruling:

*“A Presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interest of the company. Absent an abuse of direction, that judgment will be respected by the courts, with the burden being on the party challenging the decision to establish facts rebutting the presumption”* (Rajagukguk, 2009).

This means that there is an assumption that when directors make business decisions, they do so with adequate knowledge, truthfully and with sincere conviction, the decision is made in the company's best interest. As long as authority is not misused, the courts will uphold and honor the decision. The burden of proving that the decision is not appropriate is on the party who opposes the decision, and they must show facts that can refute the assumption.

In practice, the assertion made by the BJR is widely accepted, particularly in situations where directors are not influenced by personal interests (Rabathi & Zakaria, 2022). Shareholders are required to demonstrate that their opposition to the decision made by the company shows that no reasonable business person would have made the same choice (Syaflizar, 2023), or that the directors did not adequately review all pertinent information before reaching a decision (Rajagukguk, 2009; Sulistiyono & Suwadi, 2023). If the directors do not possess a self-interest, the BJR is used to evaluate if they have breached their duty of care (Haykal, 2023; Murti, 2021). Nevertheless, if the directors do have a personal interest, the BJR premise can be challenged, and a fairness standard is used to decide if they have violated their duty of loyalty to the company (Haykal, 2023). Directors are always obligated to act in the best interest of the company and its shareholders (Rajagukguk, 2009).

According to this clarification, the BJR offers directors immunity when making bold business choices, as long as they do so honestly, prudently, and without any conflicts of interest. The main benchmark in determining directors' responsibilities in Indonesia refers to Article 97 paragraph (5) of the Company Law, with four main aspects that must be met. However, if there is a violation of fiduciary duty or abuse of authority, directors can still be subject to personal responsibility. Comparison with the legal system in the United States shows that the application of the BJR varies in each state, but the basic principle remains the same, namely providing protection to directors as long as they act in the best interest of the company. There needs to be additional requirements besides the four main aspects that must be met,

namely there are no elements of intentional loss and no violations of applicable law so that what is tested in the directors' actions are the elements of Intent and Unlawful Acts, if these are not violated then the nature of the directors' Unlawful Act is eliminated on the basis of the BJR.

Understanding the nature of unlawful acts, both formally and materially, as explained by Purwoleksono (2014) and Prasetyo and Barkatullah (2005), becomes an important foundation in viewing court confusion in assessing directors' fault. In the Jiwasraya case, judges seemed to only rely on formal elements without considering good faith principles as regulated in the BJR.

Schaffmeister et al. (1995, as cited in Kenedi, 2023), classify unlawful acts into four types: general, specific, formal, and material. In Indonesian corruption judicial practice, this concept has not been applied consistently. For example, in Hendrisman's case, material elements were not considered even though his actions were carried out in his capacity as a director implementing the company's strategic policies. General unlawful nature of all written or unwritten offenses as a core part of the offense in the offense formulation, must be unlawful to be punished, so there is no need to include unlawfulness in the indictment and no need to prove it. Example: murder. Articles 2 and 3 of Law No. 31 of 1999 highlight the necessity of including the term "unlawful" in the indictment to establish guilt. Failure to prove this element will result in an acquittal. Unlawful behavior includes not only actions that go against the law, but also actions that go against societal norms and standards of decency in social interactions. Formal unlawful nature, all core parts of the offense if already fulfilled or can be proven, automatically the act is considered to be unlawful. According to Moeljatno (2002, as cited in Santoso, 2015), there are differences between formal and material views, these differences include, among others, as follows:

The formal perspective only acknowledges exceptions outlined in the law, such as those stated in Article 44 of the Criminal Code concerning the imperfect mental capacity of an individual or mental illness, Article 48 of the Criminal Code regarding unavoidable circumstances, and Article 49 of the Criminal Code concerning self-defense (*noodweer*); and

Illegality is a necessary component of all criminal actions, even if not explicitly stated in the definition. The formal perspective may not always consider illegality as a factor in criminal acts, unless it is explicitly stated in the offense description.

According to Bambang Poernomo (1994), the unlawful nature of an act has two measures, namely the formal unlawful nature or *formele wederrechtelijkheid begrip* and the material unlawful nature or *materiële wederrechtelijkheid begrip*. Formal unlawfulness if the act is seen solely as an act that is contrary to the law, in accordance with the formulation of the offense and its exceptions, such as force majeure, forced defense, only because it is determined in writing in the law. Conversely, unlawfulness of material considers illegal actions as not necessarily conflicting with the law, and an action that goes against the law may be seen as not in violation of the law (Santiago, 2024; Sugiarto et al., 2024). Therefore, under the concept of material unlawfulness, going against the law can be understood as both breaching legislation and defying laws not covered by legislation (Efendi et al., 2024).

The main finding of this research is the disparity in applying the BJR principle in two similar state-owned enterprises corruption cases, namely the PT Pertamina case (Karen Agustiawan) and PT Jiwasraya case (Hendrisman Rahim). Although both directors took managerial actions in their capacity, the court decisions differed significantly. For clarity of comparison, Table 1 shows the comparative analysis.

**Table 1**

*Comparison of Business Judgment Rule application in two state-owned enterprises cases*

Aspect	PT Pertamina Case (Karen Agustiawan)	PT Jiwasraya Case (Hendrisman Rahim)
Position	President Director of PT Pertamina	President Director of PT Asuransi Jiwasraya
Type of Business Decision	LNG procurement investment abroad	High-risk mutual fund investment
Defense Basis	Using Business Judgment Rule (BJR) principle	Using Business Judgment Rule (BJR) principle
Judge's Decision	Acquitted from all criminal charges ( <i>ontslag van alle rechtsvervolging</i> )	Convicted for being deemed to have caused state financial losses
Judge's Consideration	Action deemed reasonable, with good faith and no conflict of interest	Deemed negligent, not careful, and responsible for state losses

In criminal law, the element of 'unlawful act' becomes a critical point in assessing an action as a criminal offense. However, experts disagree: the formal approach considers this element only exists if stated in the offense formulation, while the material approach considers

it always exists if the act contradicts legal norms and propriety (Hidayat, 2021; Kanter & Sianturi, 2018; Leden, 2005; Marpaung, 2005). This difference impacts the interpretation of Article 2 paragraph (1) and Article 3 of the Corruption Law, where the word 'unlawful' is often interpreted broadly, including business decisions not accompanied by malicious intent. Consequently, the BJR principle is difficult to accept as an excuse defense, although doctrinally it should be possible (Basri, 2021; Pratama, 2021).

**Table 2**

*Evaluation based on four business judgment rule benchmarks*

<b>BJR Benchmark (Law 40/2007 Article 97 Paragraph 5)</b>	<b>Karen Agustiawan (Pertamina)</b>	<b>Hendrisman Rahim (Jiwasraya)</b>
No element of fault or negligence	Not proven negligent	Deemed negligent by the court
Acting in good faith and carefully	Proven to act carefully and based on expert analysis	Deemed to ignore prudential principles
No conflict of interest	No conflict of interest found	No proven conflict of interest
Efforts to prevent or minimize losses	Actions based on professional recommendations	Insufficient evidence regarding loss mitigation

One of the main elements in BJR is proving that directors act in good faith. In Karen Agustiawan's case, the court assessed that the LNG investment decision was made through professional study, there was no indication of personal benefit, and it was implemented for corporate interests. This aligns with the fiduciary duty principle (Gunawan & Gunadi, 2023). Conversely, in Hendrisman Rahim's case, although the defense used the same principle, the judge deemed there was negligence because the investment was made without mature risk calculation. This shows that the absence of good faith testing standards causes decisions to become very subjective and potentially unfair (Simbolon & Pramarta, 2023). Besides legal factors, research by Nulhakim and Novianto (2023) and Rabathi and Zakaria (2022) shows that judges' decisions in state-owned enterprises corruption cases are also influenced by public opinion and political context. Syaflizar (2023) emphasizes that evidence variation also affects

decision direction, making comparative case approaches important for identifying factual bias (Sugiarto et al., 2024).

The unlawful element in corruption crimes is often interpreted without considering whether business decisions were made with malicious intent or not. In the formal approach, as explained by Kanter and Sianturi (2018), actions are considered unlawful if they contradict written regulations. Meanwhile, the material approach assesses social context, intent, and decision impact (Marpaung, 2005; Hidayat, 2021). Courts that do not distinguish between the two risk equating strategic business mistakes with corruption crimes, without considering the perpetrator's intent (Pratama, 2021; Basri, 2021).

The uncertainty in applying BJR principles in Indonesia can create widespread effects for state-owned enterprises governance. When directors have no legal guarantee that business decisions made in good faith will not be criminalized, incentives arise to be passive and avoid innovation or expansion. This phenomenon is called the chilling effect, a condition where legal risks limit professional room for maneuver (Santiago, 2024). This certainly harms corporate and state interests, especially in situations requiring quick and strategic decision-making.

Unlike Indonesia, the United States legal system has explicitly regulated BJR principles through the Model Business Corporation Act (MBCA) 2016. In that system, there is a legal presumption that every director's decision is considered valid unless proven otherwise (Febrina & Manullang, 2020; Sulistiyono & Suwadi, 2023), so the burden of proof lies with the plaintiff (Bachri et al., 2023; Rissy, 2020). This protection not only provides legal certainty but also supports courage in making strategic decisions for companies (Santiago, 2024). Conversely, Indonesia's legal system does not yet have a comparable formal mechanism. Protection for directors is only implicit in Article 97 of the Limited Liability Company Law and OJK regulations (Gunawan & Gunadi, 2023), making it highly dependent on judges' subjective interpretation. Without explicit proof standards and firm judicial guidelines, BJR application will remain inconsistent.

From this analysis, it can be concluded that confusion in assessing good faith elements and unlawful intent causes decision disparities that harm legal certainty. Therefore, regulatory reform is needed through: (1) codification of BJR principles in the Corruption Law and State-Owned Enterprises Law, (2) preparation of judicial technical guidelines for judges and prosecutors, and (3) training of law enforcement officers to be able to distinguish business

failure from criminal acts. Without these steps, state-owned enterprises directors will remain in legal uncertainty that hinders their courage in making strategic decisions needed by the state.

## 5. Conclusion

The application of Business Judgment Rule (BJR) principles in Indonesia's legal system still faces major challenges due to the absence of explicit normative regulations. Before this principle can be used as a legal defense basis, courts must first assess whether directors' actions have complied with fiduciary duty principles, namely acting in good faith, based on adequate information, and for the best interests of the company. This becomes the basis for distinguishing rational business decisions from actions containing elements of intent or legal violations.

The unclear regulation of BJR in Indonesia has created legal uncertainty for state-owned enterprises directors, especially in corruption cases involving state losses. This study emphasizes the need for legal reform that includes: Preparation of explicit BJR regulatory models in the Limited Liability Company Law and Corruption Crime Law; Preparation of judicial practice guidelines for judges and prosecutors in assessing directors' business decisions; Integrated training programs for law enforcement officers regarding fiduciary duty and BJR principles; Evaluation of empirical impacts through further research on officer understanding and frequency of BJR application in judicial practice. These recommendations are structured hierarchically to provide systematic and measurable policy direction in addressing existing legal practice disparities.

From a theoretical perspective, this research contributes to corporate law and criminal law development by offering an integrative approach between BJR principles and excuse doctrine in criminal law. Meanwhile, from a practical perspective, this research results can be used as a foundation in formulating legal policy and state-owned enterprises governance that is more fair, proportional, and free from criminalization of business decisions made professionally and responsibly.

This research has limitations in its normative approach and case coverage limited to two case studies (Karen Agustawan and Hendrisman Rahim). Therefore, future research can develop this study through empirical approaches, such as interviews with judges, prosecutors,

and state-owned enterprises directors, as well as cross-country comparative studies to understand best practices for BJR application in criminal law contexts.

With a clear legal framework regarding BJR, it is hoped that state enterprise governance in Indonesia can grow healthier, be braver in strategic decision-making, while remaining legally accountable. This principle will become a bridge between legal protection for business professionalism and effective corruption eradication efforts.

### Disclosure statement

No potential conflict of interest was reported by the author(s).

### Funding

This work was not supported by any funding.

### References

- Bachri, S., Arie, M., & Azisa, N. (2023). Corporate criminal liability related to the business judgment rule doctrine. *Russian Law Journal*, 11(3S), 53–61. <https://doi.org/10.52783/rj.v11i3s.736>
- Baihaqi, I., Makarao, T., & Intihani, S. (2024). Pembelaan terpaksa yang melampaui batas (Noodweer Exces) sebagai alasan dalam penghapusan pidana. *Jurnal Hukum Jurisdiction*, 6(1), 1–11. <https://doi.org/10.34005/jhj.v6i1.162>
- Basri, H. (2021). Perlindungan hukum terhadap pelaku tindak pidana berdasarkan sistem peradilan pidana Indonesia. *SIGN Jurnal Hukum*, 2(2), 104–121. <https://doi.org/10.37276/sjh.v2i2.90>
- Efendi, N., Ramli, S. A., Hayatuddin, K., & Mahfuz, A. L. (2024). Eksistensi ajaran sifat melawan hukum materiil dalam undang-undang tindak pidana korupsi pasca putusan Mahkamah Konstitusi Nomor 003/PUU-IV/2006. *Journal of Sharia and Legal Science*, 2(1), 97–106. <https://doi.org/10.61994/jsls.v2i1.419>
- Ersya, M. H. (2023). Prinsip business judgment rule bagi direksi badan usaha milik negara. *Jurnal Hukum Das Sollen*, 9(1), 549–561. <https://doi.org/10.32520/das-sollen.v9i1.2264>

- Febrina, M. Y., & Manullang, S. O. (2020). Trade secret protection as part of intellectual property system: A comparative study of Indonesian and United States of America trade secret law. *Jurnal Mahkamah: Kajian Ilmu Hukum Dan Hukum Islam*, 5(2), 193–212. <https://doi.org/10.25217/jm.v5i2.1189>
- Gunawan, B., & Gunadi, A. (2023). Doctrin business judgment rule analysis as an effort to protect the law of directors of limited liability companies in Indonesia and the United States. *Edunity: Kajian Ilmu Sosial dan Pendidikan*, 2(10), 1198–1209. <https://doi.org/10.57096/edunity.v2i10.160>
- Haykal, H. (2023). Rekonstruksi penegakan sanksi pidana terhadap justice collaborator dalam perspektif kepastian hukum dan keadilan. *UNES Law Review*, 6(2), 4691–4700. <https://doi.org/10.31933/unesrev.v6i2.1191>
- Hidayat, A. (2021). Critical review buku “*Penelitian Hukum*” Peter Mahmud Marzuki penelitian hukum ad quem tentang norma. *Yustisia Merdeka: Jurnal Ilmiah Hukum*, 7(2), 117–125. <https://doi.org/10.33319/yume.v7i2.109>
- Kanter, E. Y., & Sianturi. (2018). *Asas-asas hukum pidana di Indonesia dan penerapannya*. Storia Grafika.
- Kenedi, J. (2023). Preventing corruption crimes of money laundering through community participation and POLRI investigators. *International Journal of Criminal Justice Sciences*, 18(1), 16–28. <https://doi.org/10.5281/zenodo.4756202>
- Leden, M. (2005). *Asas-teori-praktik hukum pidana* (Cet. 2). Sinar Grafika.
- Lesmana, E. N., & Yustiawan, D. G. P. (2023). Civil law analysis of unwritten agreements in business activities. *Policy, Law, Notary and Regulatory Issues (POLRI)*, 2(2), 109–116. <https://doi.org/10.55047/polri.v2i2.568>
- Lestari, S. N. (2015). Business judgment rule sebagai immunity doctrine bagi direksi badan usaha milik negara di Indonesia. *Notarius*, 8(2), 302–314. <https://doi.org/10.14710/nts.v8i2.10261>
- Maryam, R. (2023). Tanggung jawab direksi persero pada pengadaan barang dan jasa di BUMN dalam hal terjadi kerugian. *Jurnal Hukum In Concreto*, 2(1), 58–77. <https://doi.org/10.51825/yta.v4i3.25936>
- Marzuki, P. M. (2017). *Penelitian hukum*. Kencana Prenada Media Group.
- Moeljatno, S. H. (2002). *Asas-asas hukum pidana*. Rineka Cipta.

- Muarif, A. (2024). Applying the limited liability principles: Fiduciary duties and accountability of limited liability company director. *Yustisia Tirtayasa: Jurnal Tugas Akhir*, 4(3), 1–17. <https://doi.org/10.51825/yta.v4i3.25936>
- Murti, I. M. G. W. (2021). Melihat berbagai sistem hukum di dunia dalam kajian pengantar ilmu hukum. *Jurnal Komunitas Yustisia*, 4(3), 959–969. <https://doi.org/10.23887/jatayu.v4i3.43196>
- Nulhakim, F. A., & Novianto, W. T. (2023). International journal of multicultural and multireligious understanding. *International Journal of Multicultural and Multireligious Understanding*, 10(10), 514–523. <https://doi.org/10.18415/ijmmu.v10i10.5211>
- Ojolo, T. L., & Singh, S. B. (2024). The economic dimensions of transnational organised crime in Southern and Western Africa. *International Review of Social Sciences Research*, 4(4), 80–106. <https://doi.org/10.53378/irsr.353126>
- Prasetyo, T., & Barkatullah, A. H. (2005). *Politik hukum pidana: Kajian kebijakan kriminalisasi dan dekriminalisasi*. Pustaka Pelajar.
- Pratama, V. (2021). Restorative justice in criminal acts of corruption. *Law and Justice*, 6(1), 34–45. <https://doi.org/10.23917/laj.v6i1.12541>
- Purwoleksono, D. E. (2014). *Hukum pidana* (1st ed.). Airlangga University Press.
- Rabathi, Q., & Zakaria, C. A. F. (2022). Disparitas putusan pada tindak pidana korupsi yang dilakukan oleh oknum dihubungkan dengan Undang-Undang Nomor 20 Tahun 2001 tentang perubahan atas Undang-Undang Nomor 31 Tahun 1999 tentang pemberantasan tindak pidana korupsi. *Bandung Conference Series: Law Studies*, 2(1), 134–141. <https://doi.org/10.29313/bcsls.v2i1.527>
- Rajagukguk, E. (2009). *Perseroan terbatas, keuangan negara, dan tindak pidana korupsi*. Universitas Indonesia Fakultas Hukum Lembaga Studi Hukum dan Ekonomi.
- Rissy, Y. Y. W. (2020). Ketentuan dan pelaksanaan *business judgment rule* di Amerika, Australia dan Indonesia. *Masalah-Masalah Hukum*, 49(2), 160–171. <https://doi.org/10.14710/MMH.49.2.2020.160-171>
- Santiago, F. (2024). 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(1), 107–121. <https://doi.org/10.29303/ius.v12i1.1371>

- Santoso, S. (2015). Implementation balancing idea in the development of criminal law in Indonesia. *QIJIS (Qudus International Journal of Islamic Studies)*, 3(1), 1–22. <https://doi.org/10.21043/qijis.v3i1.1595>
- Simbolon, A., & Pramarta, C. (2023). The ambiguity application of *Business Judgment Rule* doctrine as director immunity right in the company law (Analysis of Supreme Court verdict No 121K/Pid.Sus/2020). *Journal Equity of Law and Governance*, 3(1), 1–12. <https://doi.org/10.55637/elg.3.1.6613.1-12>
- Sugiarto, S., Yanto, S. E., Sudiyanto, S., Riyadi, P., Purnomo, P., Siagian, R., & Hosein, Z. A. (2024). Comparative analysis of *Business Judgment Rules* in civil law and common law systems. *Mandub: Jurnal Politik, Sosial, Hukum dan Humaniora*, 2(4), 151–164. <https://doi.org/10.59059/mandub.v2i4.1753>
- Sulistiyono, A., & Suwadi, P. (2023). Comparison of the use principles of business continuity in bankruptcy law and the judge's consideration decides the bankruptcy case between Indonesia and with United States. *Russian Law Journal*, 11(3), 214–225. <https://doi.org/10.52783/rlj.v11i3.989>
- Syaflizar, L. P. (2023). *Business Judgment Rule*: Sebuah prinsip tanggung jawab direksi atas kerugian dalam pengelolaan BUMN (Persero). *Jurnal Privat Law*, 11(1), 140–152. <https://doi.org/10.20961/privat.v11i1.45950>
- Wijaya, A. (2020). Implementation of the doctrine of the *Business Judgment Rule* on bankruptcy law in Indonesia. *Yuridika*, 35(1), 1–14. <https://doi.org/10.20473/YDK.V35I1.12436>
- Wijayanto, B. T., & Andini, S. D. (2024). Menguji batas *Business Judgement Rule*: Studi kasus pengembangan bisnis LNG PT Pertamina di Amerika Serikat. *Jurnal Syntax Admiration*, 5(12), 5256–5266. <https://doi.org/10.46799/jsa.v5i12.1867>
- Zulmawan, W. (2019). *Business judgment rule BUMN*. Jala Permata Aksara.