

On Harming the State Finances or the State Economy by a State-Owned Enterprise (BUMN) and/or its Subsidiaries in Indonesia

Adi Hardiyanto Wicaksono*

Riau High Prosecutor Office, Pekanbaru, Indonesia Email: adi_hw@yahoo.com

Article	Abstract
<p>Keywords: State Finances; State Economy; State-Owned Enterprise</p> <p>History of Article Received: July 30, 2022; Reviewed: Oktober 05, 2022; Accepted: Oktober 12 2022; Published: Oktober 30, 2022;</p> <p>DOI:</p>	<p>There have been various modes of causing financial losses to the state or the national economy through certain BUMN and/or their subsidiaries in Indonesia. One of the legal bases that certain individuals have abused is the use of the business judgment rule doctrine immunity. Based on a normative juridical study, two conclusions are drawn. First, the business judgment rule regulation that applies to BUMN and/or their subsidiaries in Indonesia is based on the Company Law, the BUMN Law, and OJK Regulation No. 33/PJOK.04/2014. Second, in addressing financial losses to the state or the national economy caused by BUMN and/or their subsidiaries through loopholes in the business judgment rule regulation in the Company Law, a reformulation of the business judgment rule doctrine in the BUMN Law is needed by regulating legal liability against BUMN directors and subsidiary directors, as well as corporate criminal responsibility. This expanded legal liability covers compliance with the criteria for obligations to act and obligations not to act towards the directors and corporations of BUMN and/or their subsidiaries in the event of losses incurred by the BUMN and/or their subsidiaries.</p>

©2022. This work is licensed under a CC BY 4.0 license.

***Disclaimer:** This article is a private scientific study of the researcher and does not reflect the institution's opinion/policy

1. INTRODUCTION

The Corruption Eradication Commission (KPK) noted that from 2015 to 2020, there were 64 corruption cases in certain companies that are State-Owned Enterprises (BUMN) in Indonesia.¹ These corruption cases were carried out through various modes, such as: a) KPK's findings on a corruption case committed by a state-owned construction company listed on the Indonesia Stock Exchange (IDX) through the use of at least 41 fictitious subcontractors in 14 projects during 2009-2015, with an estimated loss to the state of up

¹ Indonesia Corruption Watch, *Tren Penindakan Kasus Korupsi Badan Usaha Milik Negara (BUMN) 2016-2021*, Jakarta: Indonesia Corruption Watch, 2022, available at <https://www.antikorupsi.org/sites/default/files/dokumen/Tren%20Korupsi%20BUMN%202016-2021a.pdf>, accessed on December 3, 2022, p. 6.

to IDR 202 billion,² b) Indonesia Corruption Watch (ICW)'s findings on corruption cases in BUMN environments from 2016-2021, showing that at least 90 suspects had backgrounds that included corporations as legal entities or individuals who held positions or worked in companies other than BUMN or their subsidiaries,³ and c) the State Audit Agency's (BPK) records on issues in BUMN that have shifted to their subsidiaries, where out of 45 BUMN subsidiaries examined, 62% were deemed potentially harmful to the state and corporations⁴.

Overall, the findings of KPK, ICW, and BPK indicate that establishing subsidiaries tends to become a place for transactions used for certain interests.⁵ The phenomenon of BUMN establishing subsidiaries has been the focus of several observers or studies. Said Didu mentioned that there are at least three reasons why BUMN establish subsidiaries. First, there are third parties who have power and want to do business with BUMN. Second, following the trend because of seeing other profitable business opportunities. Third, it is used for transfer pricing or by certain individuals to fill their own people or become a supplier in BUMN.⁶ Then, Yusdi stated that corrupt practices have begun to target the BUMN sector and its subsidiaries, carried out through establishing subsidiaries as a means to benefit directors and commissioners but ultimately harm the state and continue to receive injections of funds using their parent company's state capital injections.⁷ Aslam stated that one of the types of corruption that is vulnerable to occur is in the BUMN sector⁸. Furthermore, Dian Puji Simatupang revealed that the business judgment rule (BJR) doctrine is often used as a defense so that directors can be protected and free from legal action, even though the application of BJR to BUMN and their subsidiaries has its own challenges in the form of a tendency to ignore and dominate the authority judgment rule (AJR) related to their public status as state-owned assets that are separated and also as the finances and assets of BUMN.⁹

The ongoing financial losses to the state or national economy due to the establishment of BUMN subsidiaries in Indonesia through various modes, as well as the continued trend of establishing BUMN subsidiaries in Indonesia based on the business judgment rule doctrine, underlie the two problem formulations below. **First**, how does the business judgment rule doctrine regulation apply to BUMN and/or their subsidiaries in Indonesia? **Second**, what is the ideal business judgment rule doctrine regulation in addressing financial losses to the state or national economy caused by BUMN and/or their subsidiaries?

² *Loc.cit.*

³ *Ibid.*, p. 17.

⁴ Badan Pemeriksa Keuangan Republik Indonesia, 2015, available at <https://www.bpk.go.id/news/bpk-permasalahan-bumn-beralih-ke-anak-perusahaan>, accessed on December 2, 2022.

⁵ *Loc.cit.*

⁶ Detikfinance, "3 Alasan BUMN Doyan Bikin Banyak Anak Usaha", 2019, available at <https://finance.detik.com/berita-ekonomi-bisnis/d-4821809/3-alasan-bumn-doyan-bikin-banyak-anak-usaha>, accessed on December 5, 2022.

⁷ Ahmad Yusdi, "Modus Canggih Korupsi di BUMN", 2019, available at <https://www.indonesiana.id/read/89341/modus-canggih-korupsi-di-bumn>, accessed on December 5, 2022.

⁸ Nibraska Aslam, Pencegahan Korupsi di Sektor BUMN dalam Perspektif Pelayanan Publik di Indonesia, *Integritas: Jurnal Anti Korupsi*, Vol. 7, No. 2, p. 361.

⁹ Hukumonline, "Tantangan Penerapan Business Judgement Rule pada Perusahaan BUMN di Indonesia", available at <https://www.hukumonline.com/berita/a/tantangan-penerapan-business-judgement-rule-pada-perusahaan-bumn-di-indonesia-lt6363a545961be?r=7&p=1&q=business%20judgement%20rule&rs=1847&re=2022>, accessed on December 22, 2022.

2. METHODS

This study uses scientific and normative-dogmatic legal research methods to answer the two problem formulations. The strong juridical nuance is adequate to be used in this study, considering that the answers to the existing problem formulations deal with positive legal norms that apply in the country and do not prioritize social facts (events or actions) and/or do not attempt to provide scientific explanations for the factors causing crimes or corruption violations because that is the task of social sciences.¹⁰ The applicable legal norms are expected to answer carefully, comprehensively, and transparently¹¹ about the BJR legal concept that can address financial losses to the state or national economy caused by BUMN and/or their subsidiaries.

The data used in this qualitative study is secondary data or library research. Secondary data consists of data that do not use numbers but are based on decisions or opinions to research and solve problems at the analytical level.¹² Qualitative data is obtained through a systematic examination of several scientific literatures on the selected topic, which can then be expanded to extensive reviews expected to provide a broad overview of the latest knowledge about the topic being discussed.¹³

3. ANALYSIS AND DISCUSSION

a. Overview and Prevailing Law of Business Judgement Rule Doctrine in Indonesia

In the development of corporate law, which has been in effect for a long time, every board of directors in making business decisions or policies for a company is protected by a principle that has evolved in common law countries, namely the business judgment rule (BJR).¹⁴

There are several thoughts or studies about the BJR. Hayyi argues that the doctrine provides legal protection for directors from the consequences of their business decisions (such as when a company suffers losses, the directors are not automatically personally liable for those losses) as long as those decisions are made with due care, good faith, and solely for the Company's benefit.¹⁵ Meanwhile, the Legal Information Institute of Cornell Law School states that the BJR provides immunity for corporate directors against lawsuits alleging that they breached their duty of care to the corporation as long as the actions taken by the directors are within the parameters of the rules.¹⁶ The rules in question are the decisions made by directors in good faith, with the care that a reasonably prudent person would use, and with the reasonable belief that the director is acting in the corporation's best interests.¹⁷

In a lawsuit alleging corporate directors have breached their duty to care for the Company, the court will evaluate the case based on business judgment standards. Under

¹⁰ Asmak Ul Hosnah, Dwi Seno Wijanarko, and Hotma P. Sibuea, *Karakteristik Ilmu Hukum dan Metode Penelitian Hukum Normatif*, Depok: PT RahaGrafindo Persada, 2021, p. 11.

¹¹ Leo B. Barus, Business Process Redesign of Digital Libraries in Indonesia, *Journal of Governance and Administrative Issues*, Vol. 1, No. 1, 2022, p. 34.

¹² Elvrida N. Sinaga, Capabilities in the Creative Economy in Indonesia: A Literature Study, *The Scientia Law and Economics Review*, Vol. 1, No. 1, 2022, p. 1.

¹³ Muh. Bukhari, Ryan Saputra Alam, and Hurian Kamela, Indikator Kinerja Utama Jenjang Pendidikan Sekolah Menengah Sederajat di Indonesia: Suatu Studi Literatur, *Scientium Management Review*, Vol. 1, No. 1, 2022, p. 8

¹⁴ Muh. Akram Syarif Hayyi, Penerapan Doktrin Business Judgement Rule terhadap Keputusan Direksi BUMN pada Perkara Tindak Pidana Korupsi, Makasar: Program Studi Magister Ilmu Hukum Universitas Hasanuddin, 2021, p. 5.

¹⁵ *Ibid.*, pp. 5-6.

¹⁶ Legal Information Institute of Cornell Law School, "business judgement rule", available at https://www.law.cornell.edu/wex/business_judgment_rule, accessed on December 29, 2022.

¹⁷ *Loc.cit.*

these standards, the court will uphold the directors' decisions if they were made (1) in good faith, (2) with the care that would be exercised by a prudent person, and (3) with a reasonable belief that the directors were acting in the best interests of the Company.

The concept of the BJR towards directors and commissioners has been adopted in Law No. 40 of 2007 concerning Limited Liability Companies (LLC) and Financial Services Authority Regulation (OJK) No. 33/PJOK.04/2014 concerning the Directors and Board of Commissioners of Listed Companies or Public Companies.¹⁸ Article 97 paragraph (5) of the LLC Law states that members of the board of directors cannot be held liable for corporate losses if they can prove that (a) the losses were not due to their fault or negligence, (b) they acted in good faith and with due care for the interests and by the purpose and objectives of the Company, (c) they did not have any direct or indirect conflict of interest in the management actions that resulted in the losses, and (d) they took action to prevent the occurrence or continuation of the losses. The concept of the BJR towards commissioners in Article 115 paragraph (3) of the LLC Law applies in the event of corporate bankruptcy. The entire formulation of the article states that members of the Board of Commissioners cannot be held liable for the bankruptcy of the Company if they can prove that the bankruptcy was not due to their fault or negligence; they carried out their supervisory duties in good faith. With due care for the interests and the purpose and objectives of the Company, they did not have any personal interest, either directly or indirectly, in the management actions by the Board of Directors that led to the bankruptcy. They provided advice to the Board of Directors to prevent the occurrence of bankruptcy.

Furthermore, OJK Regulation No. 33/PJOK.04/2014 stipulates that members of the board of directors cannot be held liable for losses incurred by the issuer or public Company if they can prove that the losses did not occur due to their fault or negligence, they carried out their management duties in good faith, full responsibility, due care, for the benefit. By the purpose and objectives of the issuer/public company, they did not have any direct or indirect conflict of interest. They took action to prevent the occurrence or continuation of the losses.¹⁹

b. BUMN Law, Public Finance Law, and Anti-Corruption Law in Indonesia

Companies or legal entities or corporations have different treatment from any individual person since a corporation can only obtain or be subject to a range of rights and obligations far more limited than a person's.²⁰ The basic principle is that a corporation should only be empowered to accomplish its purposes. Lord Shaw of Dunfermline described that a corporation is a convenient legal creation for management, property ownership, and association of individuals in business transactions.²¹ Waqas and Rehman have also put forward the concept of a corporation as a legal entity. This means that a corporation, in the eyes of the law, is a legal entity that has certain rights and obligations according to the law, so if there is an act that violates the law, for example, due to a breach of contract committed by the corporation or the other party, the aggrieved party may file a lawsuit against the party.²² As a juridical person who must be treated as a

¹⁸ Yafet Yosafet Wilben Rissy, *Ketentuan dan Pelaksanaan Business Judgement Rule di Amerika, Australia, dan Indonesia*, Masalah-Masalah Hukum, Vol. 49, No. 2, 2020, p. 167.

¹⁹ *Loc.cit.*

²⁰ Murray A. Pickering, *The Company as a Separate Legal Entity*, *The Modern Law Review*, Vol. 31, No. 5, 1968, p. 484.

²¹ *Loc.cit.*

²² Muhammad Waqas and Zahoor Rehman, *Separate Legal Entity of Corporation: The Corporate Veil*, *International Journal of Social Sciences and Management*, Vol. 3, No. 1, 2016, p. 2.

legal entity, a corporation is separate from its members and shareholders. However, each corporation employee can benefit widely from the corporation through pension plans, tax-free health benefits, meals, life insurance, and many other benefits. Certain limitations under the law have also been imposed, whereby corporations cannot hold any public office, cannot vote in elections, cannot participate in elections, and cannot interfere in government affairs.²³

One form of a legal entity is a State-Owned Enterprise (BUMN) or Persero. BUMN capital is part of and originates from the state's separated wealth, as explained in Article 4 paragraph (1) of Law Number 19 of 2003 concerning State-Owned Enterprises (BUMN Law), which explains that the separated state wealth is the separation of state wealth from the State Revenue and Expenditure Budget (APBN) to be used as a state capital participation in BUMN, for further development and management based on healthy corporate principles, not based on the APBN system. Meanwhile, Persero is one type of BUMN in the form of a limited liability company, of which 51% or more of its shares are controlled by the government, thus subject to the BUMN Law and following the provisions and principles in the Company Law.²⁴

The meaning of state wealth that is separated and managed by state/regional-owned companies is also reaffirmed in Law Number 17 of 2003 concerning State Finances, Law Number 31 of 1999 concerning the Eradication of Corruption as amended by Law Number 20 of 2001 (Anti-Corruption Law), and Constitutional Court Decision Number 62/PUU-XI/2013. The Public Finance Law and the explanation of Article 2 of the Anti-Corruption Law regulate that state wealth that is separated and managed by state/regional-owned companies is included as state finances. Subsequently, Constitutional Court Decision Number 62/PUU-XI/2013 confirms that BUMN wealth is included in state finances. This causes that in its implementation, any business losses in BUMN and Persero can be considered state losses, and the company's board of directors is particularly liable and may be charged with the provisions of Article 2 paragraph (1) or Article 3 of the Anti-Corruption Law.²⁵

Furthermore, regarding financial losses incurred by subsidiaries of state-owned enterprises or regional-owned enterprises (BUMD), Circular Letter of the Supreme Court (SEMA) No. 10 of 2020 specifies that losses incurred by subsidiaries of state-owned enterprises or BUMD whose capital is not sourced from the state budget or regional budget or not provided by the state-owned enterprise or BUMD and do not receive/use state facilities are not considered as state financial losses. This is also in line with the opinion of several judges in the Constitutional Court Decision No. 01/PHPU-PRES/XVII/2019, which states that a subsidiary is not considered a state-owned enterprise because the state does not directly hold any of its capital.²⁶

²³ *Loc.cit.*

²⁴ Muh. Akram Syarif Hayyi, *Ibid.*, p. 3.

²⁵ *Ibid.*, p. 4.

²⁶ Mahkamah Konstitusi Republik Indonesia, available at https://www.mkri.id/public/Risalah/5390_Risalah-pdf_Putusan%201.Pilpres.2019%2027.06.19.pdf, accessed on December 27, 2022.

c. The Accountability of BUMN and/or its Subsidiaries' Management in the Event of Financial or Economic Losses to the State.

The responsibility in the Company Law adopts the concept of limited liability, but in some instances, personal or joint responsibility can be imposed on the Company's organs.²⁷ The Board of Directors can be held personally responsible and sued in court if the Company incurs losses in carrying out its business unless the Board of Directors can prove that the losses were not due to their mistakes or negligence, in which case they can be protected by the business judgment rule (BJR) principle adopted in Article 97 paragraph (5) of the Company Law.²⁸

However, the provision of immunity for directors based on Article 97 paragraph (5) of the Company Law on the one hand, and the regulation that state or local government-owned enterprises' separated state wealth is included in the state finance as stipulated in the Public Finance Law, Anti-Corruption Law, and Constitutional Court Decision No. 62/PUU-XI/2013, have caused controversy and studies related to the criminal liability of the management of state-owned enterprises and/or their subsidiaries in the event of financial losses or damage to the Indonesian economy.

A legal study conducted by Lestari concluded that implementing the business judgment rule doctrine can still be applied to the Board of Directors of state-owned enterprises as long as the directors meet certain qualifications and comply with the Company Law.²⁹ Meanwhile, a legal study by Rissy concluded that although the Company Law and the OJK Regulation in 2014 stated that the business decisions of directors and commissioners could be prosecuted if they cause losses and bankruptcy due to the mistakes or negligence of the directors or commissioners, the courts in Indonesia rarely apply it. Therefore, several suggestions are proposed, including the explicit inclusion of specific provisions related to BJR and its definition, stating clearly that directors and commissioners cannot be held liable if their business decisions are based on sufficient, reliable, and rational information, free of fraud and abuse of their position as directors or commissioners, and if they do not receive personal gain from their decisions. It is also recommended to expand the range of parties who have the right to file a lawsuit against directors in the event of a violation of BJR elements (such as minority shareholders, controlling individuals, creditors, employees or customers, or anyone with interest in the company).³⁰ Furthermore, the juridical studies by Hadi, Suryamah, and Afriana conclude that BUMN Directors cannot be held personally liable for any losses resulting from business decisions if they can prove that such decisions comply with all provisions of Article 97 paragraph (5) of the Company Law and they have acted by fiduciary duty.³¹ However, the BJR principle is still limited and incomplete, so it is hoped that there will be a revision of the Company Law or the establishment of a new law that comprehensively regulates BJR principles in the realm of BUMN to provide legal certainty for BUMN Directors.³²

In addition to these studies, there is also Constitutional Court Decision Number 62/PUU-XI/2013 on the BJR paradigm in BUMN or BUMD. The decision asserts that the

²⁷ Shigeko Desiputri Hadi, Aam Suryamah, and Anita Afriana, Prinsip Business Judgement Rule dalam Pertanggungjawaban Hukum Direksi BUMN yang Melakukan Tindakan Investasi yang Mengakibatkan Kerugian, *Acta Diurnal*, Vol. 4, No. 2, 2021, p. 174.

²⁸ *Ibid.*, pp. 174-175.

²⁹ Sartika Nanda Lestari, Business Judgement Rule sebagai Immunity Doctrine Bagi Direksi Badan Usaha Milik Negara di Indonesia, *Notarius*, Vol. 8, No. 2, 2015, p. 314.

³⁰ Yafet Yosafet Wilben Rissy, *Op.cit.*, p. 170.

³¹ Shigeko Desiputri Hadi, Aam Suryamah, and Anita Afriana, *Op.cit.*, p.189.

³² *Loc.cit.*

function of BUMN or BUMD as an extension of the state must be carried out based on the BJR paradigm, which is fundamentally different from the government administration paradigm (government judgment rules). The state or regional wealth has transformed into BUMN or BUMD capital, and the management of state wealth is subject to the BJR paradigm. However, the separation of state wealth does not make it transfer to BUMN or BUMD assets that are separate from state wealth. From the perspective of the transactions that occur, it is clear that the separation cannot be constructed as a transfer of ownership; therefore, it remains state wealth, and thus, the state's authority in the field of supervision still applies. Although it implies a change in the government's supervision paradigm, which is no longer based on government judgment rules but on the BJR paradigm,³³ according to the considerations of Constitutional Court Decision Number 62/PUU-XI/2013 and Constitutional Court Decision Number 59/PUU-XVI/2018, it has been affirmed that the Supreme Audit Agency (BPK) has the authority to conduct audits on all legal subjects as long as they involve state financial management, both directly and indirectly. Furthermore, if there is a suspicion of misconduct in state finance management, the BPK has the authority to conduct an audit.³⁴

d. Corruption Offenses in State-Owned Enterprises and/or Subsidiaries concerning Losses to State Finances or the Economy

Several applicable regulations have affirmed that the BPK has the authority to conduct investigations into any alleged acts of corruption involving state finances. Apart from Law No. 15 of 2004 on the Audit of the Management and Accountability of State Finances, Constitutional Court Decision No. 62/PUU-XI/2013 and Constitutional Court Decision No. 59/PUU-XVI/2018, consistent with the application of constitutional interpretation principles through legal interpretation and the role of the constitution in the legal system³⁵ is also in line with the Supreme Court Regulation No. 4 of 2016.

The BPK has the authority to investigate any legal entity that involves the management of state finances, whether directly or indirectly, including BUMN and their subsidiaries. This means that whether or not there is a loss to state finances or the economy in an BUMN and/or its subsidiaries should be based on calculations made by the BPK. The phrase "loss to state finances" can be seen from the definitions contained in several applicable laws and regulations. Article 32 paragraph (1) of the State Financial Losses and Recovery Law defines "loss to state finances" as losses that can be calculated based on the findings of authorized agencies or public accountants. Furthermore, Constitutional Court Decision No. 003/PUU-IV/2006, dated July 24, 2006, states that the relationship between the words "may" and "harmful to state finances" is reflected in two extreme relationships, namely those that clearly harm the state or those that may potentially cause losses, where considering the unique and concrete circumstances surrounding the event must be done by experts in state finance, national economy, and experts in analyzing the relationship between someone's actions and losses. Additionally, Article 22 number 1 of the State Treasury Law and Article 15 number 1 of the State Audit Board Law defines "State/Regional Losses" as a shortage of money, securities, and goods, the exact and certain amount of which is the result of unlawful acts whether intentional or negligent.

³³ Putusan Mahkamah Konstitusi Nomor 62/PUU-XI/2013, p. 233

³⁴ Putusan Mahkamah Konstitusi Nomor 26/PUU-XIX/2021, p. 38

³⁵ Tomasz Stawecki, *Autonomous Constitutional Interpretation*, *International Journal for the Semiotics of Law*, Vol. 25, 2012, p. 509.

The phrases "state financial loss," "state/regional loss," and/or "economic loss of the state" in state-owned enterprises (BUMN) and/or their subsidiaries indicate the presence of several keywords that suggest the existence of suspected corruption offenses, instead of being shielded by the doctrine of BJB immunity in the PT Law. Some of these keywords are "against the law" and "conspiracy." Constitutional Court Decision No. 003/PUU-IV/2006 defines "against the law" as an act that is formally or materially against the law, meaning that even if the laws and regulations do not regulate the act, if the act is considered reprehensible because it is not by the sense of justice or social norms in the community, then the act can be prosecuted. Then, Constitutional Court Decision No. 21/PUU-XIV/2016 defines "conspiracy," as referred to in Article 15 of Law No. 31 of 1999, as when two or more people of the same quality agree to commit a criminal act. The phrases "against the law" and "conspiracy" can be developed into the legal liability of each legal subject, namely the obligation to act and the obligation not to act due to propriety. The obligation to act due to propriety includes four criteria, namely, carried out with good faith in order to fulfill its legal obligations (unless it can be proven that it was due to force majeure, coercion, or other circumstances that made it act differently), carried out due to danger or damage or potential financial loss that may occur and cannot be avoided, carried out because there is no better alternative or if the action is not taken, it may potentially cause greater danger, damage or financial loss, and an action that is purely unintentional if there is financial loss. Meanwhile, the obligation not to act due to propriety covers the following four criteria: it is a mala prohibita act, it is not within its capacity to act/operate according to professional judgment, there are still several alternative acts/actions that are better and do not violate the applicable laws and regulations, and it is an act/action that enriches oneself/group and/or other parties that cause financial loss to the victim.³⁶

The criteria that exist in the obligation to act and the obligation not to act based on the fiduciary duty can be elaborated in BJR so that it can handle efforts by individuals who harm the state's finances/economy through BUMN and/or their subsidiaries. For instance, in the case of fulfilling its legal obligations, it has been regulated that acts that violate the law or neglect its obligations (directly or indirectly) which harm the state's finances, such as Article 35 of Public Finance Law, Article 59 of State Treasury Law, and Article 2 of Anti-Corruption Law.³⁷ Furthermore, acts that are mala prohibita, meaning acts that are prohibited by law, can be regulated. For example, every BUMN and/or its subsidiaries are taxpayers who must comply with the applicable tax laws. One of the obligations is to maintain books or records, so they have to report their tax notification letters (SPT) properly, clearly, and accurately.³⁸ This will reduce hidden costs that can harm BUMN and/or its subsidiaries. Finally, in the case of acts that enrich oneself/group and/or others which cause losses to the victim, clear criteria related to corporate social responsibility (CSR) can be regulated. The assistance should not be in the form of hidden campaigns or money politics, as CSR is not a medium for giving aid, grants, zakat, or gifts

³⁶ Henry D. P. Sinaga and Benny R. P. Sinaga, (2018), *Rekonstruksi Model-Model Pertanggungjawaban di Bidang Perpajakan dan Kepabeanan*, Yogyakarta: Kanisius, 2018, pp. 103-104.

³⁷ Ryan S. Alam and Henry D. P. Sinaga, Beyond Positivism Tradition in Tackling Corruption in Indonesia: Developing the Law with Makrifat Dimension, *Journal of Accounting Issues*, Vol. 1, No. 1, 2022, p. 11.

³⁸ Anis W. Hermawan, Tax Audit in Indonesia: An Agency Theory Perspective, *Journal of Accounting Issues*, Vol. 1, No. 1, 2022, p. 37.

to attract or influence someone³⁹ or certain individuals through a conspiracy that harms the state's finances/economy.

4. CONCLUSION

Based on the analysis and discussion, two conclusions were drawn. First, the business judgment rule doctrine that applies to state-owned enterprises (BUMN) and/or their subsidiaries in Indonesia is based on the Company Law, State-Owned Enterprises Law, and OJK Regulation No. 33/PJOK.04/2014. Second, the ideal regulation of the business judgment rule doctrine in addressing financial or economic losses by BUMN and/or their subsidiaries is by expanding the legal liability of BUMN management and their subsidiaries and imposing corporate criminal liability. The expansion of legal liability covers the fulfillment of the criteria in the duty to act and the duty not to act towards the management and corporation of BUMN and/or their subsidiaries in the event of losses to BUMN and/or their subsidiaries. It is recommended that the State-Owned Enterprises Law be updated as a lex specialist of the Company Law, which regulates the immunity of management or the expansion of the business judgment rule if it does not violate the criteria in the duty to act and the duty not to act towards the management and corporation of BUMN and/or their subsidiaries.

REFERENCES

- Alam, Ryan S., and Sinaga, Henry D. P., Beyond Positivism Tradition in Tackling Corruption in Indonesia: Developing the Law with Makrifat Dimension, *Journal of Accounting Issues*, Vol. 1, No. 1, 2022.
- Aslam, Nibraska, Pencegahan Korupsi di Sektor BUMN dalam Perspektif Pelayanan Publik di Indonesia, *Integritas: Jurnal Anti Korupsi*, Vol. 7, No. 2.
- Badan Pemeriksa Keuangan Republik Indonesia, 2015, available at <https://www.bpk.go.id/news/bpk-permasalahan-bumn-beralih-ke-anak-perusahaan>, accessed on December 2, 2022.
- Barus, Leo B., Business Process Redesign of Digital Libraries in Indonesia, *Journal of Governance and Administrative Issues*, Vol. 1, No. 1, 2022.
- Bukhari, Muh., Alam, Ryan Saputra, and Kamela, Hurian, Indikator Kinerja Utama Jenjang Pendidikan Sekolah Menengah Sederajat di Indonesia: Suatu Studi Literatur, *Scientium Management Review*, Vol. 1, No. 1, 2022.
- Detikfinance, "3 Alasan BUMN Doyan Bikin Banyak Anak Usaha", 2019, available at <https://finance.detik.com/berita-ekonomi-bisnis/d-4821809/3-alasan-bumn-doyan-bikin-banyak-anak-usaha>, accessed on December 5, 2022.
- Hadi, Shigeko Desiputri, Aam Suryamah, and Anita Afriana, Prinsip Business Judgement Rule dalam Pertanggungjawaban Hukum Direksi BUMN yang Melakukan Tindakan Investasi yang Mengakibatkan Kerugian, *Acta Diurnal*, Vol. 4, No. 2, 2021.
- Hayyi, Muh. Akram Syarif, Penerapan Doktrin Business Judgement Rule terhadap Keputusan Direksi BUMN pada Perkara Tindak Pidana Korupsi, Makasar: Program Studi Magister Ilmu Hukum Universitas Hasanuddin, 2021.

³⁹ Siti N. I. Wahidah, Robyan E. Bafedal, and Dewita Hartanti, Money Politics in East Lombok Period 2014-2019 (Case Study in Sandubaya), *The Scientia Journal of Social and Legal Studies*, Vol. 1, No. 1, 2022, p. 13.

- Hermawan, Anis W., Tax Audit in Indonesia: An Agency Theory Perspective, *Journal of Accounting Issues*, Vol. 1, No. 1, 2022.
- Hosnah, Asmak Ul, Dwi Seno Wijanarko, and Hotma P. Sibuea, *Karakteristik Ilmu Hukum dan Metode Penelitian Hukum Normatif*, Depok: PT RajaGrafindo Persada, 2021.
- Hukumonline, "Tantangan Penerapan Business Judgement Rule pada Perusahaan BUMN di Indonesia", available at <https://www.hukumonline.com/berita/a/tantangan-penerapan-business-judgement-rule-pada-perusahaan-bumn-di-indonesia-lt6363a545961be?r=7&p=1&q=business%20judgement%20rule&rs=1847&re=2022>, accessed on December 22, 2022.
- Indonesia Corruption Watch, Tren Penindakan Kasus Korupsi Badan Usaha Milik Negara (BUMN) 2016-2021, Jakarta: Indonesia Corruption Watch, 2022, available at <https://www.antikorupsi.org/sites/default/files/dokumen/Tren%20Korupsi%20BUMN%202016-2021a.pdf>, accessed on December 3, 2022.
- Legal Information Institute of Cornell Law School, "business judgement rule", available at https://www.law.cornell.edu/wex/business_judgment_rule, accessed on December 29, 2022.
- Lestari, Sartika Nanda, Business Judgement Rule sebagai Immunity Doctrine Bagi Direksi Badan Usaha Milik Negara di Indonesia, *Notarius*, Vol. 8, No. 2, 2015.
- Mahkamah Konstitusi Republik Indonesia, available at https://www.mkri.id/public/Risalah/5390_Risalah-pdf_Putusan%201.Pilpres.2019%2027.06.19.pdf, accessed on December 27, 2022.
- Peraturan Otoritas Jasa Keuangan Nomor 33/PJOK.04/2014 tentang Direksi dan Dewan Komisaris Emiten atau Perusahaan Publik.
- Pickering, Murray A., The Company as a Separate Legal Entity, *The Modern Law Review*, Vol. 31, No. 5, 1968.
- Putusan Mahkamah Konstitusi No. 003/PUU-IV/2006.
- Putusan Mahkamah Konstitusi Nomor 62/PUU-XI/2013.
- Putusan Mahkamah Konstitusi Nomor 21/PUU-XIV/2016.
- Putusan Mahkamah Konstitusi Nomor 59/PUU-XVI/2018.
- Putusan Mahkamah Konstitusi Nomor 01/PHPU-PRES/XVII/2019.
- Putusan Mahkamah Konstitusi Nomor 26/PUU-XIX/2021.
- Rissy, Yafet Yosafet Wilben, Ketentuan dan Pelaksanaan Business Judgement Rule di Amerika, Australia, dan Indonesia, *Masalah-Masalah Hukum*, Vol. 49, No. 2, 2020.
- Sinaga, Elvrida N., Capabilities in the Creative Economy in Indonesia: A Literature Study, *The Scientia Law and Economics Review*, Vol. 1, No. 1, 2022.
- Sinaga, Henry D. P., and Sinaga, Benny R. P., *Rekonstruksi Model-Model Pertanggungjawaban di Bidang Perpajakan dan Kepabeanan*, Yogyakarta: Kanisius.
- Stawecki, Tomasz, Autonomous Constitutional Interpretation, *International Journal for the Semiotics of Law*, Vol. 25, 2012.
- Surat Edaran Mahkamah Agung Nomor 10 Tahun 2020.
- Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas.
- Undang-Undang Nomor 15 Tahun 2006 tentang Badan Pemeriksa Keuangan.
- Undang-Undang Nomor 1 Tahun 2004 tentang Perbendaharaan Negara.
- Undang-Undang Nomor 19 Tahun 2003 tentang Badan Usaha Milik Negara.
- Undang-Undang Nomor 17 tahun 2003 tentang Keuangan Negara.
- Undang-Undang Nomor 31 tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi sebagaimana telah diamandemen dengan Undang-Undang Nomor 20 tahun 2001.

- Wahidah, Siti N. I., Bafedal, Robyan E., and Hartanti, Dewita, Money Politics in East Lombok Period 2014-2019 (Case Study in Sandubaya), *The Scientia Journal of Social and Legal Studies*, Vol. 1, No. 1, 2022.
- Waqas, Muhammad, and Zahoor Rehman, Separate Legal Entity of Corporation: The Corporate Veil, *International Journal of Social Sciences and Management*, Vol. 3, No. 1, 2016.
- Yusdi, Ahmad, "Modus Canggih Korupsi di BUMN", 2019, available at <https://www.indonesiana.id/read/89341/modus-canggih-korupsi-di-bumn>, accessed on December 5, 2022.