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Disparity in Applying the Business Judgment Rule: Analysis of Supreme Court Decision No. 121 K/Pid.Sus/2020

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Abstract: The Supreme Court Decision Number 121 K/Pid.Sus/2020 which released Karen Agustiawan from all legal charges (ontslag van alle rechtsvervolging) despite causing state losses of Rp568,066,000,000.00 is based on the application of the business judgment rule (BJR), because the defendant's actions were deemed to be in the interests of the company and did not contain elements of fraud, conflict of interest, unlawful acts, or intent. This decision differs from the first-level and appeal decisions which stated that the criminal elements in the subsidiary charges had been fulfilled due to negligence and deviations in the directors' decision-making, thus indicating a disparity in the application of BJR as regulated in Article 97 paragraph (5) of the Limited Liability Company Law. This research uses a normative legal research method by examining Decision Number 121 K/Pid.Sus/2020 through a case approach and a comparative approach. A comparative approach was conducted by comparing two cassation decisions related to similar criminal cases, namely a decision that applies BJR and a decision that does not apply BJR, and comparing the application of BJR in Indonesia and Australia. The results of the study indicate inconsistencies in the application of BJR in Indonesia due to different interpretations of Article 97 Paragraph 5, which leads to disparities in the considerations and court decisions regarding the responsibilities of directors.

Keywords: Business Judgment Rule, Management, Corruption, BUMN, Supreme Court Decision.

INTRODUCTION

The law does not assess the responsibility of directors in managing a company for making risky decisions solely based on the final results of the decisions taken but rather on how the decisions were made. In this case, Directors can be released from their personal responsibility if the losses caused by their decisions can be proven to have been made in good faith, with full responsibility, in compliance with applicable policies and regulations, and do not meet the elements of a criminal act of corruption (Sesara, 2021). This is what is known as the Business Judgment Rule (BJR) doctrine which is a legal protection for Directors against the risk of losses from the business decisions they make so that the court will not blame or judge the correctness of the Directors' business decisions, even if the decision is detrimental to the company. Indonesia itself adopted the Business Judgment Rule in the Limited Liability Company Law with the aim of protecting directors and commissioners (Rissy, 2020). This doctrine has requirements as stated in Article 97 Paragraph 5 of Law Number 40 of 2007 concerning Limited Liability Companies (UUPT).

The existence of these cumulative requirements demonstrates that the Business Judgment Rule is not intended to provide absolute immunity for directors, but rather to protect business decisions made in good faith, with due care, and within the limits of fiduciary obligations. Consequently, disputes concerning the scope of BJR protection frequently arise when business decisions result in significant financial losses and overlap with allegations of corruption or abuse of authority. Good faith and due care within the meaning of Article 97 paragraph (5) are generally interpreted as the conformity of directors' decision-making processes with corporate policies, internal procedures, and established business practices (Prasetio, 2014). The article states that "Members of the Board of Directors cannot be held responsible for company losses if the board of directors can prove :"

1. The loss was not due to his fault or negligence.
2. Has carried out management in good faith and with due care for the interests 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.
4. Have taken action to prevent the occurrence or continuation of such losses.

Previous studies have extensively examined the Business Judgment Rule as a legal mechanism for protecting directors against liability arising from business decisions made in good faith. Sesara (2021) emphasised the role of the doctrine in preventing the criminalisation of corporate decision-making, while Rissy (2020) analysed the comparative implementation of the Business Judgment Rule across several jurisdictions, including Indonesia and Australia. More specifically, Januarsyah et al. (2022), Intihani (2023), and Zulfikar and Muryanto (2025) examined the application of the Business Judgment Rule in the Karen Agustiawan case and generally concluded that the Supreme Court's decision reflected judicial recognition of directors' business discretion in state-owned enterprises.

However, previous studies have predominantly focused on explaining the doctrinal function of the Business Judgment Rule or supporting its role as legal protection for directors against criminalisation. Limited attention has been given to the compatibility between the legal requirements stipulated in Article 97 paragraph (5) of the Limited Liability Company Law and the judicial reasoning adopted in Supreme Court Decision Number 121 K/Pid.Sus/2020. In addition, previous scholarship has rarely undertaken a comparative assessment of judicial approaches in corruption cases involving business decisions by directors of state-owned enterprises.

Accordingly, this study aims to analyse whether the application of the Business Judgment Rule in Supreme Court Decision Number 121 K/Pid.Sus/2020 is consistent with the cumulative requirements established under Article 97 paragraph (5) of the Limited Liability Company Law. Furthermore, this study compares the decision with Supreme Court Decision Number 1144 K/Pid/2006 and examines Indonesian practice in light of the Australian approach to evaluate the consistency, legal certainty, and future direction of Business Judgment Rule implementation in Indonesia.

The application of the Business Judgment Rule doctrine in Indonesian judicial practice can be observed in Supreme Court Decision Number 121 K/Pid.Sus/2020, which resulted in an acquittal from all legal charges (ontslag van alle rechtsvervolging) against Karen Agustiawan, former President Director of PT Pertamina (Persero). The case originated from PT Pertamina's decision to accept an offer from Citi Group regarding a 10% Participating Interest (PI) investment in the Basker Manta Gummy (BMG) Block in Australia through the acquisition of assets owned by ROC Ltd. The transaction subsequently became controversial because it was approved despite the absence of a final due diligence report, the lack of approval from the Legal Department and the Board of Commissioners, and the existence of indications of significant commercial risks identified during the due diligence process. In particular, the Board of Commissioners had expressed concerns regarding the commercial feasibility of the acquisition and its contribution to Pertamina's strategic objective of increasing oil reserves and production.

The investment later failed to generate the expected production outcomes, resulting in the cessation of production activities and ultimately causing substantial financial losses to PT Pertamina. Based on the calculation of state financial losses, the decline in the value of the investment generated losses amounting to approximately IDR 568 billion, in addition to cash call obligations borne by PT Pertamina amounting to AUD 35,189,996. Although Law Number 1 of 2025 as amended by Law Number 16 of 2025 concerning State-Owned Enterprises now distinguishes losses of state-owned enterprises from state financial losses, the principle of lex temporis delicti requires the case to be assessed under the legal regime applicable at the time the alleged offence occurred, when losses suffered by state-owned enterprises were still considered state financial losses (Indrajaya et al., 2026).

The case subsequently underwent three levels of judicial review. At the first instance level, the Corruption Court acquitted Karen Agustiawan of the primary charge under Article 2 of the Anti-Corruption Law but found her guilty under the subsidiary charge pursuant to Article 3 concerning abuse of authority causing state financial losses. The appellate court affirmed this decision. However, a dissenting opinion emerged at the first instance level, arguing that the defendant's actions constituted business decisions taken for corporate interests rather than personal gain and therefore should not be treated as criminal conduct.

In contrast, the Supreme Court in Decision Number 121 K/Pid.Sus/2020 overturned both lower court decisions and granted an ontslag van alle rechtsvervolging verdict on the grounds that the actions undertaken by Karen Agustiawan and the Board of Directors of PT Pertamina remained within the scope of business judgment and were aimed at developing the company's oil and gas reserves (Januarsyah et al., 2022). The divergence between the lower court decisions and the cassation ruling demonstrates the absence of consistency in judicial interpretation regarding the scope and limits of the Business Judgment Rule doctrine in cases involving corporate losses and allegations of corruption (Anandya et al., 2023).

The second instance court decision, namely the DKI Jakarta High Court Decision Number 34/Pid.Sus-TPK/2019/PT.DKI, confirmed the Corruption Crime Court Decision at the Central Jakarta District Court Number 15/Pid.Sus/TPK/2019/PN Jkt.Pst., dated June 10, 2019, which was requested for appeal. Based on the reasons given in court, the Panel of Judges at the appellate level agreed with the legal and criminal considerations imposed by the Panel of Judges at the First Level because it was legally justified and therefore had to be strengthened.

The decisions at the first level and the appeal mutually reinforce each other by finding Karen guilty, but the Decision of the Supreme Court of the Republic of Indonesia Case Number 121 K / Pid.Sus / 2020 actually determined that Karen Agustiawan was freed from all legal charges (ontslag van alle rechtsvervolging) by canceling the corruption court decision at the first level and the appeal. This is because the panel of judges firmly considered that what Karen

Agustiawan and the other directors of PT. Pertamina Persero did was solely in order to develop PT. Pertamina Persero, namely trying to increase oil and gas reserves so that the steps taken by Karen Agustiawan as President Director of PT. Pertamina Persero and President Commissioner of PT. Pertamina Hulu Energi did not leave the realm of business judgment rule marked by the absence of fraud, conflict of interest, unlawful acts and intentional errors (Januarsyah dkk, 2022). The existence of differences in legal considerations in the decisions at the first level and the appeal with the cassation decision certainly shows that there is a lack of uniformity in viewing the principles of Business Judgment Rule in the company's decision-making process that results in losses (Anandya dkk, 2023).

The panel of judges' consideration that the defendant's actions were still within the scope of the Business Judgment Rule because they were aimed at developing PT Pertamina (Persero) did not fully fulfill the requirements for the application of this doctrine as stipulated in Article 97 paragraph (5) of the UUPT. The application of the Business Judgment Rule requires that the directors act in good faith, with caution, without conflict of interest and have taken the necessary steps to prevent the occurrence or continuation of losses. In this case, the defendant's (Karen) actions that resulted in state losses should first be adjusted based on all elements of the Business Judgment Rule before obtaining the protection of this doctrine. With the fulfillment of the elements of the crime of corruption as charged by the public prosecutor in the subsidiary indictment both formally and materially and the placement of the defendant's actions within the scope of this doctrine, it is questionable that criminal responsibility against the defendant should still be imposed.

METHOD

This research employs normative legal research using statutory, case, conceptual, and comparative approaches. The statutory approach was used to analyse legal norms governing directors' liability and the application of the business judgment rule, particularly Article 97 paragraph (5) of Law Number 40 of 2007 concerning Limited Liability Companies and relevant provisions of Indonesian anti-corruption law.

The case approach focuses primarily on Supreme Court Decision Number 121 K/Pid.Sus/2020 concerning Karen Agustiawan, as the case represents an important judicial precedent regarding the intersection between corporate business decisions, state financial losses, and criminal liability. The selection of this case was based on its significance in demonstrating the judicial application of the business judgment rule in corruption cases involving state-owned enterprises.

Furthermore, this research applies a comparative approach in two respects. First, it compares Supreme Court Decision Number 121 K/Pid.Sus/2020 with Supreme Court Decision Number 1144 K/Pid/2006, both of which involve directors' business decisions resulting in state financial losses but produce different judicial outcomes regarding the application of the business judgment rule. The comparison was intended to examine the consistency of judicial reasoning and the interpretation of Article 97 paragraph (5) of the Limited Liability Company Law in determining directors' criminal liability. Second, this study compares the regulation and implementation of the business judgment rule in Indonesia and Australia. Australia was selected because its corporate law expressly recognises the business judgment rule and has developed a more consistent judicial approach regarding directors' liability for business decisions taken in good faith.

The legal materials used consist of primary legal materials, including legislation and court decisions, and secondary legal materials in the form of books, journal articles, and other scholarly publications related to corporate governance, fiduciary duty, and corruption law. The collected legal materials were analysed qualitatively through legal interpretation and comparative analysis to identify similarities, differences, and implications arising from the judicial application of the business judgment rule in Indonesia.

RESULTS AND DISCUSSION

Disparity in the Application of the Business Judgment Rule Doctrine in the Accountability of Directors for State Losses.

Decision Number 121 K/Pid.Sus/2020 annulled the Decision of the Corruption Crime Court at the DKI Jakarta High Court Number 34/Pid.Sus-TPK/2019/PT.DKI which upheld the Decision of the Corruption Crime Court at the Central Jakarta District Court Number 15/Pid.Sus/TPK/2019/PN Jkt.Pst. This is because at the examination level at the Supreme Court (judex juris), the panel of judges firmly stated that what Karen and other directors of PT. Pertamina Persero did was solely in order to develop PT. Pertamina Persero, namely trying to increase oil and gas reserves so that the steps taken by Karen as President Director of PT. Pertamina Persero and President Commissioner of PT. Pertamina Hulu Energi did not go beyond the realm of business judgment rule (Zulfikar dkk, 2025).

Karen was proven to have committed the act as charged in the Public Prosecutor's subsidiary indictment, but the act did not constitute a criminal act so Karen was released from all legal charges (ontslag van alle rechtsvervolging) and her rights were restored in terms of ability, position, dignity, and release from detention. The judge's consideration in deciding this was because Karen's actions did not contain any fraud, conflict of interest, unlawful acts and deliberate errors. Normatively, the principle of criminal liability is closely related to the principle of culpability, which requires proof of guilt before a person can be convicted (Kawuryan, 2025). That is why the judge's consideration that Karen is not proof of guilt should be based on her conduct that complies with the provisions of the Article 97 paragraph (5) of the UUPT because the protection of the Business Judgment Rule can be given if the directors cumulatively prove the four elements as regulated in the UUPT.

1. The loss was not due to his fault or negligence. (Article 97 Paragraph 5 Letter a of Law Number 40 of 2007 concerning Limited Liability Companies).

   The legal facts contained in the trial and have been decided by the panel of judges at the Judex Facti level found that Karen has the duties and responsibilities in controlling and monitoring acquisition activities as well as analyzing and evaluating the company's acquisition plans in the upstream environment. However, Karen actually did not pay attention to or ignored the results of the Due Diligence Report conducted by the External Team of PT. Deloite Konsultan Indonesia (DKI) as Financial Advisor in the Diamond Project based on the Appointment Letter from FEREDERICK ST SIAHAAN as Finance Director through memorandum Number 007/H 20/00/2009-S dated January 6, 2009. In the report, it was stated that it would be very high risk if PT. Pertamina acquired Participating Interest (PI) of 10% and from Baker McKenzie Sydney stated that incomplete data was included in the high risk category.

   Ignoring the Due Diligence Report's findings is a form of negligence on the part of the board of directors in carrying out their duties in managing the company. The Due Diligence Report provided information and warnings regarding the high potential risks that could arise if PT Pertamina acquired a 10% Participating Interest (PI). With this report, the board of directors essentially had an adequate basis for identifying and estimating the risks that might arise as a consequence of the business decision to be taken. Therefore, the report should have been one of the primary considerations in the decision-making process to ensure that every action taken complies with the principle of prudence (duty of care). However, Karen, as the party with the decision-making authority, continued the acquisition process without demonstrating any adequate steps to anticipate the risks identified in the Due Diligence Report.

This action shows that the information regarding the risks that have been available is not used as a basis for optimal consideration in the decision-making process. Thus, ignoring the results of the Due Diligence Report can be seen as a form of negligence because Karen did not take appropriate action to prevent losses even though the risks could have been predicted in advance in the results of the Due Diligence Report. The negligence of the directors due to not implementing preventive measures that should have been taken before making decisions for the company caused losses for the company and is considered guilty (Muhaling, 2019). As a result of this negligence, the state suffered a loss of Rp586,066,000,000.00 (five hundred eighty-six billion sixty-six million rupiah). On the other hand, the acquisition transaction provided benefits to Anzon Australia as a subsidiary of ROC Oil Company (ROC Oil) thus indicating that the risks previously identified in the results of the due diligence report actually caused real losses.

2. Has carried out management in good faith and with due care for the interests and in accordance with the aims and objectives of the Company. (Article 97 Paragraph 5 Letter b of Law Number 40 of 2007 concerning Limited Liability Companies).

The Board of Commissioners of PT. Pertamina Hulu Energi wrote to the Board of Directors which in essence did not approve the acquisition of 10% Participating Interest (PI) of the BMG Block in Australia with an offer value of US$30 million made by Karen by stating that the previous approval was only for "Bidding" which was solely to train the upstream team's HR and not for the final goal, namely investment on the grounds that the reserves and production of the assets were relatively small so that they did not support the strategy of increasing national oil reserves and products (Ahmad dkk, 2018). In fact, the Board of Commissioners stated that the release of assets/divestment should be carried out immediately. Nevertheless, the acquisition transaction was still carried out with the signing of the Sale Purchase Agreement of 10% Participating Interest (PI) by the Finance Director based on a Power of Attorney representing PT Pertamina through the approval of Karen who at that time still served as the President Director of PT. Pertamina.

The action of continuing the acquisition of 10% Participating Interest (PI) in the BMG Block is a form of violation of the fiduciary duty principle, namely the principle of prudence (duty of care) because the acquisition was not approved by the Board of Commissioners and the results of due diligence have identified various risks in the acquisition transaction. This should be the basis for the Board of Directors to conduct further evaluation, postpone the transaction or even cancel the acquisition until all risks can be adequately prevented. However, the Board of Directors continued the acquisition process without taking adequate mitigation steps, thus this action shows the failure to apply the principle of prudence in the management of the company. In this context, Karen Agustiawan as the President Director at that time did not carry out the company's management function with the principle of prudence because she continued the acquisition transaction so that the company's goals and objectives were not achieved.

The business decisions taken by the President Director of PT. Pertamina show that the principle of prudence is not fulfilled and violates good corporate governance in Fiduciary Duty so that it should not be protected by the Business Judgment Rule. Thus, Karen as the President Director of PT. Pertamina who is proven to have violated the fiduciary duty invalidates the Business Judgment Rule doctrine on her. In this case, Karen is obliged to be fully responsible personally "persoonlijkaansprakelijk, personally liable" which must be borne as a form of consequence of the violation of the fiduciary duty of the directors as stated in Article 97 paragraph (3) of the PT Law. for the losses of PT. Pertamina.

3. Have no conflict of interest, either directly or indirectly, regarding management actions that result in losses. (Article 97 Paragraph 5 Letter c of Law Number 40 of 2007 concerning Limited Liability Companies).

   The element under Article 97, Paragraph 5 Letter C of the Company Law concerning the absence of a direct or indirect conflict of interest was not proved in this case because the court decision contains no legal findings or evidentiary addressing the directors had a conflict of interest in the management actions that resulted in the company's losses.

4. Has taken action to prevent the occurrence or continuation of such losses (Article 97 Paragraph 5 Letter d of Law Number 40 of 2007 concerning Limited Liability Companies).

   Based on the investigation, the acquisition process is suspected of being deviant because it was not carried out in accordance with applicable investment guidelines. PT Pertamina is suspected of not conducting a complete feasibility study until the final stage (Final Due Diligence), even though this study is a crucial part in assessing the risks, benefits, and feasibility of a transaction. As a result, the decision to carry out the acquisition and the costs arising from the transaction actually resulted in losses for PT Pertamina. The acquisition decision was initially made with the strategic objective of increasing national oil reserves and production and providing benefits for the company (Intihani, 2023).

   However, because the decision-making process was not supported by a comprehensive feasibility study and did not fully comply with applicable guidelines, this objective was not achieved. In this case, the discontinuation of the Due Diligence process to the final stage indicates that the Board of Directors did not make adequate efforts to prevent the emergence or continuation of potential losses. In fact, based on the incomplete Due Diligence report, significant risk indications were found, including a statement that the acquisition of a 10% Participating Interest (PI) by PT Pertamina had a very high level of risk. Furthermore, Baker McKenzie Sydney also stated that the limited and incomplete data available were factors categorized as high risk.

   The initial objective of the acquisition was to provide economic benefits and increase profits for the company. However, due to suboptimal acquisition procedures and a lack of thorough due diligence, a business decision that should have been profitable actually resulted in losses for the company. Therefore, the decision to proceed with the acquisition without completing a thorough due diligence review demonstrates that the Board of Directors failed to take action to prevent the occurrence or continuation of losses for the company.

The legal facts revealed in the trial as contained in the court decision and the adjustment to the requirements for the application of the Business Judgment Rule as stipulated in Article 97 paragraph (5) of the UUPT show that Karen Agustiawan as the President Director of PT Pertamina for the 2009–2014 period did not fulfill the three requirements that form the basis for the release of directors from responsibility. Therefore, legal protection through the Business Judgment Rule doctrine should not be applied to the person concerned. Therefore, Karen Agustiawan can be held personally responsible for the management actions she carried out. In the context of the a quo case, the relevant form of responsibility is criminal responsibility as charged by the Public Prosecutor in the subsidiary charge which was previously declared proven by the judex facti at the first level and the appeal level. The cassation decision should not overturn the decisions of the first level and the appeal level courts. The Supreme Court should uphold the judex facti decision because Karen Agustiawan did not fulfill the requirements to obtain protection based on the Business Judgment Rule doctrine as regulated in Article 97 paragraph (5) of the UUPT so that Karen was still sentenced to a criminal penalty as regulated in Article 3 of the Corruption Eradication Law considering that every element had been fulfilled both formally and materially based on the facts revealed in the trial.

Comparative Application of the Business Judgment Rule Doctrine in the Accountability of Directors for State Losses

The implementation of the Business Judgment Rule in Indonesia is actually regulated in Article 97 paragraph (5) of the UUPT. However, differences in interpretation of this provision have resulted in its inconsistent implementation. This is evident from the existence of court decisions that provide *Business Judgment Rule protection* to directors, while other decisions do not provide protection even though both have similar cases. One case that has similarities with Cassation Decision Number 121 K/Pid.Sus/2020, but its directors did not receive *Business Judgment Rule protection* , is the case of the disbursement of credit of IDR 160 billion by Bank Mandiri to PT Cipta Graha Nusantara as decided in Cassation Decision Number 1144 K/Pid/2006.

Table 1. Comparison of Directors' Responsibility for State Losses Based on Cassation Decisions

Comparative Aspects	Cassation Decision Number 121 K/Pid.Sus/2020	Cassation Decision Number 1144 K/Pid/2006
Position of the Defendant	Karen Agustiawan (President Director of PT Pertamina)	1. ECW Neloe (President Director of PT Bank Mandiri) 2. I Wayan Pugeg (Director of Risk Management) 3. M. Sholeh Tasripan (Director of Corporate Banking)
Object of Case	Acceptance of the offer from Citi Group regarding PI (Participating Interest) investment in the Australian BMG Block and the signing of the Sale Purchase Agreement (SPA) of 10% Participating Interest (PI) with the company ROC Ltd.	Disbursement of credit amounting to IDR 160 billion by Bank Mandiri to PT Cipta Graha Nusantara.
Fulfillment of the Elements of a Criminal Act	1. Everyone : Karen Agustiawan (President Director of PT Pertamina) 2. Benefiting a Corporation: The actions of the directors have benefited Anzon Australia as a subsidiary of ROC Ltd. 3. Abuse of Authority: The Board of Directors ignored the results of the Due Diligence Report conducted by the PT. DKI External Team which stated that the risk was very high. 4. Harming State Finances: The Board of Directors caused losses of 568 billion Rupiah and AUD 35,189,996.	1. Each person : ECW Neloe, I Wayan Pugeg, and M. Sholeh Tasripan were proven to have committed the crime of corruption together. 2. Unlawfully enriching oneself/another person/corporation : The Board of Directors ignored Bank Mandiri's Credit Implementation Guidelines and Credit Policy in granting credit to PT CGN. 3. Harming State Finances : The disbursement of Rp. 160 billion in credit to PT CGN resulted in state financial losses.

Compliance with the Business Judgment Rule (BJR)	1. Ignoring the results of the Due Diligence Report constitutes negligence on the part of the directors in carrying out their duties in managing the company. This violates Article 97 Paragraph 5 Letter a of the Company Law. 2. Continuing the acquisition despite the Board of Commissioners' warning and risks identified during *due diligence* violates Article 97 Paragraph 5 Letter b of the Company Law. 3. The due diligence process was not continued to the final stage. This violates Article 97 Paragraph 5 Letter d of the Company Law.	1. The disbursement of credit from Bank Mandiri to PT CGN was not based on the guidelines referred to as the Credit Implementation Guidelines and Bank Mandiri Credit Policy, as determined by the board of directors who made the final credit decision (Ali, 2006). This violates Article 97 Paragraph 5 Letter a of the Company Law. 2. The credit decision-making board of directors terminated the loan within a short period of time, acting recklessly and violating the Banking Law and the specific provisions of PT Bank Mandiri as outlined in the KPBM (Heriyanto dkk, 2020). This violates Article 97 Paragraph 5 Letter b of the UUPT.
Implementation of the Business Judgment Rule (BJR)	Business Judgment Rule Can Be Applied	Business Judgment Rule Not Applicable
Cassation Ruling	Free from all legal demands (*ontslag van alle rechtsvervolging*)	Proven legally and convincingly to have committed criminal acts of corruption jointly and continuously.

A comparison of the two decisions above at the cassation examination level shows similarities, namely the fulfillment of the elements of the criminal act in each case. However, the requirements for implementing the Business Judgment Rule (BJR) as stipulated in Article 97 paragraph (5) of the Limited Liability Company Law (UUPT) are essentially not met in both decisions. However, there are differences in their application. In Decision Number 121 K/Pid.Sus/2020, the Business Judgment Rule doctrine is applied even though the conditions as stipulated in Article 97 paragraph (5) of the UUPT are not met. From these two decisions of the Corruption Court, it is clear that there is no legal consistency in the application of the Business Judgment Rule doctrine to company directors, especially BUMN directors. In practice, the application of this doctrine still faces various inconsistencies mainly caused by diverse interpretations of related laws and regulations. This condition creates legal uncertainty which can ultimately have a negative impact on the business climate and the competitiveness of BUMN.

The overall discussion demonstrates that the Business Judgment Rule is not intended to absolve directors of all liability, but rather to provide protection against the risk of criminalization for business decisions made legally, in good faith, and based on reasonable considerations. If fraud, gross negligence, or abuse of authority is proven, protection under the Business Judgment Rule doctrine cannot be granted. In such cases, the Business Judgment Rule doctrine serves as an instrument to distinguish between business losses, which are a normal risk in business activities, and losses arising from actions that meet the elements of a criminal offense. Furthermore, the principle of fiduciary duty is also important in assessing the responsibility of directors.

As long as directors carry out their fiduciary duty properly, they are entitled to full protection under the Business Judgment Rule doctrine, even if the decisions taken ultimately result in losses for the company (Branson, 2001). This is because the business world is inseparable from risk, and the courage to take risks is part of the duties of directors. Thus, the relationship between fiduciary duty and the Business Judgment Rule is an important foundation in determining the limits of directors' liability in company management. The differences in the application of the Business Judgment Rule doctrine in court decisions demonstrate the importance of consistent interpretation and application in Indonesia. This consistency is necessary to ensure legal certainty for directors in carrying out their corporate management functions and to prevent inappropriate use of the Business Judgment Rule doctrine in cases involving unlawful acts. This approach aligns with the development of the Business Judgment Rule doctrine in Australia.

In Australia, according to Section 180(2) of the Corporations Act 2001 (Cth), the Business Judgment Rule applies only in relation to the statutory duty of care and diligence expressly provided under that provision. The protection afforded by the Business Judgment Rule also extends to the equivalent duties imposed under the common law and principles of equity. Furthermore, Section 180(3) of the Corporations Act 2001 provides a clear definition of a business judgment as any decision to take or not to take action in respect of matters relevant to the business operations of the corporation. Accordingly, a business judgment encompasses two forms of decision-making: a decision to undertake a business action or a decision to refrain from taking such action (Rissy, 2020).

One of the leading Australian cases on the application of the Business Judgment Rule is ASIC v Rich [2009] NSWSC 1229 (One.Tel case). The Australian Securities and Investments Commission (ASIC) alleged that the directors breached their duty of care by failing to inform the board that the company was insolvent. However, the Supreme Court of New South Wales dismissed the claims against Rich and Silbermann because ASIC failed to prove that they had breached section 180(1) of the Corporations Act 2001 (Cth). In that case, the Supreme Court of New South Wales emphasized that directors' liability should not be assessed merely on the basis of an unsuccessful business outcome, but rather on whether the decision-making process was conducted with due care and diligence. The Court further explained that the Business Judgment Rule functions as a defence only where directors have exercised an informed and rational business judgment, and it cannot be relied upon where directors merely neglect their duties or fail to properly inform themselves before making business decisions (Harris & Hargovan, 2016).

Australian courts consistently refuse to extend Business Judgment Rule protection to directors who fail to satisfy the statutory requirements under Section 180(2) of the *Corporations Act 2001 (Cth)*. Where directors act in bad faith, neglect their duties, fail to obtain adequate information before making a decision, or abuse their authority, they remain personally accountable for the resulting losses. This approach provides greater legal certainty and ensures that the Business Judgment Rule is applied only to legitimate business decisions made in accordance with directors' fiduciary duties. In contrast, Indonesian courts have not always applied the doctrine consistently. In several cases, Business Judgment Rule protection has been granted even where directors neglected their duties, resulting in corporate losses and benefits to other corporations. Therefore, a more consistent application of the Business Judgment Rule doctrine is necessary to ensure legal certainty for directors and to promote justice and economic efficiency (Rahardjo, 2006).

Even before the enactment of the Corporations Act 2001, Australian courts had already recognized and applied the Business Judgment Rule doctrine. One of the earliest examples is Harlowe's Nominees Pty Ltd v Woodside (Lakes Entrance Oil Co.) (1968). In that case, the court held that the directors had acted in good faith and in the best interests of the corporation. Consequently, the court declined to interfere with the directors' business judgment, establishing an important judicial foundation for the subsequent codification of the Business Judgment Rule in Section 180 of the Corporations Act 2001. This consistent approach has developed not only through statutory regulation but also through long-standing judicial precedents (Muninggar & Saleh, 2024).

The Business Judgment Rule doctrine is highly relevant to the investment climate. La Porta explained that legal protection for directors is closely linked to capital market developments and investor interest. Consistent application of the Business Judgment Rule will also increase investor confidence that SOE management enjoys legal certainty. Legal certainty means that legal norms must be predictable in their application, so that legal subjects feel secure (Utrecht, 1959). When SOE directors lack legal certainty, they will be reluctant to take bold policies. As a result, SOEs become less competitive and potentially harm the broader interests of the state. Protection through the Business Judgment Rule (BJR) thus serves not only the interests of directors but also the interests of the community and the state. Consistent application of this principle can strengthen legal certainty, increase investor confidence, and boost the performance of SOEs as drivers of the national economy (Sutanto, 2025).

CONCLUSION

The Business Judgment Rule doctrine in Supreme Court Decision Number 121 K/Pid.Sus/2020 shows a disparity with BJR as stipulated in Article 97 paragraph (5) of the UUPT. The Supreme Court assessed that the actions of the Pertamina Director were still within the realm of business decisions protected by *the Business Judgment Rule* , but the legal facts in the trial showed a disregard for the results of *due diligence* and warnings given by the Board of Commissioners and negligence in terms of not continuing the *due diligence report* until the end and not taking adequate steps to prevent losses when knowing the results of the high level of risk to the investment and acquisition process. Comparison of Decision Number 121 K/Pid.Sus/2020 with Decision Number 1144 K/Pid/2006 shows the inconsistency in the application of BJR by the courts in Indonesia. In this case, both cases violated the BJR doctrine as stipulated in Article 97 paragraph (5) of the UUPT, but only in the case of Decision Number 121 K/Pid.Sus/2020, the doctrine was applied and resulted in a decision to acquit all legal charges. If compared with Australia, Indonesia demonstrates a less consistent interpretation and application of the Business Judgment Rule (BJR) in judicial decisions. In contrast, Australian courts have consistently applied the statutory requirements under Section 180(2) of the Corporations Act 2001 (Cth) alongside established judicial precedents, as illustrated in *Harlowe's Nominees Pty Ltd v Woodside (Lakes Entrance Oil Co.)* (1968), which established an important foundation for the subsequent codification of the BJR under Section 180(2) of the *Corporations Act 2001* (Cth). This consistent approach provides greater legal certainty and strengthens the effectiveness of the BJR as a legal protection mechanism for directors. This difference reflects the lack of uniformity in the interpretation of the BJR doctrine which has the potential to create legal uncertainty for BUMN directors, thereby reducing the effectiveness of the BJR doctrine as a legal protection instrument that should be applied consistently. Therefore, strengthening the implementation of the Business Judgment Rule (BJR) requires the establishment of uniform guidelines to ensure its consistent interpretation and application in judicial decisions. A more consistent application of the BJR would reduce disparities in judicial reasoning and improve the effectiveness of the doctrine as a legal protection mechanism while maintaining accountability for corporate misconduct.

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