

Criminal Responsibility for Perpetrators of Criminal Acts of Corruption in State-Owned Enterprises (BUMN) Based on Positive Law

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Abstract. *State-Owned Enterprises (SOEs) have special characteristics as corporate entities that carry out dual functions, namely as profit-oriented business entities and as state instruments in the provision of public services. These characteristics give rise to legal issues related to the criminal liability of SOE Directors, particularly when company losses occur that are qualified as state financial losses due to corruption. Regulatory developments through Law Number 40 of 2007 concerning Limited Liability Companies, which emphasizes the principle of separation of state assets from company assets, and the enactment of Law Number 1 of 2023 concerning the Criminal Code, which strengthens the principle of culpability, give rise to the need to review the limits of criminal liability of SOE Directors. The research findings indicate that criminal liability of SOE directors cannot be based solely on the company's losses. SOE losses must be clearly distinguished from state financial losses, taking into account the principle of separating state assets that have become the company's capital. Furthermore, the application of criminal liability must remain based on proving elements of unlawful acts, abuse of authority, and the perpetrator's fault in accordance with the principle of culpability. Going forward, harmonization of the Limited Liability Company Law, the Corruption Eradication Law, and the 2023 Criminal Code is needed to create legal certainty, prevent the criminalization of legitimate business decisions, and support professional, accountable, and competitive SOE governance.*

Keywords: *Corruption; Criminal Responsibility; Directors; State Financial Losses; State-Owned Enterprises.*

1. Introduction

State-Owned Enterprises (BUMN) are a concrete manifestation of the state's role

in national economic activities as explicitly mandated in Article 33 of the 1945 Constitution of the Republic of Indonesia. This constitutional norm is not merely an ideological declaration, but rather a philosophical and legal foundation for a national economic system oriented towards general welfare. Article 33 of the 1945 Constitution emphasizes that the economy is structured as a joint effort based on the principle of kinship, and that branches of production that are important to the state and that control the livelihoods of many people are controlled by the state.¹This provision places the state as a central actor in managing strategic resources to ensure the achievement of social justice for all Indonesian people.

State control as referred to in the constitutional norm is not always interpreted as direct management by government organs in the narrow sense. The concept of "state control" has been interpreted broadly, encompassing regulatory (*regelendaad*), management (*beheersdaad*), administration (*bestuursdaad*), oversight (*toezichthoudensdaad*), and policy (*beleid*). In practice, the implementation of these functions can be carried out through institutional instruments in the form of business entities subject to modern corporate mechanisms. Thus, the state does not have to act as an administrative bureaucracy, but can act as a shareholder through professionally managed corporate entities.

In this context, state-owned enterprises (SOEs) are established as legal entities with dual objectives and unique characteristics. On the one hand, SOEs are profit-oriented, like corporations in general. As business entities, SOEs are required to adhere to the principles of efficiency, effectiveness, and good corporate governance. SOEs must be able to compete in the market, manage business risks, expand their business, and provide dividends to the state as shareholder. This business orientation places SOEs in the dynamics of market competition, which demands managerial professionalism and swift and adaptive decision-making.

However, on the other hand, BUMN also carries out public service obligations as part of the country's economic policy instruments.²It's not uncommon for state-owned enterprises (SOEs) to be given special assignments by the government to implement national strategic projects, maintain price stability, provide basic services at affordable prices, or intervene in the market for the benefit of the wider community. In certain situations, these assignments can even potentially reduce corporate profits, as their orientation is not solely commercial but rather social. This is where the dual character of SOEs lies, distinguishing them from purely private corporations.

¹Article 33 of the 1945 Constitution of the Republic of Indonesia.

²Jimly Asshiddiqie, *The Indonesian Economic Constitution*, Jakarta: Kompas, 2010, p. 112.

This dual nature places state-owned enterprises (SOEs) in a unique and challenging position. SOEs are not entirely synonymous with state organs because they are subject to private legal regimes, particularly limited liability company law. However, SOEs also cannot be fully equated with private corporations because their capital is sourced from the state and they often carry out public policy mandates. This in-between position in practice gives rise to various legal challenges, particularly when company losses are then attributed to state financial losses.

Normatively, before the latest amendment, Article 1 number 1 of Law Number 19 of 2003 concerning State-Owned Enterprises defined a State-Owned Enterprise as a business entity whose capital is wholly or mostly owned by the state through direct participation originating from separated state assets.³The phrase "separated state assets" has become a central point of debate in legal discourse. On the one hand, this separation indicates that after capital investment, the assets change status to corporate assets subject to private law mechanisms. However, on the other hand, because they originate from the state budget and remain recorded as part of state assets, the view has emerged that SOE losses remain state financial losses.

This difference in interpretation is increasingly prominent in corruption cases. Problems arise when state-owned enterprises (SOEs) incur losses due to business decisions made by the Board of Directors, such as failed investments, unprofitable expansions, or market price fluctuations that adversely affect the company. In law enforcement practice, these losses are often classified as state financial losses, thus opening up the opportunity to apply the Corruption Eradication Law (UU Tipikor).⁴This approach is based on the argument that state-owned enterprise capital comes from state assets, so any reduction is considered detrimental to the state.

In fact, from a corporate law perspective, the Board of Directors has management authority based on the principle of fiduciary duty, namely the obligation to act in good faith, with full responsibility, and solely in the interests of the company. The Board of Directors is given discretion in making business decisions as long as they are carried out carefully (duty of care) and without conflict of interest (duty of loyalty). The business judgment rule doctrine provides protection to the Board of Directors from lawsuits for business decisions that turn out to be detrimental, as long as the decisions are made based on adequate information and rational considerations.⁵

Consequently, the line between business risk and criminal offenses has become

³Article 1 number 1 of Law Number 19 of 2003 concerning State-Owned Enterprises.

⁴Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption.

⁵M. Yahya Harahap, *Limited Liability Company Law*, Jakarta: Sinar Grafika, 2016, p. 347.

blurred. In the business world, risk is inherent and unavoidable. Every business decision carries the potential for profit or loss. However, in law enforcement practice, business losses are often viewed as an indication of unlawful conduct, without a thorough analysis of the subjective element of fault. Many cases demonstrate that managerial failures or changes in market conditions are positioned as corrupt acts, even though there is not always an element of *mens rea* or malicious intent.

This phenomenon is known as the overcriminalization of business decisions, a tendency to criminalize business policies that are normally within the realm of civil law or corporate governance. This has a significant impact on the management climate of state-owned enterprises (SOEs). Directors tend to be defensive and reluctant to make high-risk strategic decisions, even if they have the potential to significantly benefit the company and the country. Fear of potential criminalization can undermine SOEs' competitiveness in the face of global economic dynamics.

Recent developments indicate a normative shift through the enactment of Republic of Indonesia Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the 2007 PT Law). This law emphasizes the principle of separating state assets from those of state-owned enterprises (SOEs) as independent corporate entities.⁶ This affirmation indicates a legal policy direction that places SOEs more as autonomous private legal subjects, with professional and accountable corporate governance.

This affirmation of the separation of assets has direct implications for the construction of state finances in corruption cases. If state-owned enterprise assets are understood as separate corporate assets, not every company loss can be automatically classified as a state loss. A more thorough analysis is needed to distinguish between corporate losses due to business risks and state losses due to abuse of authority or unlawful acts.

In addition, the reform of national criminal law through Law Number 1 of 2023 concerning the Criminal Code (KUHP 2023) strengthens the principle of culpability (*geen straf zonder schuld*), namely the principle that there is no punishment without fault.⁷ This principle emphasizes that punishment must be based on the existence of subjective fault on the part of the perpetrator, whether in the form of intentional or negligent responsibility. Thus, the paradigm of punishment can no longer be based solely on the existence of harm, but rather must be proven a relationship between the unlawful act and the perpetrator's fault.

This issue becomes increasingly relevant within the framework of national legal

⁶Law of the Republic of Indonesia Number 1 of 2025 concerning the Third Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises

reform, particularly in efforts to achieve state-owned enterprise governance based on professionalism, transparency, and legal certainty. Without clear lines of accountability, state-owned enterprise directors will tend to adopt a defensive management approach, avoid innovation, and be reluctant to take progressive strategic steps. In the long term, this situation could hinder the transformation of state-owned enterprises into world-class, competitive and globally competitive corporations.

Therefore, a comprehensive and systematic academic study is needed to reconstruct the limits of criminal liability for SOE directors from the perspective of Indonesian positive law. Such a study must harmonize the principles of corporate law with criminal law, thus creating a balance between protecting state finances and ensuring legal certainty for SOE managers. With the right approach, it is hoped that the national legal system will foster a professional, integrity-based, and nationally economic-oriented SOE governance climate.

Based on this, the author is interested in researching and writing it in a legal paper with the title: "Criminal Liability of State-Owned Enterprise Directors for State Financial Losses in Corruption Crimes After the Enactment of Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies and its Implications for Law Number 1 of 2023 concerning the Criminal Code".

2. Research Methods

To conduct the study in this research, the author used a normative legal method. Considering that the problems being researched and examined adhere to the legal aspect, namely based on norms, regulations, legislation, legal theories, and the opinions of legal experts. In normative legal research, law is conceptualized as a rule or norm that is the basis for human behavior that is considered appropriate. This research is categorized as normative research because it examines library materials against secondary data sourced from library materials.

3. Results and Discussion

3.1. What is the Criminal Liability for Perpetrators of Corruption Crimes in State-Owned Enterprises (BUMN) in the form of PT Based on Positive Law?

a) Legal Status of State-Owned Enterprises as Subjects of Corporate Law

State-Owned Enterprises (BUMN) in the form of a Limited Liability Company are essentially private legal entities formed and established based on the provisions of limited liability company law, so that in carrying out their business activities they are subject to the private legal regime of companies (private law regime). Although structurally the capital of a Limited Liability Company is partly or even entirely derived from the state through a state capital participation mechanism sourced from separated state assets, the legal status of the Limited Liability

Company remains unchanged as an independent business entity and cannot be equated with state organs or government institutions.

As a consequence, State-Owned Enterprises (BUMN Persero) remain within the scope of Law Number 40 of 2007 concerning Limited Liability Companies, which affirms that each company has the status of an independent legal entity, has its own corporate organs, and carries out business activities based on the principles of good corporate governance. In this context, the legal status of Persero shows a clear separation between the state as a shareholder and the company itself as an independent legal subject, which in legal doctrine is known as the principle of separate legal entity.⁷

The principle of separate legal entity is one of the fundamental principles in corporate law which emphasizes that a company has rights, obligations, and legal responsibilities that are independent and separate from its shareholders. Therefore, all forms of company assets, rights, and obligations cannot be automatically considered as the property of shareholders, including the state, and vice versa, shareholder assets do not automatically become part of the company's assets. In the context of a State-Owned Enterprise (BUMN Persero), the state only acts as a shareholder with corporate rights in accordance with its portion of share ownership, without directly interfering in the management of the company's assets in its daily operational activities.⁸

The existence of this principle has significant legal implications, particularly in the context of law enforcement for corruption related to the management of state-owned enterprises. In practice, a long-standing view has tended to equate any losses incurred by state-owned enterprises with state financial losses, arguing that the initial capital of state-owned enterprises comes from the State Budget (APBN). However, this view has begun to undergo a fundamental shift with the development of modern corporate law doctrine, which emphasizes that after capital participation and the separation of state assets, these assets have changed status to become the assets of a company that stands alone as a private legal entity.

This development of thinking also strengthens the understanding that not all losses experienced by BUMN can automatically be qualified as state financial losses, but must be viewed carefully based on the applicable legal construction, including the separation between the public legal regime and the private legal regime in the management of BUMN Persero.

b) The Concept of State Financial Losses in Criminal Acts of Corruption

⁷Law Number 40 of 2007 concerning Limited Liability Companies", "Indonesia"], Article 1 number 1 and Article 3.

⁸Law Number 1 of 2004 concerning State Treasury", "Indonesia"], Article 1 number 22.

State financial loss is one of the most important elements in criminal acts of corruption, particularly as formulated in Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption. Both provisions place state financial loss or state economic loss as a result of unlawful acts or abuse of authority committed by perpetrators of criminal acts of corruption. Therefore, the existence of the element of state loss is one aspect that is often the focus of evidence in the process of enforcing the law on criminal acts of corruption.⁹

Normatively, the definition of state losses is regulated in Article 1 number 22 of Law Number 1 of 2004 concerning State Treasury which states that state/regional losses are a shortage of money, securities and goods of a real and definite amount as a result of unlawful acts, whether committed intentionally or due to negligence.¹⁰ This definition emphasizes that state losses cannot be based on mere allegations, but must be proven concretely and measurably so that the amount of losses suffered by the state can be calculated with certainty based on an audit mechanism or calculation that can be legally accounted for.

Based on this formulation, several key elements must be met for a situation to be categorized as a state loss. First, there must be a reduction or depletion of state assets, which can be in the form of money, goods, or securities that are the right or property of the state. Second, the loss must be real (actual loss) and definite in amount, so it is not sufficient to simply consider a potential loss or a possible loss that has not yet occurred. Third, the loss must arise from an unlawful act, either a violation of laws and regulations or an abuse of authority that results in a reduction of state assets.¹¹

Over time, the concept of state losses has become increasingly complex when linked to the management of State-Owned Enterprises (SOEs). This is because SOEs have dual characteristics: they are both business entities aiming to generate profits and business entities whose capital is partially or entirely derived from separated state assets. This situation often gives rise to debate over whether every loss experienced by SOEs can automatically be classified as a state financial loss in the context of corruption.¹²

Conceptually, not every loss experienced by a state-owned enterprise (BUMN) can be categorized as a state loss. As a corporation conducting business activities, BUMNs are inherently exposed to various business risks inherent in economic and trade activities. Losses arising from market price fluctuations,

⁹Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001.

¹⁰Law Number 1 of 2004 concerning State Treasury, Article 1 number 22.

¹¹Adami Chazawi, "Corruption Criminal Law in Indonesia", "Corruption Criminal Law Book"], (Jakarta: RajaGrafindo Persada), pp. 35–38.

¹²Law Number 19 of 2003 concerning State-Owned Enterprises, Article 1 number 1.

changes in currency exchange rates, business competition, investment failures, changes in global economic conditions, or business decisions made in good faith within the authority of the Board of Directors are part of the business risks that commonly occur in the business world. In such circumstances, the losses incurred cannot necessarily be viewed as state losses that constitute an element of corruption.¹³

Distinguishing between state losses and business risks is crucial for maintaining legal certainty in the management of state-owned enterprises. If every loss experienced by a state-owned enterprise is consistently considered a state loss without considering the cause, decision-making process, and the business judgment rule principles applicable to corporate law, this will broaden the definition of state losses, potentially blurring the boundaries between criminal law and corporate law. As a result, state-owned enterprise directors and officials could face criminal prosecution for business decisions that were actually made professionally and in good faith for the benefit of the company.¹⁴

Therefore, in determining whether state losses have occurred in a state-owned enterprise (SOE), a careful analysis of the assets under management, the nature of the act committed, the causal relationship between the perpetrator's actions and the resulting losses, and any unlawful elements or abuse of authority is necessary. Therefore, the application of the state loss element in corruption crimes remains within the bounds of legal certainty and does not impede legitimate business decision-making in SOE management.

3.2. What form will criminal liability take for perpetrators of corruption crimes in State-Owned Enterprises (BUMN) in the form of PT in the future?

a) Reconstruction of the Concept of State Financial Losses

Developments in national law, particularly in the areas of criminal law, corporate law, and state financial law, demonstrate an urgent need to reconstruct the concept of state financial losses in corruption cases involving State-Owned Enterprises (SOEs) in the form of Limited Liability Companies (Persero). This need arises because there are still differing interpretations regarding the status of SOE assets and the relationship between company losses and state financial losses. These differing interpretations often create legal uncertainty, particularly in determining whether any losses suffered by SOEs can automatically be categorized as state losses, which constitute an element of corruption.¹⁵

¹³Erman Rajagukguk, "Indonesian Corporate Law Expert", The Concept of State and State-Owned Enterprise Losses in the Perspective of Corporate Law, pp. 45–50.

¹⁴Ridwan Khairandy, Limited Liability Company", "Company Law Book", (Yogyakarta: FH UII Press), pp. 267–272.

¹⁵Adami Chazawi, "Corruption Criminal Law in Indonesia", "Corruption Criminal Law Book", p. 120.

Theoretically and normatively, state assets that have been separated and included as capital in state-owned enterprises (BUMN) have changed their status to corporate assets subject to the principles of corporate law. This separation of assets is a consequence of the Persero's status as a legal entity with assets, rights, and obligations separate from those of its shareholders, including the state as the majority shareholder. Therefore, losses experienced by Persero are essentially corporate losses that must be clearly distinguished from state financial losses in the fiscal sense.¹⁶

From a legal reform perspective, the concept of state losses should be reframed by classifying losses to state-owned enterprises (SOEs) as state losses only if a direct link can be proven between the perpetrator's actions and the reduction in state assets, which are the object of protection under corruption criminal law. In other words, not every decline in asset value, investment loss, business failure, or decline in company profits can be classified as state losses. An overly broad interpretation of the concept of state losses has the potential to blur the line between legitimate business risks and criminal acts of corruption.¹⁷

This conceptual reconstruction is also necessary to provide legal certainty for SOE directors in carrying out their corporate management functions. As a corporate organ, the board of directors is essentially empowered to make risky business decisions as long as they are made in good faith, with due care, and in the best interests of the company. If every loss arising from a business decision is always associated with state losses and potentially subject to criminal prosecution, the board of directors will tend to avoid making strategic decisions that are truly necessary for the company's development. As a result, the function of SOEs as business actors that must be able to compete in the business world becomes suboptimal.¹⁸

Thus, the reconstruction of the concept of state losses needs to be directed at establishing clearer, more objective, and more measurable legal standards so that it can clearly differentiate between corporate losses resulting from business risks and state losses arising from unlawful acts or abuse of authority.

b) Strengthening the Business Judgment Rule Doctrine in the Indonesian Legal System

The Business Judgment Rule is a fundamental principle in modern corporate law that provides legal protection to directors for business decisions made honestly, rationally, and based on adequate information. This doctrine arose from the

¹⁶Law Number 19 of 2003 concerning State-Owned Enterprises; Indonesia, Law Number 40 of 2007 concerning Limited Liability Companies.

¹⁷Ermanto Rajagukguk, "Indonesian Corporate Law Expert", *The Concept of Separated State Assets in State-Owned Enterprises*, p. 45.

¹⁸Ridwan Khairandy, *Limited Liability Company*, "Company Law Book", pp. 270–275.

need to provide room for company managers to make risky business decisions without the threat of legal liability whenever those decisions result in losses for the company.¹⁹

In the Indonesian context, the Business Judgment Rule doctrine has been implicitly recognized in the Limited Liability Company Law, particularly through regulations regarding the obligation of Directors to carry out their duties in good faith and with full responsibility. However, in the practice of law enforcement of corruption crimes involving state-owned enterprises, the application of this doctrine has not yet fully gained sufficient ground. It is not uncommon for business decisions that turn out to be unprofitable or even result in company losses to be viewed as indications of corruption without a thorough analysis of the decision-making process.²⁰

Therefore, in the future, it is necessary to strengthen the Business Judgment Rule doctrine, both through revisions to legislation and the development of operational law enforcement guidelines. This strengthening aims to provide clear parameters for law enforcement officials in distinguishing between legitimate business decisions, managerial negligence, abuse of authority, and criminal acts of corruption.

Legitimate business decisions should be understood as those made based on the authority held, supported by adequate information, made in good faith, and directed toward the company's interests. Conversely, managerial negligence is the failure of management to meet reasonable standards of prudence in carrying out their duties. Abuse of authority and corruption require intent, a deviation from the intended purpose of the authority, and unlawful gain.²¹

With these clear parameters, the risk of criminalization of business policies can be minimized, thus creating a balance between the need to eradicate corruption and protect legitimate business activities.

c) Harmonization of the Limited Liability Company Law, the State-Owned Enterprises Law, the Anti-Corruption Law, and the National Criminal Code in 2023

One of the fundamental problems still faced in law enforcement is the lack of integration of various laws and regulations governing state-owned enterprises, corporations, and corruption. This lack of synchronization often gives rise to conflicting norms and differing interpretations, resulting in legal uncertainty.²²

¹⁹Sutan Remy Sjahdeini, "Indonesian Corporate Law Expert"], *Business Judgment Rule and Directors' Responsibilities*, pp. 88–95.

²⁰Law Number 40 of 2007 concerning Limited Liability Companies, Article 97.

²¹Munir Fuady, "Modern Doctrines in Corporate Law", *"Corporate Law Book"*, pp. 213–220.

²²Barda Nawawi Arief, "Anthology of Criminal Law Policy", *"Criminal Law Policy Book"*, p. 56.

The Limited Liability Company Law defines a Persero as a private legal entity with assets separate from its shareholders. Meanwhile, the State-Owned Enterprises Law stipulates that Persero capital originates from separated state assets. Meanwhile, the Corruption Eradication Law still uses the concept of state losses as one element of a crime. Furthermore, the 2023 National Criminal Code introduced a more modern and comprehensive concept of corporate criminal liability. These differences in regulatory orientations necessitate comprehensive legal harmonization.²³

Harmonization is needed to establish a common understanding of the status of state-owned enterprise assets, the concept of state losses, the limits of directors' liability, and the mechanisms for corporate criminal liability. With this harmonization, all law enforcement agencies will have a common normative basis for handling cases involving state-owned enterprises, thereby reducing the potential for inconsistent decisions.

Furthermore, harmonization is also necessary to ensure a balance between the interests of protecting state finances and the needs of business development. A harmonious legal system will provide legal certainty for business actors while increasing the effectiveness of eradicating corruption.

d) Model of Criminal Liability for BUMN Directors in the Future

According to the author, the future criminal liability model for SOE directors must be based on the principles of prudence, legal certainty, and proportionality. Criminal liability should not be based solely on company losses, but rather on evidence of elements that clearly indicate the existence of a criminal act of corruption.²⁴

The model must be based on at least four main parameters. First, there must be a clear and objectively proven unlawful act based on statutory provisions. Second, there must be deliberate abuse of authority by the perpetrator for purposes that deviate from the interests of the company or the state. Third, there must be personal gain, the benefit of a particular group, or the benefit of another party obtained illicitly as a result of the act. Fourth, there must be a clear state loss, a definite amount, and a direct causal link (causal verband) to the perpetrator's actions.

These four elements must be proven cumulatively. If any one element is not met, the Board of Directors' actions should not be classified as corruption. In such circumstances, resolution is more appropriate through corporate law, civil law, or corporate governance mechanisms. This approach aligns with the principle of

²³Law Number 1 of 2023 concerning the Criminal Code.

²⁴Muladi and Dwidja Priyatno, "Corporate Criminal Liability", "Corporate Criminal Law Book"], pp. 77–83.

ultimum remedium, which places criminal law as a last resort after other legal instruments are inadequate to resolve the problem.²⁵

It is hoped that the law enforcement model for SOE directors will be fairer, more proportional, and provide legal certainty. On the one hand, the state still has effective instruments to prosecute actual perpetrators of corruption. On the other hand, directors who carry out their business functions professionally and in good faith will still receive adequate legal protection in carrying out their company management duties.

4. Conclusion

Based on the results of research on Criminal Responsibility for Perpetrators of Corruption Crimes in State-Owned Enterprises (BUMN) in the Form of Limited Liability Companies Based on Positive Law, the following conclusions can be drawn: 1. Accountability Criminal penalties against perpetrators of corruption in BUMN in the form of Limited Liability Companies based on positive Indonesian law cannot be based solely on the existence of losses to the Company. A State-Owned Enterprise (SOE) in the form of a Limited Liability Company is essentially a legal entity that has a status as a separate legal entity or legal subject separate from its shareholders, including the state as the majority shareholder. Since the state has invested capital in a SOE, the assets have changed status to corporate assets whose management is subject to the principles of corporate law as regulated in Law Number 40 of 2007 concerning Limited Liability Companies and Law Number 1 of 2025 concerning the Third Amendment to Law Number 19 of 2003 concerning SOEs. In the practice of enforcing corruption laws, losses suffered by state-owned enterprises are often automatically equated with state financial losses. However, legally, there is a fundamental difference between corporate losses and state financial losses. Not every loss experienced by a state-owned enterprise can be classified as a state loss, especially if the loss arises as a consequence of normal business risks in business activities. The Board of Directors, as a corporate body, has the authority to manage the company and make various business decisions that carry the risk of profit or loss. Therefore, losses arising from business failure cannot necessarily be used as a basis for imposing criminal liability on the Board of Directors. Criminal liability can only be imposed if there is evidence of an unlawful act, abuse of authority, conflict of interest, procedural deviation, or actions taken with the intention of unlawfully benefiting oneself, another person, or the corporation. Thus, the existence of losses to a state-owned enterprise cannot be the sole basis for determining the existence of corruption. Law enforcement must continue to adhere to the elements of a crime as stipulated in the Corruption Eradication Law and the principles of criminal liability applicable in the national legal system. 2. The form

²⁵Barda Nawawi Arief", "Indonesian Criminal Law Expert"], Problems of Law Enforcement and Criminal Law Policy, pp. 32–35.

of criminal responsibility for perpetrators of corruption in BUMN in the form of Limited Liability Companies in the future must be oriented towards the principles of culpability, legal certainty, and protection of legitimate business decisions. The enactment of Law Number 1 of 2023 concerning the Criminal Code brings a paradigm shift in the national criminal justice system by strengthening the principle of culpability (*geen straf zonder schuld*), which affirms that there is no punishment without fault. This principle places fault as the primary basis for punishment, so that an individual can only be punished if proven guilty for which they are legally accountable. In the context of state-owned enterprise management, this principle implies that directors cannot be punished solely for business decisions that result in company losses. Criminal penalties must be based on proof of intent (*dolus*) or negligence (*culpa*), accompanied by unlawful acts and abuse of authority. Therefore, criminal law should not be used as an instrument to criminalize any business failures that occur in the management of a state-owned enterprise. Going forward, the concept of the business judgment rule needs to be more firmly recognized and implemented in law enforcement practices in Indonesia. Directors who act in good faith, with a duty of care, without conflict of interest, and who act in the best interests of the company should receive legal protection from the threat of criminalization. Conversely, directors who intentionally abuse their authority for personal gain or to benefit certain parties at the expense of the state must still be held criminally accountable. Therefore, the future criminal liability model for SOEs must strike a balance between the interests of eradicating corruption and the business world's need to develop professionally, innovatively, and competitively. Legal certainty for SOE directors is essential so they can make strategic decisions without the overshadowing of excessive fear of criminalization.

3. Regulatory harmonization is needed to create legal certainty in determining the criminal liability of BUMN Directors.

4. The research results indicate that there is still potential for normative conflict between various laws and regulations governing state-owned enterprises (SOEs), state finances, corruption, and criminal liability. Differing perspectives on the status of separated state assets often create legal uncertainty in determining whether SOE losses can be categorized as state financial losses. This lack of alignment in regulations has the potential to lead to differing interpretations among law enforcement officials, academics, and legal practitioners. Consequently, the handling of corruption cases involving state-owned enterprises often sparks debate about the boundary between business risk and criminal corruption. To address these issues, harmonization is required between the Limited Liability Company Law, the State-Owned Enterprises Law, the Corruption Eradication Law, and the 2023 Criminal Code. This harmonization must produce clear regulations regarding the legal status of separated state assets, the criteria for state financial losses in State-Owned Enterprises, the limits of the Board of Directors' authority, and parameters that can be used to distinguish business risks from abuse of authority. With the harmonization of

these regulations, it is hoped that legal certainty will be created that can provide protection for Directors who carry out their duties professionally while strengthening the effectiveness of eradicating criminal acts of corruption within the BUMN environment.

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