

Analysis of The Application of The Business Judgment Rule Principle in The Management of a State-Owned Company on Corruption Allegations (Study of Supreme Court Decision Number 121 K/ Pid .Sus/2020)

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Abstract. *Business Judgment Rule is a doctrine that is a standard in Company law, in the form of teachings for the Board of Directors in managing the risk of loss due to business decisions so that any losses incurred are not immediately held personally accountable by the Board of Directors. The Business Judgment Rule is a legal protection for the Board of Directors when the business decisions they make result in losses. The Board of Directors can avoid personal liability if they can prove that the losses incurred were not their fault and can prove that the management of the company has been carried out responsibly, in good faith, and without any conflict of interest. The research method of this thesis is a normative legal research method, by reviewing laws and regulations, jurisprudence and library materials. This study analyzes Supreme Court Decision Number 121 K/Pid.Sus/2020, which acquitted the former President Director of Pertamina from corruption charges, and analyzes the application of the Business Judgment Rule to Pertamina Directors business decision in acquiring the management rights of the Block Manta Gummy (BMG) oil block in Australia. This research originated from a case in which a business decision made by the Board of Directors of PT Pertamina (Persero) resulted in financial losses in the form of asset depreciation. However, the District Court and the High Court considered these losses to constitute a criminal act of corruption. This differed from the Supreme Court's cassation decision, which held that the losses were not the result of corruption but rather constituted a business risk and therefore did not amount to a criminal offense. The results of this study demonstrate that the Directors were able to avoid corruption charges because they had applied the principles of the Business Judgment Rule in making their business decisions and had managed the company in accordance with statutory regulations, responsibly, in good faith, without conflicts of interest, and by implementing Good Corporate Governance*

principles. Likewise, in Supreme Court Decision Number 121 K/Pid.Sus/2020, the judges, in their legal considerations, rendered a verdict of release from all legal charges (ontslag van alle rechtsvervolging) regarding the corruption allegations because the panel of judges judged that the losses incurred did not constitute a criminal act of corruption but rather business risks that may arise in business management. Furthermore, any errors in making business decisions that result in losses cannot automatically be categorized as corruption offenses, but rather as business risks within the application of the Business Judgment Rule, and therefore do not constitute criminal acts.

Keywords: *Business Judgment Rule; Criminal Act of Corruption; Directors of State-owned Enterprise (SOE); Legal Protection.*

1. Introduction

State-Owned Enterprises (BUMN), is one of the manifestations of the Government in the economic sector, whose main objective is to improve the welfare of the people and at the same time represent the State in carrying out the mandate as stated in the 1945 Constitution of the Republic of Indonesia, Article 33 paragraph (3) which states that "The land and water and the natural resources contained therein are controlled by the State and used for the greatest prosperity of the people". In the history of the basic formation of BUMN in Indonesia, there have been several changes in the provisions of the Law adjusted to the dynamics of the business world both on a national and international scale. In the dynamic development of BUMN now moving in almost all economic sectors, this shows the role of BUMN is very strategic in the national economy.¹

The legal basis for State-Owned Enterprises (BUMN) in the Republic of Indonesia has undergone several changes, the most recent being Law Number 1 of 2025 concerning the Third Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises, enacted on February 24, 2025.

Law Number 1 of 2025 concerning the Third Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises is basically an amendment to 10 (ten) provisions, while those related to the writing of this thesis are more focused on the regulations regarding the Business Judgment Rule in State-Owned Enterprises which were previously not regulated in Law Number 19 of 2003 concerning State-Owned Enterprises, where in Law Number 1 of 2025 it is regulated in Chapter IH concerning Management and Supervision in Article 9F paragraph (1) and paragraph (2).

¹Marwah M. Diah, (2003), *Restructuring of State-Owned Enterprises in Indonesia: Privatization or Corporation*, Lintas Media, Jakarta, 2003, p. 9.

In relation to capital in State-Owned Enterprises, there is a phrase that has been removed from Law Number 19 of 2003 concerning State-Owned Enterprises, where in this Law it is stated that a State-Owned Enterprise is a business entity whose capital is wholly or mostly owned by the state through direct participation originating from separated state assets, whereas in Law Number 1 of 2025 which is the third amendment to Law Number 19 of 2003, the phrase "originating from separated state assets" has been removed.

By regulating the Business Judgment Rule and eliminating the phrase originating from separated state assets where in Law Number 1 of 2025 it is only stated that capital is wholly or mostly owned by the Republic of Indonesia through direct participation, this shows that Law Number 1 of 2025 places the dynamics of BUMN not only from an economic perspective but also legal protection for the company's organs, especially the Directors and Commissioners.

In the regulations at the level of Law, previously the Business Judgment Rule was only regulated in Law Number 40 of 2007 concerning Limited Liability Companies, but now it has been regulated in Law Number 1 of 2025 concerning the Third Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises, this increasingly provides legal protection for BUMN management in making strategic decisions, as long as it is done with: Good faith, based on reasonable analysis, does not violate laws and regulations, this is important to create a more dynamic business climate for BUMN, while minimizing management's fear in making decisions due to the potential criminalization of business policies.²

The Chairman of the Working Committee (Panja) for the BUMN Bill, Eko Hendro Purnomo, said that the regulations related to the Business Judgment Rule, which protects the authority of directors in making decisions, received special attention.³ Meanwhile, Deputy Chairman of the Corruption Eradication Commission (KPK) Fitroh Rochyanto agreed that there is a Business Judgment Rule regulation in the Law on State-Owned Enterprises, so that law enforcement officers must be more careful in applying Article 2 and Article 3 of the Corruption Crime Law or Tipikor, law enforcers must ensure that there is malicious intent in applying the two articles, not just the existence of state losses alone to prove the Corruption Crime.⁴

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

²Mangesti Waluyo Sedjati, 2025, Analysis of the 2025 State-Owned Enterprises Law: "Implications, Challenges, and Opportunities, Media Construction."
(<https://konstruksimedia.com/analisis-uu-bumn-2025-implikasi-tantangan-dan-peluang/3/>)

³Kompas.Com, 2025, "KPK Agrees That the BUMN Bill Should Include a Business Judgment Rule, Here's Why," Jakarta, February 3, 2025, 9:28 a.m. WIB (<https://nasional.kompas.com>)

⁴Ibid, p. 4.

Enterprises, it is stated that business entities whose capital is wholly or mostly owned by the state through direct participation, aim to achieve Company profits. BUMN consists of Limited Liability Companies (Persero) and Public Companies (Perum), where Perum's capital is entirely owned by the State and is not divided into shares with the aim of general benefit in the form of providing high-quality goods and services and pursuing profits based on the principles of Company management, while Persero's capital is divided into shares where all or at least 51% (fifty-one percent) of its shares are owned by the state with the main aim of pursuing profits.

State-owned enterprises (SOEs) in the form of limited liability companies (LLCs) aim to conduct business with profit targets and are required to compete with national and international private companies to realize a more prosperous Indonesia and be able to play a role in global economic competition. SOEs are expected to play a role as agents of development. According to Mawardi Simatupang, SOEs also serve as business entities, as expected, in accordance with the principles of good corporate governance, such as transparency, accountability, and fairness. Similarly, SOE restructuring is clearly focused on improving efficiency, transparency, and professionalism.⁵

These three laws, in addition to other regulatory provisions, are legal provisions that must be adhered to and understood by the directors of BUMN companies. By understanding and fulfilling these provisions, at least the directors can avoid personal liability from business risks in the form of company losses or state financial losses and if the directors can prove that the business risk is not their fault, the directors are free from personal liability and this is the importance of implementing the Business Judgment Rule doctrine, this doctrine itself is intended to protect the directors from every business decision taken, but with the note that the decision is taken by prioritizing the principles of good corporate governance and is intended solely for the benefit of the company, and paying attention to the provisions of applicable laws and regulations, then the directors are deemed to have carried out their duties well even though business risks cannot be avoided. Directors who cannot run the company in good faith, then if in the future there is a loss arising from their decision, then the directors must carry out personal responsibility.

However, in practice, it is not uncommon for deviations between the application of the Business Judgment Rule principle and criminal acts of corruption related to business decisions taken by the company's directors. For example, the case involving the President Director of PT Pertamina (Persero), KA in 2009 who intended to acquire the Basker Manta Gummy (BMG) block in Australia, but the decision he took was suspected of violating the investment procedures

⁵Sugiharto et al, (2005), *Indonesian State-Owned Enterprises: Issues, Policies, and Strategies*, PT. Elex Media Komputindo Gramedia Group, Jakarta, p. 76.

applicable at PT Pertamina, resulting in state financial losses of up to IDR 568 billion. Although at the first level and appeal level, KA was found guilty and sentenced to 8 years in prison and a fine of 1 billion, at the cassation level of the Supreme Court Decision Number 121 K / Pid. Sus / 2020, the Supreme Court issued an acquittal and stated that KA's actions were not a criminal act of corruption and what he did was the application of the Business Judgment Rule principle and was a civil case.

The existence of different views in the first level and appeal level decisions with the cassation level decisions certainly shows that there is a lack of uniformity in viewing the Business Judgment Rule principle in the company's business decision-making process that results in losses, so that with this fact it creates uncertainty regarding the protection of BUMN company directors in the application of the Business Judgment Rule principle if the business decisions taken cause losses, both company business losses and state financial losses. Due to the difference in legal considerations in the first level and appeal level decisions with legal considerations in the cassation level decisions, where the legal considerations in the cassation level application of the Business Judgment Rule are considerations that underlie the decision to acquit the directors of corruption charges.

2. Research Methods

The type of research used is normative research. This type of research is normative legal research with a normative juridical approach, because this research uses methods of approaching the problem being studied by reviewing it from the perspective of applicable laws and regulations or examining library materials.⁶ Normative research begins with a legal event and then seeks references to the normative system, such as statutory regulations, legal principles and legal doctrines taught by experts to find legal constructions and legal relationships.⁷

3. Results and Discussion

3.1. Implementation of the Business Judgment Rule, Which Provides Legal Protection for Directors in Managing a Company

In analyzing the application of the Business Judgment Rule, the Fiduciary Duty Theory is used, a theory that requires directors to carry out company management and business decision-making in good faith, with proper purposes,

⁶Soerjono Soekanto and Sri Mamuji, 2009, Normative Legal Research: A Brief Review, PT. Raja Grafindo Persada, Jakarta, p. 13.

⁷Mukti Fajar ND and Yulianto Achmad, 2023, Dualism of Normative & Empirical Legal Research, Pustaka Pelajar, Yogyakarta, p. 37.

freely but responsibly, and without any conflict of interest.⁸This theory is used to analyze whether the Board of Directors of PT Pertamina has made its business decisions and carried out the fiduciary duty mandate properly and correctly, responsibly, in good faith and without any conflict of interest and complies with the Articles of Association, GMS, provisions and regulations underlying the company. The use of the fiduciary duty theory does not stand alone but also uses the Piercing The Corporate Veil Theory, this theory teaches Limited Liability Companies according to the concept of Legal Entities that liability in the event of a loss is limited to the assets included in the company in the form of shares, according to the concept of Legal Entities cannot be charged to the Directors or Commissioners, but according to this theory the burden of responsibility in certain cases can be charged to the Directors or Commissioners, unless the Directors or commissioners can prove that they have carried out their fiduciary properly, this is where the fiduciary duty theory applies which is closely related to the application of the theory of piercing the corporate veil. Liability for losses in Legal Entities is not limited to assets included in the form of shares but can be charged to the Directors personally which includes assets that are not included as company shares, if the directors in running the company do not carry out fiduciary duty.⁹

Compliance with the provisions of the Company's Articles of Association and applicable laws and regulations related to business decisions taken by the Board of Directors is a requirement and evidence of the Business Judgment Rule being implemented by the Board of Directors where the directors have implemented their fiduciary in making business decisions, meaning that the Pertamina Board of Directors in making business decisions and carrying out the management of the company must carry out fiduciary duty: carried out responsibly, in good faith, without any conflict of interest. The provisions of fiduciary duty are regulated in Article 97 of the Limited Liability Company Law Number 40 of 2007 and the State-Owned Enterprise Law Number 1 of 2025 Chapter IH Article 9F, which regulates the Business Judgment Rule where the directors are required to carry out the management of the company must be carried out in good faith, responsibility and without any conflict of interest.

In addition to the obligation to carry out fiduciary duty in managing the company because PT Pertamina (Persero) is a State-Owned Enterprise in the form of a Limited Liability Company, it is obliged to implement Good Corporate Governance in managing the company as stipulated in the BUMN Law Number 1

⁸Munir Fuady, (2003), *New Paradigm Limited Liability Company*, Citra Aditya Bakti, Bandung, p. 82

⁹Munir Fuady, (2014), *Modern Doctrines in Corporate Law and Their Existence in Indonesian Law*, Citra Aditya Bakti, Bandung, p. 7.

of 2025 and BUMN Law Number 16 of 2025, so that in addition to the Board of Directors of PT Pertamina being required to carry out fiduciary duty, they are also required to carry out Good Corporate Governance (GCG) in carrying out the management of the company, including in making business decisions so that when losses arise which are the Company's business risks, they are not personally borne by the Board of Directors.

Guidelines for the Implementation of Good Corporate Governance (GCG) at Pertamina are contained in internal regulations, namely Board Manual 2008 and Corporate Governance (Code of Corporate Governance). The implementation of Good Corporate Governance (GCG) at Pertamina aims to create transparent, accountable, responsible, independent, and fair company management, in line with the AKHLAK BUMN values of Trustworthy, Competent, Harmonious, Loyal, Adaptive, and Collaborative.

The basic principles of transparency, accountability, responsibility, independence, and fairness are applied across all business lines, from upstream to downstream. The focus is on increasing trust, operational efficiency, and preventing conflicts of interest, thereby achieving concrete goals such as increasing company value and shareholder and stakeholder trust, creating and ensuring a safe and ethical work environment, and increasing compliance with laws and ethical standards.

Pertamina integrates Good Corporate Governance (GCG) principles with the AKHLAK BUMN values to improve professional performance, operational security, and integrity from upstream to downstream. Key components of Good Corporate Governance (GCG) implementation within Pertamina include:

- Basic Principles (TARIF): Pertamina implements Transparency, Accountability, Responsibility, and Fairness.
- The 6C Values; Pertamina's Human Behavior Guidelines include Clean, Competitive, Confident, Customer Focused, Commercial, and Capable.
- *Whistleblowing System (WBS)*: Reporting channel for improper conduct to

So if the Board of Directors can prove that they have carried out their fiduciary duty well and implemented Good Corporate Governance in managing the company, it is the basis for the reason that the losses incurred are not due to errors in business decisions taken and the losses incurred cannot be charged to the directors personally as intended by the Business Judgment Rule doctrine. Ridwan Khairandy interprets the Business Judgment Rule as a doctrine that teaches that the company's directors are not responsible for losses arising from an action.

business decision making, if the action is based on good faith and caution.¹⁰

As an implementation of having carried out the fiduciary duty he has been entrusted with and has implemented Good Corporate Governance, the President Director of Pertamina in making business decisions in the form of purchasing a Participating Interest (PI) of 10% of the management rights of the Basker Manta Gummy (BMG) Block in Australia has gone through the stages as stipulated in the Articles of Association, GMS and applicable Laws and Regulations, which can be analyzed with a compliance approach to the Company's Articles of Association and the Provisions of Laws and Regulations relating to companies, State-Owned Enterprises, State Finance, Corruption Crimes.

The application of the Business Judgment Rule and Good Corporate Governance (GCG) in business decision making in the form of purchasing a 10% Participating Interest (PI) for the management of the Basker Manta Gummy (BMG) block in Australia in the trial facts can be conveyed as follows:

3.1.1. The loss was not due to his fault or negligence.

In the trial facts, PT Pertamina, before the SPA (Sale Purchase Agreement) was signed, had conducted studies which were preliminary conditions (Conditions Precedent) which had to be fulfilled before the transaction was closed, namely:

a. The study by the Internal Team and External Team of PT Pertamina, namely: legal aspect study by Baker Mc Kenzie and financial aspect study by Deloitte Konsultan Indonesia.

b. Assessing the Basker Manta Gummy (BMG) block by conducting a Feasibility Study and technical study and the results stated that the oil and gas reserves in the Basker Manta Gummy (BMG) block are proven, prospect, and lead, meaning this study is from several basic levels in the form of oil traps in one seismic line (lead), further studies that the oil traps have high potential opportunities that have been identified and mapped in an effort to find oil and gas reserves (prospect) to a study of the amount of oil that can actually be extracted for sale based on current conditions, not just an estimate of underground oil potential.¹¹ And based on this study, it can be concluded that the acquisition of the Basker Manta Gummy (BMG) block is profitable.

c. In the SPA (Sale Purchase Agreement) and JOA (Joint Operating Agreement), the risks that PT Pertamina has mitigated in Legal Due Diligence and Financial Due Diligence are listed.

¹⁰Ridwan Khairandy et al, (2023), Business Judgment Rule in the Case of PT Pertamina Hulu Energi, FH UII Press, Yogyakarta, p. 23.

¹¹Curley. R, (2012), Fossil Fuels. Energy: Past, Present, and Future, Britannica Educational Publishing. New York, p.128

d. The results of the study by the President Director of Pertamina, based on Pertamina's internal and external studies submitted to the Board of Commissioners, stated that investment Purchase of a 10% Participating Interest (PI) for the management of the Basker Manta Gummy (BMG) block in Australia will bring profits.

3.1.2. 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.

- The element of good faith can be seen in:

a. The Board of Directors acts in accordance with its authority as stated in the Company's Articles of Association and the Limited Liability Company Law Number 40 of 2007.

b. Decisions are taken collectively collegially, and

c. Business decisions are taken in line with the RKAP determined in the GMS

- The element of caution can be seen:

With mature business calculations accompanied by comprehensive studies by professionals and having obtained all the necessary information regarding the business decisions to be taken

The business decisions of the Board of Directors of PT Pertamina, as evidenced in court, met all of the above elements. The elements that were met were:

a. In the Articles of Association of PT Pertamina, the purpose and objective of PT Pertamina is to conduct business in the oil and gas sector both domestically and abroad as well as other business activities related to the oil and gas sector. And the purchase Purchase of a 10% Participating Interest (PI) for the management of the Basker Manta Gummy (BMG) block in Australia is one of the efforts to realize the aims and objectives that have been regulated in the Company's internal regulations and is part of PT Pertamina's business activities.

b. PT Pertamina's Articles of Association state that activities to participate in purchases/investments/acquisitions/can be carried out with the written approval of the Commissioners and must be approved collegially by the Directors. And business decisions in the form of Purchase of a 10% Participating Interest (PI) for the management of the Basker Manta Gummy (BMG) block in Australia The purchase has been approved and signed by all members of the board of directors. This approval was stated in the minutes of the PT Pertamina Board of Directors meeting on April 17, 2009, and this activity has been approved by the Commissioners in writing in the Board of Commissioners' Memorandum to the Board of Directors dated April 30, 2009, signed by 6 of the 7 Commissioners. The investment activity is in the form of Purchase of a 10% Participating Interest (PI)

for the management of the Basker Manta Gummy (BMG) block in Australia has been included in the 2009 RKAP and has been budgeted at US\$161,000, the RKAP has been approved by the GMS on January 22, 2009. Thus, PT Pertamina's business decisions have complied with the Limited Liability Company Law Number 40 of 2007 Article 97 paragraph (5) letter b, namely that it has managed the company in good faith, with caution for the benefit and in accordance with the intent and purpose of the company and the State-Owned Enterprise Law Number 1 of 2025, specifically regarding management and supervision that must be carried out by the board of directors as regulated in Article 9F paragraph 1, namely that the board of directors cannot be sued for compensation if the board of directors can prove that the losses incurred are not due to errors, as evidenced by the board of directors having managed the company in good faith, with caution in accordance with the interests and objectives of the BUMN, there is no conflict of interest, and has made efforts to take action to prevent and continue losses.

3.2. Business Judgment Rule as a Consideration for Judges in Decisions to Acquit Corruption Charges

In analyzing the Business Judgment Rule as a judge's consideration in the decision to acquit the defendant of corruption charges, the Identification Theory and the Pancasila Justice Theory were used.

Identification Theory is a theory for determining corporate criminal responsibility for individual parties who are responsible for business decisions made. This is linked to the individual's position in the company that is influential in making business decisions, usually the position of director and manager who is in charge of or related to the business decisions taken.¹²This theory is used to analyze the accuracy or otherwise of the determination of the suspects/defendants, in the corruption charges in the aquo case, those determined as suspects are the Main Director and officials at the level below the director related to the business decision in the form of the PI acquisition of 10% of oil management rights in the Basker Mante Gummy Block, Australia.

The Pancasila Justice Theory is a theory that places justice within the entire contents of Pancasila, which consists of five principles: Belief in the One Almighty God, Just and Civilized Humanity, Unity of Indonesia, Social Justice for All Indonesian People, Democracy Guided by Wisdom in Deliberation and Representation. When associated with "Social Justice," then justice must be linked to social relations; social justice can be defined as:¹³

¹²Mahrus Ali, 2008, *Corporate Crime, Study of the Relevance of Sanctions for Combating Corporate Crime*, Arti Bumi Intaran, Yogyakarta, p. 19.

¹³Abdul Azis Nasihuddin, et al, (2024), *Pancasila Legal Theory*, CV. Elvarettabuana, Tasikmalaya, p. 29.

- Returning lost rights to those entitled to them
- Eradicate persecution, fear, rape and criminalization of entrepreneurs
- Realizing equality before the law between every individual, businessmen and wealthy people who have obtained it unfairly.

The use of the Pancasila Justice Theory is used to analyze whether the Supreme Court decision No. 121 K/Pid.Sus/2020, in which the aquo decision acquitted the defendant of corruption charges with the legal consideration that the losses incurred were business risks in the realm of applying the Business Judgment Rule in carrying out company management and making business decisions, has fulfilled the elements as stipulated in the Pancasila Justice Theory.

3.2.1. Case Sitting in Court Decision No. 121K/Pid.Sus/2020

The position of the case in the Supreme Court Decision No. 121K/Pid.Sus/2020 regarding corruption charges that began with a business decision taken by the President Director of Pertamina to acquire the Basker Manta Gummy (BMG) oil block owned by ROC Oil Company Ltd Australia, namely by purchasing a Participating Interest (IP) of 10% of the oil block management rights equivalent to USD 30 million, which resulted in the signing of the Sales Purchase Agreement (SPA) on May 27, 2009, until the decision of PT Pertamina (Persero) to divest with withdrawal on October 21, 2014 because ROC as the operator of BMG temporarily stopped production in the Basker 7 field on the grounds of insufficient oil production or known as (NPP), even though previously PT Pertamina (Persero) as the owner of 10% PI had rejected it, but lost the vote in the voting because it was desired by the majority of PI holders. The business decision taken by the Pertamina Board of Directors was used as the basis for the corruption charges by the Public Prosecutor in the aquo case because it is suspected of causing state losses of Rp. 568,060,000,000.¹⁴

The corruption charges placed the President Director of Pertamina KA as a suspect and defendant. In the first instance Court Decision of the Central Jakarta District Court with the Corruption Crime Court Decision at the Central Jakarta District Court Number 15 / Pid.Sus / TPK / 2019 / PN Jkt.Pst, dated June 10, 2019 with the verdict basically the former President Director of Pertamina KA was declared proven and guilty of committing a crime of corruption and sentenced to 8 (eight) years in prison and a fine of Rp. 1,000,000,000.¹⁵ And in the appeal decision of the DKI Jakarta High Court, namely the Decision of the Corruption

¹⁴District Court Decision, (2018), Decision Number 15/Pid.Sus/TPK/2019/PN.Jkt.Pst, p. 521

¹⁵Ridwan Khairandy et al, (2023), Business Judgment Rule in the Case of PT Pertamina Hulu Energi, FH UII Press, Yogyakarta, p. 567.

Crime Court at the DKI Jakarta High Court Number 34/Pid.Sus-TPK/2019/PT.DKI, dated September 24, 2019, the decision basically confirmed the Decision of the Corruption Crime Court at the Central Jakarta District Court Number 15/Pid.Sus/TPK/2019/PN Jkt.Pst, dated June 10, 2019.

However, in the cassation level decision through the Supreme Court decision No. 121K/Pid.Sus/2020 dated March 9, 2022, in its decision, it basically stated that the former President Director of Pertamina KA committed the acts charged, but the acts charged did not constitute a crime of corruption, thus releasing the defendant from all upstream charges (*ontslag van alle rechtsvervolging*).¹⁶The losses that arise are business risks in the company's business decisions, The Supreme Court issued an acquittal and stated that KA's actions did not constitute a criminal act of corruption and that what he did was an application of the Business Judgment Rule principle and was a civil case.¹⁷*Business Judgment Rule* is a doctrine in corporate law that protects directors if the directors make a wrong business decision that causes losses to the company. These losses cannot be charged personally to the directors if the directors can prove their interests and do not violate the Company's Articles of Association and applicable laws and regulations.

In the a quo case, the public prosecutor at the Attorney General's Office of the Republic of Indonesia accused the defendant of ignoring the investment procedures applicable at Pertamina, which are regulated among others in Law Number 19 of 2003 concerning BUMN and in other investment provisions/guidelines in the form of conducting Participation Interest (PI) in the Australian Basker Manta Gummy (BMG) Block in 2009.

The defendant's actions in approving the Participation Interest (PI) for the Basker Manta Gummy (BMG) Block without due diligence and without any risk analysis which was then followed up by signing the Sale Purchase Agreement (SPA) without the approval of the Legal department and the Board of Commissioners of PT Pertamina so that he enriched himself or another person or a corporation, namely enriching Roc Oil Company Limited (ROC, Ltd), Australia. Based on the State Financial Loss Calculation Report from the Public Accountant Office Drs, Suwarno, Ak Number: 032/LAI/PPD/KAP.SW/XII/2017 dated December 6, 2017, the act resulted in state financial losses or the state economy amounting to Rp.568,060,000,000.

In detail, the a quo case began when on January 29, 2009, Citibank Investment, the financial advisor to ROC Oil Company, a publicly listed oil company in Australia, the operator of the BMG oil block, offered a confidential participation

¹⁶Decision of the Supreme Court of the Republic of Indonesia, (2020), Decision Number 121 K / Pid . Sus / 2020, Directory of Decisions of the Supreme Court of the Republic of Indonesia, Jakarta, p. 40.

¹⁷Ibid, p. 40.

project in the form of selling 10-40% of its participating interest to PT Pertamina. On that date, PT Pertamina expressed its interest in it. In preparation for the investment, a Takeover or acquisition Team was formed led by BK (Pertamina Merger & Acquisition Manager), with the main task of reviewing all documents or conducting due diligence assisted by external consultants, namely BMK (legal consultant) and PT. Delloite Konsultan Indonesia (Financial Consultant) and 144 investments in collaboration with Delloite Australia.

In order for the investment to be in accordance with Pertamina's Articles of Association (AD), the board of directors held a board meeting on March 18, 2009, and April 17, 2009. The board meeting unanimously approved the investment by acquiring a Participating Interest (PI) in the BMG block. On April 30, 2009, the Board of Commissioners approved the request to participate in the bidding.

Subsequently, the defendant submitted an acquisition offer of 15% Participating Interest (PI) worth USD 35 million. Based on this offer, ROC requested PT Pertamina to submit a new offer. In the second offer, PT Pertamina submitted an acquisition offer of 10% PI (Participating Interest) at a price of USD 30 million and was approved by ROC. In each stage of the investment process, the directors always reported on every development of the process, including notification that the investment SPA would be signed on May 27, 2009 in Sydney, Australia by PT Pertamina Hulu Energy (PHE), a subsidiary of Pertamina, and PT Pertamina itself as the guarantor of the purchase.

On May 27, 2009, the Board of Commissioners wrote to the Board of Directors, essentially disapproving the acquisition of PI (Participating Interest) carried out by the directors, stating that the previous approval was only for bidding, solely for training human resources and not the ultimate goal of 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. The Board of Commissioners recommended that the asset be immediately released/divest.

Since August 20, 2010, ROC as the operator stopped production in the Basker 7 field citing a lack of oil production, so it proposed a temporary production stoppage (Non Production Phase/NPP). At that time, PT Pertamina as the owner of 10% PI in principle refused to carry out the NPP, but the majority of PI holders gave their approval for the NPP. Based on the proposal of the PHE board of directors as the holder of the management rights (PI) of the MBG Block, a study was conducted by PT Pertamina's internal team and approved the release of assets/divestment. The Board of Commissioners and the GMS as shareholders approved the divestment and agreed to hand it back to other PI holders (withdrawal).

Based on the audit results from Ernest & Young, the investment in the MBG block no longer has any value. Therefore, as agreed upon with the board of directors, PT PHE Australia (a subsidiary of PHE) has made a loss provision for impairment of assets due to a decrease in reserves for the project, amounting to Rp 568,060,000,000.

3.2.2. Determination of Defendant and Articles of Indictment

The President Director of Pertamina KA was named as a suspect and defendant in the a qua case according to the identification theory which places the President Director as an individual because he is closely related and responsible for the company's business decisions made in the form of acquiring Participation Interest (PI) in the Basker Manta Gummy (BMG) Block in Australia, specifically this theory is to determine corporate criminal liability for the parties personally responsible for the business decisions made, this is linked to the personal position in the company which is influential in making business decisions, usually the position of director¹⁸

4. Conclusion

Based on the description of the writing of the thesis above, it can be concluded as follows: 1. Business Judgment Rule which is applied appropriately in making company business decisions that meet the criteria for business decisions taken with good faith and prudence for the benefit and in accordance with the aims and objectives of the company. There is no conflict of interest, either directly or indirectly, regarding management actions that result in losses, and has taken action to prevent the occurrence or continuation of losses and implemented Good Corporate Governance in every business process in carrying out the management of the company. Business decisions based on this protect and provide legal immunity for the directors of the company's state-owned enterprises from corruption charges and absolve them of personal responsibility for company losses. The application of the Business Judgment Rule has been carried out by the Pertamina Board of Directors in making Business decisions. The acquisition of Participating Interest (PI) in the Basker Manta Gummy (BMG) Block was carried out procedurally based on the provisions of the Company's Articles of Association and through the GMS, therefore the corruption charges against Pertamina's Board of Directors were not proven. 2. Legal considerations for the acquittal (ontslag van alle rechtsvervolging) of the corruption charges in the Supreme Court Decision No. 121 K/Pid.Sus/2020 because the losses incurred by PT Pertamina are business risks and not criminal acts of corruption and in the facts of the trial the Board of Directors of PT Pertamina has implemented the Business Judgment Rule in the process of making business decisions. This is proven in making business decisions in the form of the acquisition of

¹⁸Mahrus Ali, op.cit., p. 19

Participating Interest in the management of the Basker Manta Gummy (BMG) Oil Block in Australia has gone through stages and is carried out procedurally in accordance with the Company's Articles of Association and does not deviate from the provisions of the PT Law Number 40 of 2007 and the BUMN Law Number 1 of 2025. The reason that the judge considered as a legal consideration in the acquittal (*ontslag van alle rechtsvervolging*) is that the Board of Directors of Pertamina has implemented the Business Judgment Rule in making business decisions, so that the losses incurred are business risks not due to criminal acts of corruption.

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