

Reconstruction of the Criminal Liability of State-Owned Enterprise Directors in Managing the Tin Business Based on the Business Judgment Rule and Anti-Corruption Principles

Muhammad Zulkarnaen Dharmawi*, Subianta Mandala

Borobudur University, Jakarta, Indonesia, mhd.zulkarnaen68@gmail.com

Borobudur University, Jakarta, Indonesia, subianta_mandala@borobudur.ac.id

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*Correspondence: Muhammad Zulkarnaen Dharmawi

Email: mhd.zulkarnaen68@gmail.com

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Abstract: *This study examines the construction of criminal liability of state-owned enterprise (BUMN) directors in managing the tin business, which faces tensions between the corporate law approach and the criminal law on corruption. The background of this study is the phenomenon of the criminalization of business policies arising from the dominance of state loss parameters without considering the characteristics of business risks. The main problem lies in the absence of a clear boundary between business risks and corruption crimes and the lack of integration of the Business Judgment Rule within the criminal law system. This study aims to analyze the weaknesses of the applicable legal construction and formulate a reconstruction model for criminal liability that is fairer and more proportional. The method used is normative juridical with a statutory, conceptual, and comparative approach, as well as a prescriptive qualitative analysis of primary and secondary legal materials. The results show that the current legal construction tends towards a consequence-based and position-based approach that potentially ignores the element of fault. The Business Judgment Rule has not been explicitly recognized in criminal law and therefore does not function as a protection mechanism for directors acting in good faith. The proposed reconstruction emphasizes the integration of the Business Judgment Rule as the basis for limiting criminal liability, affirming the element of mens rea, and formulating objective parameters in distinguishing business risks from corrupt acts. This approach is expected to create a balance between protection for directors and the effectiveness of eradicating corruption.*

Keywords: *Criminal Liability, State-Owned Enterprise Directors, Business Judgment Rule, Corruption, Business Risk.*

Introduction

State-Owned Enterprises (SOEs) possess a unique character because they sit at the intersection of economic and public functions (Daffa 2023). These entities are not only required to generate profits but also to fulfill the state's mandate in managing strategic resources (Putri 2022). This position places SOEs as business actors that must remain competitive in the market while adhering to the principle of public accountability (Lestari 2026). The management structure creates complexity in decision-making, especially when

business decisions may incur losses. Directors are in a challenging position because every step they take intersects with both state and corporate interests (Afrilia 2025).

The management of the tin business is characterized by characteristics that are heavily influenced by global dynamics. Fluctuating tin commodity prices create uncertainty in the planning and implementation of business strategies (Sartini 2025). The mining industry also carries a high level of operational risk, from exploration to distribution. Environmental factors, regulations, and international market pressures contribute to this complexity (Wahyuni 2025). Decisions made by directors often require rapid action and are based on incomplete information.

The phenomenon of criminalization of directors' business policies is becoming an increasingly prominent issue in law enforcement practices. Decisions initially taken as part of a business strategy are often deemed unlawful when they result in state losses (Setiawati 2025). This assessment often fails to consider the inherent nature of business risk. Law enforcement officials tend to use state losses as the primary benchmark for determining criminal acts (Widodo 2024). This situation raises concerns among directors in carrying out their managerial functions.

The tension between the Business Judgment Rule and the criminal law approach to corruption is a key issue requiring serious attention. The Business Judgment Rule essentially provides protection for directors as long as decisions are made rationally and without conflicts of interest (Khairiyah 2025). The criminal law approach to corruption, however, focuses more on the consequences, particularly state losses (Mahmud 2021). These two approaches operate on different paths and have not been adequately integrated. This difference in orientation creates uncertainty in assessing business policies.

Legal uncertainty directly impacts directors' courage in making strategic decisions. Directors tend to be defensive and risk-averse, even though such risks are part of the dynamics of business. This situation has the potential to hinder innovation and company growth. The performance of state-owned enterprises (SOEs) can be affected because strategic decisions that should have been taken are delayed or not taken at all (Budhiyono 2025). A healthy business environment requires courage in making measured and responsible decisions.

The need for criminal liability reconstruction becomes increasingly urgent in situations like this. The existing legal system needs to be adjusted to clearly distinguish between business risks and acts containing elements of corruption. This reconstruction is not only related to changing norms but also shifting perspectives on law enforcement. A balance between protecting directors and eradicating corruption must be maintained. This effort is crucial to creating legal certainty and justice.

The theory of criminal liability places fault as a key element in imposing penalties. The principle of *mens rea* requires intent or negligence that can be morally and legally accounted for (Ar 2024). The concept of culpability emphasizes that not every consequence can be directly attributed to the perpetrator without considering the aspect of fault (Utoyo 2020). Applying this theory in the corporate realm often presents unique challenges. Complex organizational structures make determining who is responsible challenging.

The Business Judgment Rule developed as a doctrine that provides protection to directors in carrying out their corporate management functions (Anggusti 2021). This

doctrine recognizes that business decisions do not always result in profits and may carry the risk of loss. Protection is granted as long as directors act in good faith, exercise due care, and are free from conflicts of interest. This approach seeks to encourage rational decision-making without fear of excessive legal consequences. This principle has become an essential part of modern corporate law practice.

Corporate law theory recognizes the concept of fiduciary duty, which requires directors to act in the best interests of the company (Prakasa 2025). This obligation encompasses the duty of care and duty of loyalty, which serve as the basis for assessing directors' actions. Violations of these obligations can give rise to legal liability. Assessing breaches of fiduciary duty requires a thorough analysis of the decision-making process (Cesaria 2025). The relationship between fiduciary duty and criminal liability becomes crucial when business decisions are linked to state losses.

Criminal policy theory serves as a framework for formulating an appropriate approach to crime prevention (Ismanto 2024). This approach focuses not only on prosecution but also on prevention and protection of legal interests. The use of criminal law as the primary instrument must be implemented proportionally. The principle of *ultimum remedium* teaches that criminal sanctions should be a last resort (Mahesa 2025). The application of this principle is relevant in assessing risky business policies.

The concept of state losses in corruption law has a broad scope. These losses are often interpreted as a reduction in state assets in various forms. State-owned enterprises (SOEs), as entities that manage state assets, often fall into this category. The broadening of the definition of state finances has broadened the scope of criminal liability. This situation has given rise to debate regarding the boundary between state losses and corporate losses.

The Business Judgment Rule in corporate law has clear elements as parameters of protection. Directors must act in good faith, have a rational basis for making decisions, and not be in a position of conflict of interest (Syaharani 2024). The decision-making process must also be based on adequate information. These elements serve as benchmarks for assessing whether a decision is worthy of protection. Applying these elements requires a comprehensive understanding from various parties.

Criminal liability in corporate law targets not only individuals but also corporations as legal entities. The doctrine of liability has evolved to accommodate various forms of liability (Fridawati 2024). The distinction between individual and corporate liability requires a different approach. The concepts of *dolus* and *culpa* form the basis for assessing fault. Determining the form of fault is crucial to ensuring fairness in law enforcement.

Corruption in SOEs has its own characteristics that distinguish it from other sectors. The involvement of state finances makes every loss a serious concern. Corruption offenses are often formulated formally, not always requiring concrete consequences. This approach facilitates law enforcement, but also has the potential for broad interpretation. This situation can impact business policies adopted by directors.

Business risk is an integral part of corporate activities, particularly in the tin mining sector. These risks encompass financial, operational, and external aspects that cannot always be controlled. It is important to emphasize the distinction between business risk and unlawful acts. The lack of an obvious boundary can lead to errors in legal judgment. A

proper understanding of business risk will help create a more just and proportional legal system.

Methodology

This study employs a normative juridical method with a statutory, conceptual, and comparative approach to examine in depth the construction of criminal liability of state-owned enterprise directors in managing the tin business. The statutory approach is carried out through an analysis of Law Number 40 of 2007 concerning Limited Liability Companies, Law Number 19 of 2003 concerning State-Owned Enterprises, and Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption. The conceptual approach is used to examine the Business Judgment Rule doctrine, the theory of criminal liability, and the principle of fiduciary duty as the basis for normative analysis. The comparative approach is carried out by comparing the application of the Business Judgment Rule in several other legal systems to find a relevant model for adoption. The legal materials used include primary, secondary, and tertiary legal materials, which are analyzed qualitatively using descriptive-prescriptive techniques to produce a more ideal legal reconstruction formulation.

Result and Discussion

Construction of Criminal Liability of State-Owned Enterprise Directors in Current Tin Business Management

The legal provisions that form the basis for the liability of state-owned enterprise directors are rooted in the legal regime for limited liability companies, as stipulated in Law Number 40 of 2007 concerning Limited Liability Companies. Article 92 paragraph (1) emphasizes that directors manage the company in the company's best interests and in accordance with the company's purposes and objectives. Article 97 paragraph (3) states that directors are fully and personally liable for company losses if they are at fault or negligent in carrying out their duties. This formulation demonstrates that directors' liability rests on the element of fault, not merely the consequences. This principle serves as an important foundation for assessing whether a business decision is legally accountable.

The principle of fiduciary duty is the spirit of the regulation of directors' responsibilities in the Limited Liability Companies Law. Directors are required to act in good faith and with full responsibility, as stipulated in Article 97 paragraphs (2) and (5). Article 97 paragraph (5) even provides for directors to defend themselves if they can prove that the loss was not the result of their fault, that they have conducted their management in good faith and with due care, and that they have no conflict of interest. This norm implicitly reflects the Business Judgment Rule doctrine, although not explicitly stated. This regulatory structure aims to protect directors who act professionally.

The regulations regarding State-Owned Enterprises (SOEs), as stipulated in Law Number 19 of 2003, add dimension to the responsibilities of directors. Article 1, number 1, states that SOEs are business entities whose capital is wholly or largely owned by the state through direct participation. This characteristic often leads to SOE assets being perceived as part of state finances. SOE directors are accountable not only to the company but also

indirectly to the state as a shareholder. The position creates a more complex burden of responsibility than that of directors in private companies.

The construction of state finances in SOEs is often linked to Law Number 17 of 2003 concerning State Finances. Article 2, letter g, includes state assets separated from state companies as part of state finances. This interpretation has broad implications for assessing losses in SOEs. Any loss incurred in business activities can be classified as a state loss. This understanding is crucial in enforcing criminal law against directors.

Law Number 31 of 1999, in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption, broadens the definition of state losses in law enforcement practices. Article 2, paragraph (1), and Article 3 emphasize unlawful acts or abuse of authority that harm state finances. This norm formulation does not always require explicit malicious intent; rather, it simply requires the existence of losses and actions deemed deviant. This approach simplifies proof, but has the potential to drag business policies into the criminal realm. This situation becomes even more complex when linked to the nature of state-owned enterprises (SOEs) as business entities.

Law enforcement practices against SOE directors demonstrate a tendency to criminalize business policies that fail economically. Decisions made under conditions of uncertainty are often deemed deviant when they fail to generate profits. Law enforcement officials focus more on the end result than on the decision-making process. This pattern creates the perception that every loss is an indication of error. This situation has the effect of fostering fear in strategic decision-making.

The formal approach to proving corruption reinforces this tendency. The offenses under Articles 2 and 3 of the Corruption Eradication Law are often understood as formal offenses that do not require profound concrete consequences. The primary focus is on the potential for state losses. This approach reduces the scope for assessing the rationality of business decisions. Directors are vulnerable to criminal prosecution even if they act in accordance with professional standards.

The dominance of state loss parameters is a key characteristic of corruption law enforcement practices. Audits of state losses are often used as primary evidence without being balanced by analysis of business processes. Audit reports from state auditors assume a crucial role. Assessments of good faith and prudence are often marginalized. This situation creates an imbalance in the evidentiary process.

The disharmony between the Business Judgment Rule and criminal law arises from the lack of explicit recognition of the doctrine within the criminal law regime. Corporate law protects directors, while criminal law does not provide a similar mechanism. This difference creates conflict in the application of norms. Directors who should be protected under corporate law may still be subject to criminal penalties. This situation creates a dualism in legal assessment.

The conflict between the corporate and criminal approaches is increasingly apparent when assessing business decisions. Corporate law assesses decisions based on professional processes and standards, while criminal law tends to focus on the consequences. This difference in perspective leads to differing conclusions regarding the same event. This

inconsistency complicates the pursuit of justice. Directors find themselves in an uncertain position due to the two legal regimes operating independently.

The inconsistency of court decisions exacerbates this problem. Some decisions allow for the application of the precautionary principle in assessing business policies, while others continue to emphasize state losses. This variation in decisions creates significant legal uncertainty. Judicial practice lacks a uniform standard for assessing the role of directors. This situation has resulted in weak legal predictability. The unclear boundary between business risks and criminal acts of corruption is a recurring problem. Losses arising from market fluctuations are often equated with losses resulting from unlawful acts. The overlap between business losses and state losses is difficult to avoid without clear parameters. This situation may create errors in legal judgment. Directors face the risk of being prosecuted for decisions that are actually part of normal business activities.

The absence of objective parameters for assessing business decisions exacerbates the situation. There are no standard standards that can be used to distinguish between business errors and legal violations. Assessments often rely on subjective interpretations by law enforcement officials. This situation opens up room for wide differences in interpretation. Legal certainty becomes difficult to achieve under these conditions.

The current construction of criminal liability tends toward a position-based approach. Directors are often held accountable solely because of their position as decision-makers. This approach resembles strict liability, although it is not explicitly regulated. The element of fault is not always analyzed in depth. This pattern has the potential to ignore basic principles of criminal law.

The lack of analysis of *mens rea* is a significant weakness in law enforcement against SOE directors. The excessive focus on state losses diverts attention from aspects of intent and culpability. Good faith and due care are not adequately assessed. The lack of a clear legal protection mechanism for directors exacerbates the situation. Directors face significant legal risks even if they perform their duties professionally.

Reconstruction of Criminal Liability of BUMN Directors Based on Business Judgment Rule and Anti-Corruption Principles

Legal reconstruction of the criminal liability of state-owned enterprise directors requires a comprehensive and integrated approach, not a partial one. A significant gap has been observed between the corporate and criminal law regimes. Both operate with different logics, often resulting in inconsistent assessments of the same event. Reconstruction efforts need to be directed at bridging this gap through the formulation of complementary norms. This unification of perspectives is a crucial step to avoid conflicts in legal application.

Integration between corporate and criminal law can begin with a recognition of the characteristics of business decisions. Corporate law has long recognized professional standards in assessing directors' actions, while criminal law focuses more on norm violations. Combining these two approaches will create a more comprehensive assessment framework. Law enforcement will examine not only the consequences but also the process and considerations underlying the decision. This perspective will encourage fairer assessments.

A balanced approach between protection and law enforcement is a crucial element in this reconstruction. Directors need the space to make decisions without undue fear. Law enforcement must continue to be effective to prevent abuse of authority. The key to balance lies in the legal system's ability to distinguish between administrative errors and those that merit criminal punishment. This balance will create a healthy legal climate for the management of SOEs.

Affirming the principle of *ultimum remedium* is an indispensable part of legal reconstruction. Criminal law should be placed as a last resort after other mechanisms have been ineffective. Disputes related to business decisions should be resolved through civil or administrative mechanisms first. This approach will reduce the tendency to criminalize business policies. Proportional application of criminal law will improve the quality of law enforcement.

A clear and operational definition of the boundaries between business risk and corruption needs to be formulated. This boundary must be able to answer the fundamental question of when a loss can be considered a business risk and when it becomes a criminal act. Formulating objective parameters is key to this model. Without clear parameters, assessments will always be subject to varying interpretations. Legal certainty can only be achieved with measurable standards.

The parameter of good faith is one of the main indicators in assessing board decisions. Good faith is reflected in decisions aimed at the benefit of the company, not personal gain. Assessing good faith requires analyzing the motives and background of decisions. This process is not sufficient through formal documents but also through an assessment of the overall actions of the board of directors. A comprehensive approach will yield more accurate conclusions.

The rationality of decisions is another equally important parameter. Business decisions must be based on logical and accountable considerations. Rationality does not necessarily mean that the decision will generate profits, but rather whether the decision was reasonable at the time it was made. The assessment of rationality must consider the conditions existing at the time the decision was made, not after the outcome is known. This approach will avoid retrospective bias.

Due diligence and prudence tests should be an integral part of the assessment model. Directors are expected to have gathered adequate information before making decisions. This process includes risk analysis, consultation with experts, and evaluation of various alternatives. Prudence is an indicator that directors are not acting recklessly. This standard can be used as a measuring tool in assessing the feasibility of a business decision.

Criteria for abuse of authority must be clearly formulated to avoid broad interpretation. Abuse of authority can be identified by actions that deviate from the objectives of the position. Other indications may include a conflict of interest or unlawful personal gain. These criteria must be clearly separated from administrative errors. This distinction will assist law enforcement in determining whether an act merits criminal prosecution.

Strengthening the Business Judgment Rule in criminal law is a strategic step in this reconstruction. This doctrine can be adopted as justification or excusal under certain circumstances. Recognition of the Business Judgment Rule will provide protection for directors who have acted in accordance with professional standards. This protection is not absolute, but is contingent on the fulfillment of certain conditions. The application of the Business Judgment Rule in criminal law will enrich the assessment instruments in the judicial process.

The integration of the Business Judgment Rule into the evidentiary system requires adjustments to judicial practice. Judges need to be given the space to assess the decision-making process thoroughly. Evidence should not only focus on the consequences but also on the steps taken by the directors. This change will shift the evidentiary paradigm from being outcome-oriented to process-oriented. This approach will improve the quality of court decisions.

The role of experts is crucial in assessing complex business decisions. Experts can provide professional insight into the appropriateness of a decision based on industry standards. The presence of experts helps judges understand technical aspects that are not always mastered. Expert opinions can also be a tool to test the rationality and prudence of directors. The involvement of experts will enrich the evidentiary process and result in a more objective assessment.

The reconstruction of directors' criminal liability needs to adopt a fault-based approach. Shifting from strict liability to fault-based liability is a fundamental step. Directors cannot be held accountable solely because of their position. The element of fault must be clearly proven through intent or serious negligence. This approach aligns with the basic principles of criminal law, which place fault as a primary requirement for punishment.

Affirming the mens rea element in business policies is a crucial part of this reconstruction. A thorough analysis of the perpetrator's intent and awareness must be conducted. Not every detrimental decision can be considered the result of malicious intent. Proving mens rea requires a careful, fact-based approach. This affirmation will prevent unfair punishment.

The distinction between administrative and criminal errors must be clearly formulated to avoid overlap. Administrative errors can be resolved through internal mechanisms or administrative sanctions. Criminal errors should be limited to acts that are truly unlawful and detrimental to the public interest. This distinction will clarify the path to resolving each type of violation. Legal certainty will be easier to achieve if these boundaries are clearly defined.

The integration of anti-corruption principles remains an integral part of this reconstruction. Transparency and accountability in decision-making must be strengthened as part of corporate governance. Conflicts of interest must be prevented through clear and measurable mechanisms. Strengthening the internal control system will help prevent irregularities. The implications of this reconstruction will be felt not only by SOE directors, but also by law enforcement and the national legal system as a whole.

The determination of objective standards of reasonableness in business decisions should be based on an *ex ante* assessment of the circumstances existing when the decision was made, rather than an *ex post* evaluation of its outcome. Courts should rely on independent expert assessments from professionals in relevant fields, such as finance, accounting, risk management, corporate governance, or industry-specific sectors, to evaluate whether the directors acted in accordance with generally accepted business practices. Expert opinions can assist courts in determining whether the decision was supported by adequate information, proper risk analysis, reasonable alternatives, and a rational business purpose. The assessment should focus on factors such as the directors' good faith, level of due diligence, compliance with internal governance procedures, consideration of available information, and the proportionality between anticipated risks and expected benefits. Through this approach, courts can establish objective standards of reasonableness that distinguish legitimate business judgments and ordinary business risks from decisions involving negligence, bad faith, abuse of authority, or corrupt intent.

Conclusion

The current framework for criminal liability of state-owned enterprise directors still presents several fundamental weaknesses, primarily due to the lack of harmonization between corporate law and criminal law. The dominant approach focuses on the consequences of state losses without adequate analysis of the business decision-making process. This situation has led to a tendency to criminalize business policies that fall within the authority of directors. The Business Judgment Rule, recognized in corporate law, has not yet been clearly defined in the criminal law system, thus failing to serve as an effective protection mechanism. The unclear boundaries between business risks and corruption further exacerbate the situation, as there are no objective parameters that can consistently distinguish between the two. This situation creates legal uncertainty that has the potential to hinder directors' courage in making strategic decisions and disrupt the performance of state-owned enterprises as business entities.

The need for regulatory reform is increasingly pressing to create a fairer and more proportional legal system. Amendments to the Corruption Eradication Law, the State-Owned Enterprises Law, and the Limited Liability Company Law need to be directed toward accommodating the Business Judgment Rule as part of the criminal liability framework. BJR-based law enforcement guidelines need to be developed comprehensively to provide law enforcement officials with a clear framework for assessing business decisions. Strengthening the capacity of law enforcement officials to understand business aspects and risk management is crucial to ensuring that law enforcement is not solely results-oriented but also considers the process and rationality of decisions. These measures are expected to strike a balance between protecting well-intentioned directors and maintaining effective anti-corruption efforts, thereby creating legal certainty that supports a healthy and integrity-based business climate.

Beyond identifying doctrinal conflicts between corporate law and criminal law, this study contributes to the development of Indonesian Corporate Law and anti-corruption law

reform theory by proposing a normative reconstruction of criminal liability for state-owned enterprise directors based on the Business Judgment Rule (BJR). The study advances the theoretical understanding that criminal liability in corporate governance should not be assessed solely through the outcome-oriented criterion of state financial losses, but must also incorporate a process-oriented evaluation of directors' decision-making, including good faith, due diligence, rationality, and the absence of personal interest. In this regard, the research develops a conceptual framework that integrates corporate governance principles into anti-corruption law enforcement, thereby establishing clearer boundaries between legitimate business risks and corrupt conduct. This framework contributes to Indonesian legal reform theory by promoting harmonization between corporate law and criminal law, introducing objective parameters for assessing directors' liability, and supporting a more balanced model of accountability that simultaneously protects good-faith business decisions and preserves the effectiveness of anti-corruption enforcement.

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