

## The Paradigm Shift in Law Enforcement in State-Owned Enterprises: An Analysis of the Restrictions on the Role of KPK

**Pujiwati Wiantin\***

University of Jember, Indonesia

**Gautama Budi Arundhati**

University of Jember, Indonesia

**Al Khanif**

University of Jember, Indonesia

\*Corresponding Author's Email: [pujiwatiwiantin@gmail.com](mailto:pujiwatiwiantin@gmail.com)

Article	Abstract
<p><b>How to cite:</b>          Pujiwati Wiantin, et al.,          'The Paradigm Shift in          Law Enforcement in          State-Owned Enterprises:          An Analysis of the          Restrictions on the Role          of KPK' (2025) Vol. 6 No.          3 Rechtenstudent Journal          Sharia Faculty of KH          Achmad Siddiq Jember          State Islamic University.</p> <p><b>DOI:</b>          10.35719/rch.v6i3.391</p> <p><b>Article History:</b>          Submitted: 16/11/2025          Reviewed: 28/11/2025          Revised: 04/12/2025          Accepted: 16/12/2025</p> <p><b>ISSN:</b>          2723-0406 (printed)  <b>E-ISSN:</b>          2775-5304 (online)</p>	<p>This study is motivated by the dual role of State-Owned Enterprises (BUMN) as business actors and agents of national development, which makes them vulnerable to governance issues, including corruption and abuse of authority. The supervision by the Corruption Eradication Commission (KPK), which has been crucial, becomes limited after the removal of the status of state administrators for SOE officials based on Law No. 1 of 2025. This creates new challenges in maintaining SOE accountability, thus requiring strengthening of supervisory mechanisms through civil law and the application of Good Corporate Governance principles. This study uses a normative legal approach with doctrinal legal research, focusing on normative-conceptual analysis of the paradigm shift in law enforcement in State-Owned Enterprises (BUMN), particularly the limitation of the Corruption Eradication Commission's (KPK) authority from a civil law perspective. The research method combines three approaches: the statutory approach to review relevant regulations, the conceptual approach to explore applicable legal principles and theories, and the case approach to analyze court decisions related to law enforcement against SOE officials.</p> <p><b>Keywords:</b> <i>Business Judgement Rule, Law Enforcement, Corruption.</i></p> <p><b>Abstrak</b></p> <p>Penelitian ini dilatarbelakangi oleh BUMN memegang peran ganda sebagai pelaku usaha dan agen pembangunan nasional yang rentan terhadap masalah tata kelola, termasuk korupsi dan penyalahgunaan kewenangan. Pengawasan KPK yang selama ini krusial menjadi terbatas setelah penghapusan status penyelenggara negara bagi pejabat BUMN berdasarkan UU No. 1 Tahun 2025. Hal ini menimbulkan tantangan baru dalam menjaga akuntabilitas BUMN, sehingga diperlukan penguatan mekanisme pengawasan melalui hukum perdata dan penerapan prinsip <i>Good Corporate Governance</i>. Penelitian ini menggunakan pendekatan hukum normatif dengan tipe penelitian hukum doktrinal yang berfokus pada analisis normatif-konseptual terhadap perubahan paradigma penegakan hukum di Badan Usaha Milik Negara (BUMN), khususnya pembatasan kewenangan Komisi Pemberantasan Korupsi (KPK) dari perspektif hukum perdata. Metode penelitian menggabungkan tiga pendekatan, yaitu pendekatan perundang-undangan untuk mengkaji regulasi terkait, pendekatan konseptual untuk mendalami asas dan teori hukum yang relevan, serta pendekatan kasus untuk menganalisis putusan pengadilan terkait penegakan hukum pada pejabat BUMN.</p> <p><b>Kata Kunci:</b> <i>Aturan Pertimbangan Bisnis, Penegakan Hukum, Korupsi.</i></p>

## Introduction

State-Owned Enterprises (BUMN) are part of the state with a strategic role, not only carrying out business functions but also playing a vital role in national development. As part of the state, BUMN bear a dual responsibility: on the one hand, they are required to achieve efficiency and profitability like private corporations, and on the other, they must continue to consider social missions and the public interest in their operations. This combination of functions makes BUMN highly complex institutions and vulnerable to conflicts of interest and abuse of authority.<sup>1</sup>

Historically, the presence of state-owned enterprises (BUMN) in Indonesia's post-reform economic system has demonstrated an increasingly significant role in supporting state revenues, but on the other hand, they are also vulnerable to corruption and governance irregularities. A report by the Corruption Eradication Commission (KPK) revealed that between 2010 and 2022, dozens of corruption cases involved high-ranking SOE officials, including directors, commissioners, and strategic managers, resulting in substantial state losses.<sup>4</sup> This situation urges the urgent need to strengthen oversight and accountability systems within BUMN, both through criminal law approaches and civil law mechanisms and corporate governance.<sup>2</sup>

Since the reform era, attention has been increasing to improving governance and integrity within State-Owned Enterprises (BUMN). The government and various supervisory agencies are striving to improve BUMN management mechanisms to make them more transparent, accountable, and free from corruption. In this context, the Corruption Eradication Commission (KPK) plays a strategic role as an independent institution tasked with eradicating corruption in the public sector, including BUMN, which are a key pillar of the national economy. The KPK focuses not only on enforcement through investigations and prosecutions, but also actively undertakes preventative measures and strengthens internal oversight systems to minimize corruption.

Several major corruption cases involving BUMN demonstrate the serious challenges faced in managing state-owned enterprises. For example, the corruption case involving PT Garuda Indonesia, which involved allegations of misuse of funds and non-transparent management, and the case at PT Jiwasraya, which resulted in significant state losses and sparked public unrest.<sup>3</sup> These cases clearly illustrate that BUMN, despite their status as state-owned entities, are not immune to the risks of corruption and abuse of authority, which can significantly harm state finances.

This situation indicates that internal oversight within state-owned enterprises is often insufficient to prevent or address irregularities. Therefore, the presence of the Corruption Eradication Commission (KPK) as an external supervisor is crucial. The KPK serves as a control institution that exerts positive pressure on state-owned enterprises to operate in accordance

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<sup>1</sup> Mardiasmo, *Akuntansi Sektor Publik*, (Yogyakarta: Andi, 2009), 44.

<sup>2</sup> Rachmawati, Indah & Hartanti, Dewi. "Tantangan Implementasi Good Corporate Governance dalam BUMN di Indonesia." *Jurnal Ilmu Hukum Ekonomi*, Vol. 9 No. 2, 2021, 45–60.

<sup>3</sup> Mohammad Diky Andika Irawan & Siti Khodijah, "Kewenangan Badan Pengawas Keuangan dan Pembangunan (BPKB) dalam Menentukan Kerugian Keuangan Negara pada Kasus Tipikor" *Rechtenstudent Journal*, Vol. 2 No. 3, 2023, 280.

with the principles of good corporate governance. Furthermore, the KPK serves as a reminder that abuse of power and public funds is intolerable and will result in strict legal sanctions.<sup>4</sup>

However, the dynamics of national law underwent significant changes following the enactment of Law Number 1 of 2025 on State-Owned Enterprises. This regulation stipulates that the positions of directors, commissioners, and supervisory boards of BUMN are no longer categorized as state administrators.<sup>5</sup> This provision has significant legal implications, particularly in the context of oversight and law enforcement by the Corruption Eradication Commission (KPK). This is because the KPK's authority to conduct inquiries and trials is highly dependent on the legal subject's status as a state administrator, as stipulated in Article 1 number 1 of Law Number 19 of 2019 concerning the KPK. With the removal of SOE officials from this category, the scope of the KPK's oversight is automatically limited, so that cases of alleged corruption or abuse of authority within BUMN that could previously be followed up by the KPK now face significant legal obstacles.

The business judgment rule is a legal doctrine that provides protection for directors' decisions as long as they are made reasonably, in good faith, and prioritize the company's interests. This principle recognizes that in the business world, not all decisions lead to profit; Losses are an unavoidable part of business dynamics. Therefore, legal intervention should only be undertaken if there is evidence of intent, abuse of authority, or fraud.<sup>6</sup>

However, in practice, the BJR principle is often ignored in corruption investigations. For example, in several cases involving state-owned enterprise directors, investigators prioritize a state loss approach based on audit results from the Supreme Audit Agency (BPK), without conducting a comprehensive assessment of the context in which the business decision was made. This demonstrates a shift in the meaning of state loss from actual loss to potential loss or even hypothetical loss, which can create legal uncertainty for state-owned enterprise managers.<sup>7</sup>

This situation has serious implications for the management climate of state-owned enterprises, as it creates a disproportionate deterrent effect. Directors are reluctant to make risky strategic decisions, even those with the potential for long-term benefits, for fear of criminalization. This tension between economic logic and a legalistic approach must be addressed in normative studies to find a balance between protecting state assets and managerial freedom to take legitimate business risks.<sup>8</sup>

## **Research Method**

Research methods are scientific ways to obtain data for specific purposes and uses.<sup>9</sup> Juridical research is research that uses an emphasis to find out about the implementation of legal

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<sup>4</sup> Komisi Pemberantasan Korupsi, Laporan Tahunan KPK 2021, Jakarta: KPK, 2022; Andriani, D., dan Nugroho, B., "Korupsi dalam BUMN: Studi Kasus PT Jiwasraya," *Jurnal Transparansi dan Akuntabilitas*, Vol. 5, No. 2, 2021, 120-135;

<sup>5</sup> A. Junaedi Karso, "Corruption KPK Threatened to Not Be Captured Board Of Directors of State-Owned Enterprises" *International Journal of Sociology and Law*, Vol. 2 No. 3, 2025, 78. <https://doi.org/10.62951/ijsl.v2i3.737>

<sup>6</sup> Robert C. Clark "The Business Judgment Rule", *Harvard Law Review*, Vol. 57, No. 2, 1964, 153.

<sup>7</sup> Angga Kiryaditama Putra & Sugimin, "the Limited Scope of BPK Audit and Comparison with Other Supreme Audit Institutions" *Jurnal Tata Kelola dan Akuntabilitas Keuangan Negara*, Vol. 10 No. 1, 2024, 68. [10.28986/jtaken.v10i1.1389](https://doi.org/10.28986/jtaken.v10i1.1389)

<sup>8</sup> Erwin Siregar, "Dampak Penegakan Hukum Terhadap Manajemen Risiko di BUMN" *Jurnal Kebijakan Publik*, Vol. 10, No. 1, 2023, 85.

<sup>9</sup> Sugiyono, *Metode Penelitian Kuantitatif Kualitatif* (Bandung: Alfabeta, 2019), 2.

norms or legal rules in positive law.<sup>10</sup> The research method used is descriptive qualitative with a case study approach on several state-owned enterprises (BUMN) involved in corruption cases.

The type of legal research used to address the existing problems is doctrinal research. Doctrinal research is the study of law and legal concepts.<sup>11</sup> Based on this type of research, the researcher aims to identify shifts in the meaning of state losses in BUMN based on the Business Judgment Rule principle.

## Results and Discussion

### Removal of State Administrator Status in BUMN and Its Impact on KPK Authority

Law Number 1 of 2025 concerning Amendments to Law Number 19 of 2003 concerning State-Owned Enterprises introduces fundamental changes to the legal structure of the position of directors and commissioners of State-Owned Enterprises, primarily through the elimination of their status as state administrators. This elimination represents a turning point in the oversight system for state financial management carried out by SOE entities, which functionally continue to carry out public mandates and manage large amounts of state assets. The previous status of state administrators placed SOE officials within a strong framework of public accountability, including obligations to report assets, comply with the principle of transparency, and fall within the jurisdiction of the Corruption Eradication Commission (KPK), an independent institution constitutionally authorized to conduct inquiries, investigations, and prosecutions of corruption crimes.

As stipulated in Article 11 letter a of Law Number 19 of 2019 on the Corruption Eradication Commission (KPK), one of the main parameters for the KPK in taking over the handling of a case is whether the perpetrator of the corruption crime is a state official.<sup>12</sup> Therefore, the removal of this status not only has administrative implications, but also has serious consequences in the context of limiting the KPK's functional jurisdiction. In practice, many large-scale corruption cases within state-owned enterprises handled by the KPK, such as the Jiwasraya, Garuda Indonesia, and Pertamina cases, which are essentially actionable because the perpetrators were qualified as state officials at the time of the crime. With this legislative change, this authority can be legally contested, and opens up the potential for legal exceptions by suspects/defendants regarding the absolute competence of law enforcement officers handling the case.<sup>13</sup>

The civil liability of State-Owned Enterprise (SOE) officials is rooted in the contractual relationships they enter into and the fiduciary obligations inherent in their positions as managers of state-owned enterprises. As representatives of the state as the majority shareholder, SOE officials are obligated to carry out their duties in good faith, with due diligence, and with the highest professionalism to safeguard and protect the state's interests and minimize the risk

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<sup>10</sup> Herowati Poesoko, *Diktat Mata Kuliah Metode Penulisan dan Penelitian Hukum* (Fakultas Hukum Universitas Jember, 2012), 34-35.

<sup>11</sup> Uul Fathur Rahmah, "The Effect of Political Configuration on Legal Products: A Critical Study of Responsive Legal Concepts and Orthodox Conservative" *Rechtenstudent Journal*, Vol. 4 No. 2, 2023, 137. <https://doi.org/10.35719/rch.v4i2.266>

<sup>12</sup> Dudy Heryadi & Denny Indra Sukmawan, "Optimizing interagency coordination and supervision in corruption eradication efforts" *Integritas*, Vol. 9 No 2, 2023, 222. <https://doi.org/10.32697/integritas.v9i2.945>

<sup>13</sup> The decision of the Central Jakarta Corruption Court in the PT Asuransi Jiwasraya corruption case (Decision Number 34/Pid.Sus-TPK/2020/PN Jkt.Pst)

of loss. This provision aligns with the fiduciary duty principle in corporate law, which requires SOE officials to act in the interests of the company and the state without conflict of interest.

If a state-owned enterprise official is proven to have been negligent in carrying out their duties, committed negligence, or even abused their authority, and these actions result in losses to state finances, then the official may be held legally liable in the civil realm.<sup>14</sup> This liability is personal, meaning the official in question is obliged to bear the losses directly, including the potential obligation to pay compensation for losses suffered by the state or the relevant state-owned enterprise. The applicable liability principle ensures that officials cannot escape legal consequences, and this serves as a mechanism to enforce accountability and ensure that state-owned enterprise governance runs smoothly and in accordance with regulations. Thus, civil law mechanisms play a crucial role as a law enforcement tool that can be used to seek compensation and redress losses resulting from negligence or abuse of office by state-owned enterprise officials.

A concrete example of the civil liability of state-owned enterprise officials can be found in the case of PT Asuransi Jiwasraya. In this case, Jiwasraya's directors were suspected of imprudent investment management, violating the principles of prudence and good financial governance. As a result, the company suffered significant losses, harming state finances, with losses amounting to trillions of rupiah. As a result, the directors involved were prosecuted through legal channels, including filing a civil lawsuit to demand accountability for these losses and seek compensation from the state.<sup>15</sup>

Furthermore, another case highlighting the civil liability of state-owned enterprise officials was the 2020 case of PT Garuda Indonesia. Several directors faced lawsuits related to financial management deemed non-transparent, resulting in state losses and serious liquidity problems for the company. The civil lawsuits were filed to seek compensation and recovery of state assets lost due to management that failed to adhere to procedures and principles of good corporate governance.<sup>16</sup>

These cases clearly emphasize that State-Owned Enterprise (SOE) officials not only have moral and ethical obligations but also civil legal liability for any losses suffered by the state. This liability arises primarily when the losses are caused by negligence in carrying out their duties, abuse of authority, or decision-making that does not comply with applicable laws and regulations.<sup>17</sup> Furthermore, actions that violate the principles of good corporate governance, such as a lack of transparency, accountability, and prudence, also constitute grounds for such liability. Therefore, SOE officials can be held liable for damages and held personally responsible for any losses incurred, ensuring that the management of state-owned enterprises continues to operate professionally and accountably for the public interest and the company's sustainability.

Legally, the civil liability obligations of State-Owned Enterprise (SOE) officials are expressly regulated in Law Number 19 of 2003 concerning State-Owned Enterprises, specifically in Article 23 paragraph (1), which states: *"The Board of Directors is fully responsible for managing*

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<sup>14</sup> Abraham Ethan Martupa Sahat Marune, "Criminal Liability of Indonesia's State-Owned Enterprise Directors for Acts that Cause State Financial Losses" *Interdisciplinary Social Studies*, Vol. 1 No. 2, 2021, 52-53.

<sup>15</sup> Komisi Pemberantasan Korupsi (KPK), "Penanganan Kasus Jiwasraya," <https://www.kpk.go.id/id/berita/siaran-pers/2020/01/penanganan-kasus-jiwasraya> (accessed June 4, 2025).

<sup>16</sup> Media Indonesia, "Direksi Garuda Indonesia Dilaporkan Atas Dugaan Kerugian Negara," 15 Oktober 2020.

<sup>17</sup> Rifky Effendi Hardijanto, et.al, "Losses in the Management of Subsidiaries of State-Owned Enterprises in the Form of Limited Liability Companies Based on the Doctrine of Business Judgment Rule and Civil Law" *The Seybold Report*, Vol. 19 No. 6, 2024, DOI: 10.5281/zenodo.11666358.



*the BUMN for the interests and objectives of the BUMN and representing the BUMN, both inside and outside the court in accordance with the provisions of the articles of association."*

Then, in Article 23 paragraph (5) it is stated that: *"Every member of the Board of Directors is personally responsible for losses to the BUMN if the person concerned is at fault or negligent in carrying out his duties."*

These two articles demonstrate that the responsibility of BUMN directors extends not only to the collective responsibility of a team but also to individuals, particularly if a member of the board of directors is proven to have been negligent, careless, or abused their authority, resulting in financial losses for the state or the BUMN itself. This means that each member of the board of directors can be held accountable individually and cannot hide behind group decisions. This regulation is crucial to ensure that every BUMN official carries out their duties honestly, carefully, and responsibly, and does not make arbitrary decisions that could harm the company or the state. In this way, this regulation protects state finances and encourages more professional and transparent BUMN management.

In addition, the Civil Code (KUHPerdata) provides additional foundations through two main legal bases for civil liability:

1. Default as regulated in Article 1243 of the Civil Code, which states: *"Reimbursement of costs, losses and interest due to failure to fulfill an obligation, only becomes mandatory if the debtor, after being declared to have failed to fulfill his obligation, continues to fail to do so or if something that must be given or made can only be given or made within a time limit that has passed."*<sup>18</sup>
2. Unlawful Acts (PMH) as regulated in Article 1365 of the Civil Code, which states: *"Every act that violates the law and causes loss to another person, requires the person whose fault causes the loss to compensate for the loss."*

Thus, if a state-owned enterprise official acts negligently, violates applicable laws, or abuses his or her position, he or she may be held civilly liable. This liability can arise in two forms: first, due to breach of contract (i.e., failing to carry out duties or obligations in accordance with agreements or regulations); and second, due to unlawful acts (e.g., making decisions that unlawfully harm the state).<sup>19</sup> The type of liability imposed will depend on the nature and severity of the error. This rule demonstrates that each state-owned enterprise official must be held accountable for their own actions, not only as part of a team, but also individually, to ensure that the management of the state-owned enterprise is carried out honestly, carefully, and responsibly.

State-Owned Enterprise (SOE) officials, such as directors and commissioners, play a strategic role in managing the country's economic interests because BUMN are state instruments in carrying out public service functions and national economic development. In carrying out their duties, SOE officials are not only bound by organizational responsibilities but also subject to legal principles that require them to act in good faith, exercise due diligence, and uphold the values of professionalism and integrity in every policy and decision-making process.<sup>20</sup>

This responsibility has a strong legal basis, including Law Number 19 of 2003 concerning State-Owned Enterprises, which in Article 23 paragraph (5) states that members of the board of

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<sup>18</sup> Windi Friliani Abdullah & Nirwan Junus, "Default on Joint Responsibility Agreements by Debtors" *Damhil Law Journal*, Vol. 3 Np. 1, 2023, 47.

<sup>19</sup> A. Taufik, et.al "Civil Liability: A Comparative Study of State-Owned Enterprises and Corporations" *Russian Journal of Agricultural and Socio-Economic Sciences*, Vol. 138 No. 6, 2023, 16-19. DOI:[10.18551/rjoas.2023-06.03](https://doi.org/10.18551/rjoas.2023-06.03)

<sup>20</sup> Republic of Indonesia Law Number 19 of 2003 on State-Owned Enterprises, Article 23 paragraph (5)

directors are fully personally responsible for losses to a BUMN if the person concerned is at fault or negligent in carrying out their duties<sup>1</sup>. This is in line with the principle of civil liability in the Civil Code (KUHPerdata), specifically Article 1365 which states that every unlawful act that harms another party requires the perpetrator to compensate for the loss.<sup>21</sup>

If a state-owned enterprise official is proven to have committed negligence, abused his or her authority, or made a decision without adequate professional consideration, resulting in losses to the state or the state-owned enterprise's finances, he or she may be held civilly liable. This liability may include compensation, cancellation of contracts or decisions, and restoration of the company's assets and condition to their original state, depending on the nature and impact of the act.<sup>22</sup>

The application of this principle not only aims to deter state-owned enterprise officials who abuse their positions, but also to ensure individual accountability in the management of state finances and assets, and to promote good corporate governance, as mandated by Minister of State-Owned Enterprises Regulation No. PER-01/MBU/2011 in conjunction with PER-09/MBU/2012 concerning the Implementation of Good Corporate Governance (GCG) in State-Owned Enterprises.<sup>23</sup>

If officials are negligent, careless, or abuse their authority, resulting in losses to state finances or state-owned enterprise assets, they can be held civilly liable. This form of accountability covers several aspects, including:

1. Compensation

Officials of State-Owned Enterprises (BUMN) who are proven to have caused losses due to negligence, error, or abuse of authority may be required to compensate those losses in accordance with the legally proven amount. This compensation claim mechanism is generally carried out through a civil lawsuit in district court, where the state or SOE, as the injured party, files a demand that the official in question be held financially responsible for the losses incurred.

The primary legal basis for these compensation claims is Article 1365 of the Civil Code (KUHPerdata), which states: *"Every act that violates the law and causes loss to another person, requires the person whose fault caused the loss, to compensate for the loss."*

This provision emphasizes that officials' actions that harm state-owned enterprises and ultimately the state must be held personally accountable, as long as there is an element of error or negligence that can be legally proven. Furthermore, Law Number 19 of 2003 concerning State-Owned Enterprises explicitly regulates the responsibilities of state-owned enterprise directors in Article 23 paragraph (5), which states: *"Each member of the board of directors is personally responsible for losses to the state-owned enterprise if they are guilty or negligent in carrying out their duties."*

Thus, these legal provisions strengthen the state's position as a major shareholder in state-owned enterprises (BUMN) to demand compensation from SOE officials who fail to carry out their duties and responsibilities in accordance with applicable laws and regulations, good corporate governance principles, and professional standards. This is crucial to ensure SOE officials always act accountably and transparently in managing company assets and finances,

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<sup>21</sup> Civil Code (Burgerlijk Wetboek), Article 1365.

<sup>22</sup> Shinta Danisa Ristita, et.al, "Strategic Regulatory Solutions for Implementing the Business Judgment Rule in State-Owned Enterprise Governance" *International Journal of Social Science and Human Research*, Vol. 8 No. 5, 2025, 2270. DOI: 10.47191/ijsshr/v8-i5-11

<sup>23</sup> Regulation of the Minister of State-Owned Enterprises No. PER-01/MBU/2011 in conjunction with PER-09/MBU/2012 concerning the Implementation of Good Corporate Governance.

and avoid negligence or abuse of authority that could harm state finances. With this legal accountability mechanism, the state has an effective tool to protect the public interest and ensure that SOE management is sound and sustainable.

## 2. Cancellation of Decision or Agreement

In the context of State-Owned Enterprise (SOE) governance, decision-making by SOE officials must always be based on the principle of prudence and compliance with applicable laws and regulations. If a decision-making or contract is found to be detrimental to the state and contrary to legal provisions, the decision or agreement can be annulled through established legal mechanisms. This annulment is not only administrative but also carries legal consequences, rendering the decision or contract invalid and non-binding for the parties involved.

The annulment of decisions or agreements is crucial for safeguarding the interests of the state and the public, as well as for holding SOE officials accountable for the performance of their duties. This is in accordance with the principle of legality in state administrative law, which states that every action by public officials must be based on legitimate authority and must not abuse that authority. Furthermore, annulment also serves as a control instrument to prevent abuse of power that could result in material or immaterial losses to the state.<sup>24</sup>

The process of annulling decisions or agreements that are detrimental to the state can be pursued through two main legal channels: the state administrative court (PTUN) and the civil court. If the annulment is a decision of a state-owned enterprise official that is of a state administrative nature, the resolution is carried out through the PTUN. This court has the authority to test the legality of state administrative decisions that are suspected of being in conflict with statutory regulations and can therefore annul such decisions if they are proven to be unlawful and detrimental to the interests of the state. Conversely, if the dispute is a business contract agreement that violates legal provisions, the resolution is carried out through the civil court. The civil court has the authority to annul contracts based on the principles of contract law and the protection of the interests of the state and the injured parties.<sup>25</sup>

In practice, the annulment process can be filed by parties who have suffered losses due to legally flawed decisions or agreements, or by supervisory agencies authorized to supervise and take action against legal violations within BUMN. This mechanism is crucial as a form of external oversight to ensure that SOE officials carry out their duties in accordance with the principles of accountability and transparency. Therefore, SOE officials must thoroughly understand legal provisions and the principles of good governance to avoid the risk of annulment of decisions or contracts that would not only be financially detrimental to the state but could also undermine the credibility and sustainability of the SOE's business as a whole.<sup>26</sup>

## 3. Restoration of Rights and Original Conditions

Restitutio in integrum is part of a law enforcement effort aimed at restoring a state-owned enterprise to its pre-loss condition due to unlawful decisions or actions. This mechanism is usually filed through a lawsuit with the competent court, depending on the type of case at hand. If the issue relates to a state administrative decision detrimental to a state-owned enterprise, the restoration process is submitted to the State Administrative Court (PTUN). The court will examine the legality of the decision and, if found to be legally flawed, may annul the decision

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<sup>24</sup> Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, (Jakarta: Raja Grafindo Persada, 2004), 45-46.

<sup>25</sup> Subekti, *Pokok-Pokok Hukum Perjanjian*, (Jakarta: RajaGrafindo Persada, 2006), 89-91.

<sup>26</sup> R. Soeroso, *Hukum Tata Kelola BUMN*, (Jakarta: Rajawali Pers, 2020), 12-115.



and order the restoration of the original conditions.<sup>27</sup> Meanwhile, if the loss arises from an unlawful business contract or agreement, recovery can be pursued through civil court, demanding the cancellation of the contract and the return of assets or compensation.

During the trial, the court will consider the available evidence and facts to ensure that the recovery can be implemented without causing new losses. The court's decision ordering this recovery is binding and must be implemented by the relevant parties, including the state-owned enterprise officials responsible for the action.

Restoring rights and the original condition of a State-Owned Enterprise (SOE) can be achieved through various legal actions, such as canceling transactions proven to be legally flawed or fraudulent, returning assets that have been illegally transferred, and providing compensation for losses suffered by the company. These efforts aim to restore the situation to the position it was in before the violation occurred, thus optimally maintaining the integrity and continuity of SOE operations. Therefore, the recovery process goes beyond repairing financial losses and also safeguarding the reputation and trust of stakeholders in BUMN as state entities.<sup>28</sup>

Furthermore, the restoration of rights and original conditions also serves a strategic function as a law enforcement instrument that provides a deterrent effect for those who commit unlawful acts. Through this mechanism, it is hoped that officials or parties who abuse their authority will consider the legal consequences they will face, thereby encouraging the implementation of the principles of accountability and transparency in the management of BUMN. Therefore, the restoration process not only protects the interests of the state as the owner of BUMN but also plays a role in maintaining public trust in good governance.

The implementation of restoration must be supported by an effective oversight system, both internally through the SOE's oversight and compliance unit, and externally through supervisory institutions and law enforcement officials. This oversight mechanism is crucial to ensure that any potential losses are promptly detected, reported, and legally followed up, thus optimally preventing unlawful acts.

Prosecuting civil liability for the actions of State-Owned Enterprise (SOE) officials that cause losses to the state is a crucial legal step to uphold accountability and transparency in the management of state assets. This prosecution process is conducted through a lawsuit mechanism in a civil court, which has the authority to examine, adjudicate, and decide cases related to claims for compensation for losses incurred. This mechanism not only requires the injured party to submit a claim but also requires a detailed and comprehensive evidentiary process to ensure that the losses incurred were truly caused by the actions of the SOE official concerned.

The stages of this civil prosecution process must be carried out systematically and carefully, from filing the lawsuit and the evidentiary process to the issuance of a binding decision and its implementation. This approach is crucial to optimally fulfill the principles of justice, legal certainty, and protection of the rights of all parties involved. Thus, civil prosecution serves not only as a means of recovering state losses but also as a law enforcement instrument capable of providing a deterrent effect and encouraging SOE officials to act in accordance with legal provisions and the ethics of good governance.

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<sup>27</sup> Eddy O.S. Hiariej, *Hukum Administrasi Negara Indonesia*, (Jakarta: Prenadamedia Group, 2017), 180-185.

<sup>28</sup> Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, (Jakarta: Raja Grafindo Persada, 2004), 52.

The first stage is the filing of a lawsuit by the injured party, which in the context of state-owned enterprises is usually the state, represented by the Ministry of State-Owned Enterprises or a relevant authorized government agency. This lawsuit demands accountability for losses caused by the actions of state-owned enterprise officials who violated the law or abused their authority.

Next, the evidentiary stage is crucial in the civil process. The plaintiff must be able to provide sufficient evidence of actual losses and a direct link between those losses and the actions of the state-owned enterprise officials being sued. This evidence includes documents, witnesses, and other evidence supporting the plaintiff's claim.

Once the losses and the connection between the actions are proven, the court will determine the amount of compensation to be paid by the defendant. The determination of the compensation amount is based on a calculation of the material and immaterial losses suffered by the plaintiff, taking into account the principles of justice and proportionality.

The final stage is the implementation of the court's decision, which is binding on all parties. The decision must be complied with by officials or the defendant, including payment of compensation and other remedial measures as ordered by the court. If the decision is not voluntarily implemented, it can be enforced through applicable legal mechanisms.

Thus, the civil law enforcement process plays a crucial role in maintaining the accountability of State-Owned Enterprise (SOE) officials for any actions that could potentially harm the state. Through this legal mechanism, the state and society are provided with effective legal protection to ensure that losses resulting from abuse of authority or negligence can be legally accounted for. Furthermore, civil law enforcement also serves as a preventative measure, where SOE officials are expected to act with utmost caution and in compliance with regulations, so that the integrity and good governance of state-owned enterprises can be maintained for the public interest and business sustainability.

### **Business Judgment Rule and Good Corporate Governance as Limits to BUMN Management Liability**

In the context of managing State-Owned Enterprises (BUMN), the business judgment rule principle and the concept of Good Corporate Governance (GCG) play a very strategic role as both a limiting mechanism and a control tool in the implementation of the functions of directors and commissioners. These two principles are designed to create a healthy balance between managerial freedom in making innovative and dynamic business decisions and the legal responsibilities inherent in each of these decisions. In other words, the business judgment rule principle provides space for directors and commissioners to make decisions that are considered best based on available information and analysis without fear of retrospective lawsuits, provided that the decisions are made in good faith, without conflicts of interest, and within the framework of legitimate authority. Meanwhile, the GCG principle emphasizes the importance of transparency, accountability, and strict oversight mechanisms to ensure that this freedom is not abused and remains within the corridor of good governance. By implementing these two principles synergistically, it is hoped that SOE directors and commissioners will be able to carry

out their management functions effectively and efficiently while being legally and ethically accountable for their decisions.<sup>29</sup>

The business judgment rule principle provides significant legal protection to directors and commissioners in making business decisions, provided that the decisions are made in good faith, with careful consideration, and based on sufficient and relevant information at the time of decision-making. Within the framework of this principle, managerial actions or decisions cannot be questioned or legally challenged as long as it can be proven that the decision was taken without any conflict of interest, based on rational and professional analysis, and within the limits of legitimate authority in accordance with applicable laws and regulations.<sup>30</sup> This principle serves as an essential legal safeguard, providing SOE management with the flexibility to optimally and dynamically carry out their business functions without the burden of fear of retrospective or excessive legal action. Thus, the business judgment rule supports the creation of a climate of innovative and bold decision-making, which is essential for managing state-owned enterprises to compete effectively in the market and achieve national strategic objectives.

One example of the application of the business judgment rule can be seen in the decision of the Board of Directors of PT Pertamina (Persero) to develop downstream oil and gas projects, such as the construction of a new refinery and the development of petrochemical products. In making this strategic decision, the board of directors conducted various in-depth studies, including risk analysis, feasibility studies, and consultations with experts and relevant stakeholders. The decision was made in good faith and based on valid and relevant data and information at the time.

Although this project involved substantial investment and significant financial risk, the directors enjoyed legal protection under the business judgment rule because the decisions were made professionally and without any conflict of interest. If losses later arise due to changing market conditions or other external factors, the directors would not necessarily be subject to legal action as long as they can demonstrate that the decisions were made in a proper and responsible manner. This case demonstrates how the business judgment rule provides space for state-owned enterprise (SOE) directors to make bold and strategic decisions for the company's progress, while maintaining accountability and transparency in accordance with the principles of good corporate governance.

However, the protection afforded by the business judgment rule does not mean that SOE directors and commissioners have absolute freedom without legal responsibility. If there is gross negligence, abuse of authority, or actions contrary to applicable laws and regulations, this principle cannot be used as a basis for absolving directors and commissioners from legal responsibility for those decisions or actions. In other words, the business judgment rule only applies as long as the decisions made meet the standards of good faith, professionalism, and fairness in the decision-making process.<sup>31</sup>

In this context, the principles of Good Corporate Governance (GCG) play a crucial role as a control tool, ensuring that directors and commissioners carry out their duties and responsibilities with full transparency, accountability, responsibility, independence, and

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<sup>29</sup> Juan Kasma & Christian Andersen, "Business Judgment Rule and Corporate Governance as the Strategic Imperative of Indonesian State-owned Enterprise" *European Journal of Law and Political Science*, Vol. 3 No. 4, 2024, 51-58. DOI:[10.24018/ejpolitics.2024.3.4.151](https://doi.org/10.24018/ejpolitics.2024.3.4.151)

<sup>30</sup> Meckling, William H. & Jensen, Michael C., "Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure," *Journal of Financial Economics*, 1976., 305-360.

<sup>31</sup> Salim HS, *Hukum Perusahaan di Indonesia*, (Jakarta: Rajawali Pers, 2018), 280-285.

fairness. Through effective GCG implementation, every strategic and operational decision taken by SOE management can be objectively monitored and evaluated by commissioners and shareholders. This oversight mechanism serves to identify and minimize potential irregularities and risks of loss that could harm the state, as the owner of BUMN, and other stakeholders. Thus, GCG not only plays a role in regulating good governance but also serves as a primary foundation for maintaining the integrity and sustainability of state-owned enterprises amidst increasingly complex business dynamics.<sup>32</sup>

The implementation of Good Corporate Governance (GCG) principles in State-Owned Enterprises (BUMN) is explicitly regulated in the Minister of BUMN Regulation Number PER-01/MBU/2011 concerning the Implementation of Good Corporate Governance in BUMN, and is reinforced in Law Number 19 of 2003 concerning State-Owned Enterprises and its revisions. This regulation emphasizes the importance of the principles of transparency, accountability, responsibility, independence, and fairness as the foundation for managing BUMN professionally and responsibly.<sup>33</sup>

One example of good GCG implementation can be found at PT Telekomunikasi Indonesia (Persero) Tbk (Telkom Indonesia). Telkom consistently applies the principle of transparency by regularly publishing financial reports and sustainability reports audited by an independent institution. Furthermore, Telkom has an audit committee that functions to conduct internal oversight regarding the implementation of financial policies and compliance with laws and regulations. The application of the principle of independence is also evident in the structure of the board of commissioners, some of whose members are external parties with no direct conflict of interest with the company. Through this GCG implementation, Telkom is able to maintain investor and public trust and minimize legal risks that could harm the company and the state.<sup>34</sup>

## Conclusion

The elimination of state administrator status for directors and commissioners of state-owned enterprises (BUMN) in Law Number 1 of 2025 has significant legal implications for the Corruption Eradication Commission (KPK)'s authority to supervise and prosecute corruption. Although this status is removed, the KPK's authority is not completely lost. However, adjustments to regulations and oversight mechanisms are needed to ensure the effectiveness of corruption eradication. This adjustment is crucial to avoid a legal vacuum and ensure harmonization between law enforcement agencies, allowing the KPK to carry out its anti-corruption function in the SOE sector optimally and sustainably.

The importance of the business judgment rule and Good Corporate Governance (GCG) principles as two fundamental elements in limiting and supervising the legal liability of directors and commissioners of state-owned enterprises. The business judgment rule principle provides legal protection for business decisions made in good faith and with rational consideration, while GCG functions as a continuous monitoring and evaluation system that ensures these decisions are made transparently, accountably, and ethically. The synergy between these two principles creates a governance framework that not only protects

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<sup>32</sup> Tricker, Bob, *Corporate Governance: Principles, Policies, and Practices*, (Oxford University Press, 2015).45-60.

<sup>33</sup> Regulation of the Minister of State-Owned Enterprises Number PER-01/MBU/2011 concerning the Implementation of Good Corporate Governance in State-Owned Enterprises.

<sup>34</sup> Annual Report and Sustainability Report of PT Telekomunikasi Indonesia (Persero) Tbk, 2023.

management from disproportionate demands but also strengthens oversight of every corporate activity to protect the interests of the state and the public.

The government is expected to refine regulations governing the legal liability of directors and commissioners of state-owned enterprises (BUMN) through a revision of the SOE Law. These regulations need to clarify the boundary between reasonable business risks and unlawful acts, by explicitly adopting the business judgment rule principle as a legal protection instrument for management acting in good faith.

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