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Business Decisions or Corruption? The Business Judgment Rule in Decision 68/2025

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Abstract

Background: On 20 November 2025, the Anti-Corruption Court at the Central Jakarta District Court delivered Decision Number 68/Pid.Sus-TPK/2025/PN Jkt.Pst, convicting three former directors of PT ASDP Indonesia Ferry (Persero) of corruption arising from a business cooperation arrangement and the acquisition of PT Jembatan Nusantara (2019–2022), with state losses set at IDR 1.25 trillion.
Objective: This study examines the juridical construction of the Business Judgment Rule (BJR) in the majority and dissenting opinions of Decision Number 68/Pid.Sus-TPK/2025/PN Jkt.Pst and formulates operational parameters distinguishing BJR-protected business decisions from corruption offenses under Law Number 1 of 2025.
Methods: This study applies a normative juridical method that integrates statutory, case-based, and conceptual approaches to distinguish business decisions sheltered by the BJR from corruption offenses under Law Number 1 of 2025 on SOEs.
Results: The majority panel held that the BJR is subject to the cumulative thresholds of Article 97(5) of the Company Law and Article 9F of the 2025 SOE Law; gross negligence (*culpa lata*) removes BJR protection. The dissent found no mens rea, disputed the state-loss calculation, and treated IDR 11.2 billion in due diligence as evidence of compliance. From this divergence, five cumulative parameters emerge: decision quality, degree of negligence, integrity of approval documents, character of loss, and presence of fraud or conflict of interest.
Conclusion: This study offers a theoretical contribution to BJR doctrine in SOE corruption jurisprudence and provide a practical guide for Corruption Court panels in distinguishing legitimate business risk from criminal liability of SOE directors.

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INTRODUCTION

The governance of State-Owned Enterprises (SOE) in Indonesia harbors a dilemma that is, in truth, not new. This dilemma boils down to a pull between two poles: on the one hand, the maneuverability needed by boards of directors to formulate risky business decisions; on the other hand, the threat of criminal punishment every time such a decision results in losses. More than two decades have passed since the Corruption Crime Law (hereinafter the Corruption Law) was enacted, and throughout that period, the position of SOE directors has tended to stand on shaky ground. A recurring pattern can be observed: when a company suffers a loss, that loss does not remain long on the private balance sheet; it soon migrates into "state financial losses" and, from there, falls within the scope of Articles 2 or 3 of the Corruption Law. Some recent research even documents an astonishing criminalization ratio business decisions of SOE directors in Indonesia

are criminalized in an estimated 60–70 percent of all cases brought. Compare this with the practice in the United States: there the ratio is only 15–20 percent, with a presumption of validity and enhanced scrutiny functioning as conceptual safeguards. This domestic ratio is broadly consistent with monitoring data from Indonesia Corruption Watch and the Corruption Eradication Commission (*KPK*), which record a high proportion of SOE-related corruption indictments originating from ordinary business and procurement decisions (OECD) (Baum et al., 2024; Crane-Charef, 2015; Yudhistira et al., 2026).

From such a pattern arises what is often called a chilling effect. SOE directors, instead of acting nimbly, find themselves in a "frozen" condition hesitant, if not fearful, to make strategic decisions because the specter of the defendant's chair constantly looms. As an answer to such a rigid situation, the Business Judgment Rule (BJR) doctrine, whose roots lie in the common law tradition, began to move into the Indonesian legal system. The first stage of absorption occurred implicitly; the instrument serving as its entry point was Article 97 paragraph (5) of Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter the Company Law) (RI, 1999; P. Zulfikar & Cahyadi, 2026). The next stage brought reinforcement, this time through Article 27 paragraph (2a) of Government Regulation Number 23 of 2022. Finally, in the third stage, BJR appeared in an explicit formulation its codification was carried out by Articles 9F and 9G in Law Number 1 of 2025 concerning the Third Amendment to Law Number 19 of 2003 concerning SOEs (hereinafter the 2025 SOE Law) (Danantara, 2025).

The explicit codification of the BJR in the 2025 SOE Law was actually designed with a clear purpose: to provide a bulwark for directors who carry out their duties in good faith, with due care, and without hidden interests behind them. This logic mirrors the Delaware courts' long-standing presumption that directors who act on an informed basis, in good faith, and in the honest belief that their decisions serve the corporation's best interest should not have their business judgment second-guessed by the courts. At the level of state ownership, the OECD Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises likewise emphasize that accountability mechanisms should distinguish between ordinary commercial risk-taking and conduct involving fraud, conflict of interest, or abuse of authority (Baum et al., 2024). Read together, these frameworks suggest that cross-country differences in BJR practice are shaped less by the doctrine's formal wording than by how consistently courts and oversight institutions separate business risk from governance failure. A similar position, it should be recalled, had already been affirmed by the Supreme Court through Decision Number 121 K/Pid.Sus/2020 in the case of Karen Galaila Agustiawan. However, there is a paradox that is not easily dismissed. The doctrine that was supposed to be a shield can, in reality, show two faces simultaneously one face protects the professionalism of directors; the other face, conversely, opens up the possibility for the creation of a space for impunity.

This tension eventually reached its culmination in a specific case, namely the Decision of the Corruption Crime Court at the Central Jakarta District Court Number 68/Pid.Sus-TPK/2025/PN Jkt.Pst, handed down on 20 November 2025. The three individuals tried in this case were former members of the board of directors of PT ASDP Indonesia Ferry (Persero): Ira Puspadewi serving as President Director from 2017 to 2024; Muhammad Yusuf Hadi, who held the position of Commercial and Services Director between 2019 and 2024; and Harry Muhammad Adhy Caksono, who filled the position of Planning and Development Director for the 2020–2024 period. The root of the case lay in the Business Cooperation (*KSU*) and the acquisition of PT Jembatan Nusantara (hereinafter PT JN) that took place between 2019 and 2022; the resulting state losses, according to calculations, reached IDR 1.25 trillion.

What makes this decision interesting to dissect is the accompanying disunity. Mardiantos sided with Nur Sari Baktiana as the majority panel, and their conclusions led to one point: all three defendants were proven legally and convincingly to have committed a corruption crime as formulated in Article 3 in conjunction with Article 18 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 in conjunction with Article 55 paragraph (1) of the Criminal Code (*KUHP*) (Sinambela et al., 2026; the Goverentment of Indonesia, 1999). The sentences then handed down were 4 years and 6 months for Defendant I, while Defendants II and III each received 4 years. Taking a different path was Sunoto. As the Presiding Judge, he instead took the dissenting opinion route. His view was that the three defendants ought to have been acquitted of all legal

charges (*ontslag van alle rechtsvervolging*) based on Article 191 paragraph (2) of the Criminal Procedure Code. His argument was that the proven act was actually not a crime, but a business decision still protected under the Business Judgment Rule. Such disagreement among judges in a single trial forum sends a clear signal: the dividing line between business decisions and corruption offenses is not yet firmly established in Indonesian judicial practice, even though the 2025 SOE Law has arrived with an explicit formulation of the BJR.

When traced, the literature discussing the BJR in Indonesia can be grouped into at least three clusters. The first cluster places the landmark decision of Karen Agustiawan as the axis of discussion; here, the work of Zulfikar and Muryanto (2025) alongside Wardani (2023) introduces the BJR as a path to *ontslag van alle rechtsvervolging* in the jurisprudence of SOE corruption. The second cluster works at the level of cross-jurisdictional comparison writings by Alfiansyah et al. (2025) and Kasma and Andersen (2024) are used to measure the extent to which the absorption of BJR in Indonesia is equivalent to practices in the United States and Japan. The third cluster focuses on the normative implications of the codification of the BJR in the 2025 SOE Law within an abstract framework; contributions by Umar (2026), Alimudin (2026) and Loren (2025) belong to this cluster, but their arguments have not yet been tested against a real decision. A discussion directly targeting Decision Number 68/Pid.Sus-TPK/2025/PN Jkt.Pst has been conducted by Rusmana et al. (2025), but only within the scope of culpa. As a result, how the BJR was actually constructed in that decision especially in the dimension of the dissenting opinion and the elaboration of operational parameters post-2025 SOE Law remains largely unexplored. Methodologically, the studies in all three clusters share a common limitation: they remain confined to normative interpretation of the BJR's textual formulation, without examining how judges actually apply the doctrine in concrete corruption cases. Consequently, little attention has been paid to the judicial indicators that distinguish a legitimate, BJR-protected business decision from one that crosses into criminal misconduct a gap that becomes especially salient once the BJR is read alongside a dissenting opinion that reaches the opposite conclusion from the same set of facts.

Moving on from the background and research gaps already presented, this paper sets out to dissect the actual juridical construction of the Business Judgment Rule in the considerations of the majority panel and the dissenting opinion of Decision Number 68/Pid.Sus-TPK/2025/PN Jkt.Pst after Law Number 1 of 2025 concerning SOEs came into effect, and, on that basis, to formulate the operational parameters that can be drawn from this decision to distinguish business decisions protected by the BJR from corruption offenses.

This paper offers a three-layered novelty. On the first layer, there is the novelty of the object Decision Number 68/Pid.Sus-TPK/2025/PN Jkt.Pst appears to be among the earliest verdicts after the enactment of the 2025 SOE Law to directly test the application of the BJR alongside a substantial dissenting opinion; to the author's knowledge, academic literature specifically addressing this decision remains very limited in the Indonesian legal corpus. On the second layer, there is the novelty of approach: instead of returning to already saturated cases Karen Agustiawan, Asabri, Jiwasraya this paper reconstructs the post-2025 operational criteria of the BJR through the lens of gross negligence (*culpa lata*) as formulated by the panel of judges. This dimension was missed by the analyses of Rusmana et al. (2025), Alimudin (2026), and Umar (2026). The final layer is the novelty of conceptual contribution: five cumulative operational parameters are formulated that distinguish business decisions from SOE corruption offenses a synthesis that, to the best of the author's search, has not previously been compiled in this form in Indonesian jurisprudence notes, and is designed to serve as a practical guide for panels of judges in the Corruption Court.

The significance of this paper lies precisely in closing the gap identified above: by reading the majority and dissenting opinions of Decision Number 68/Pid.Sus-TPK/2025/PN Jkt.Pst side by side, it moves beyond normative restatement of the BJR toward an empirically grounded account of how the doctrine is actually applied or denied in a live corruption case. The expected contribution is twofold: theoretically, it sharpens the conceptual boundary between gross negligence (*culpa lata*) and ordinary business risk within Indonesian BJR doctrine; practically, the resulting operational parameters are intended to function as a working reference for panels of judges in the Corruption Court when assessing similar cases involving SOE directors.

METHOD

This paper rested on the framework of normative legal research (doctrinal legal research). Three approaches were employed complementarily. The statute approach was used to examine the Company Law, the Corruption Law, the 2025 SOE Law, Government Regulation Number 23 of 2022, and Article 191 paragraph (2) of the Criminal Procedure Code (*KUHAP*). The case approach, which stood as the backbone of the analysis, focused attention on Decision Number 68/Pid.Sus-TPK/2025/PN Jkt.Pst as the primary object; the comparator used was Supreme Court Decision Number 121 K/Pid.Sus/2020 in the Karen Agustiawan case, a decision with landmark status. This decision was chosen as the comparator because it was the principal precedent in which the Supreme Court accepted the Business Judgment Rule (BJR) as a basis for *ontslag van alle rechtsvervolging* in an SOE corruption case, allowing Decision Number 68/Pid.Sus-TPK/2025/PN Jkt.Pst to be read against a setting in which the BJR had been accepted, so that the conditions under which BJR protection was granted or denied could be compared directly. The conceptual approach was then used to unpack the doctrines of BJR, fiduciary duty (encompassing duty of care, duty of loyalty, and duty of skill), along with the concept of *culpa lata*. Normative legal research was chosen because the central problem of this paper was not the empirical behavior of corporate actors but the judicial interpretation and doctrinal construction of the BJR; that is, how a panel of judges read the cumulative conditions of Article 97(5) of the Company Law and Article 9F of the 2025 SOE Law against a concrete set of facts, and how a dissenting opinion could reach an opposite construction from the same facts. The combination of statutory, case-based, and conceptual approaches enabled this paper to move beyond a description of the verdict toward a reconstruction of the panel's and the dissenting judge's ratio decidendi, which was precisely the analytical space in which the five operational parameters proposed in this paper were developed.

The legal materials used in this paper were divided into two categories. Primary materials included legislation and court decisions. Secondary materials were drawn from law journals indexed in Sinta 1–2 and Scopus within the last five years, covering the 2020 to 2025 period. A total of twelve secondary sources meeting these criteria were identified and analyzed, using the search keywords "business judgment rule," "BJR Indonesia," "*culpa lata direksi BUMN*," and "Putusan 68/Pid.Sus-TPK/2025" in Google Scholar, Scopus, and the Garuda/Sinta portals. Material collection was carried out through library research and documentation of published decision copies available in the Supreme Court Decision Directory. The analysis was qualitative-prescriptive. The interpretation used included three types simultaneously (systematic, grammatical, and teleological) and was directed at key articles and the ratio decidendi of the panel of judges. The output of this analysis process was finally used to formulate operational criteria that separate business decisions from corruption offenses.

RESULTS AND DISCUSSION

Anatomy of the Business Judgment Rule Doctrine in Indonesian Law

The classic definition of the Business Judgment Rule (BJR) can be found in Gifis Law Dictionary, which formulates the doctrine as "the presumption that in making business decisions not involving direct self-interest or self-dealing, corporate directors act on an informed basis, in good faith, and in the honest belief that their actions are in the corporation's best interest" (Gifis, 2010; Schwarcz & Stewart, 2026). The tradition in which this doctrine is rooted is, of course, common law. Where does its logic originate? From the fiduciary duty inherent in directors which includes the duty of care, duty of loyalty, and duty of skill. The starting premise is simple: every business decision inherently carries risk; therefore, it is not appropriate for a judge who is, after all, not a business practitioner to substitute professional judgment already exercised by directors (Wardani, 2023).

In the context of Indonesian law, the adoption of the BJR in its initial stage occurred implicitly through Article 97 paragraph (5) of the Company Law. What does this article stipulate? That members of the board of directors may obtain release from liability for company losses, provided they can prove four conditions simultaneously and cumulatively. These four conditions are as follows: (a) the loss was not caused by his/her personal fault or negligence; (b) the management of the company was carried out in good faith and with due care, in line with the corporation's intent and objectives; (c) there was no conflict of interest whether direct or indirect

affecting the management action that resulted in the loss; and (d) preventive measures were taken to avoid the occurrence or continuation of the loss (Article 97 paragraph (5) of the Company Law). The cumulative nature of these conditions is not merely formal. If one element fails, the entire protection under the BJR collapses (Wijayati et al., 2025).

The next affirmation came through Article 27 paragraph (2a) of Government Regulation Number 23 of 2022, which extends the reach of BJR protection to the state-owned enterprise (SOE) sector. This provision also underscores that Article 27 paragraph (2) still imposes personal responsibility for SOE losses if directors are proven guilty or negligent. The peak of this normative development appears in the 2025 SOE Law, where the BJR is explicitly codified for the first time through Article 9F. Its formulation reads: "Members of the board of directors cannot be held legally liable for losses if they can prove: (a) the loss was not due to their fault or negligence; (b) they have carried out management in good faith and with due care; (c) they have no conflict of interest; (d) they have taken action to prevent the emergence or continuation of such losses" (Articles 9F and 9G of the 2025 SOE Law). Article 9F does not substantially expand BJR protection beyond Article 97(5) of the Company Law; rather, it restates the same cumulative conditions. What changes is the normative level: the BJR is elevated from an implicit doctrinal construction to an explicit statutory rule specific to SOEs. Whether this represents a substantive paradigm shift or merely a formal legal codification remains the central question addressed in the Critical Reflection section.

Additional reinforcement comes from Article 9G of the 2025 SOE Law. This provision establishes that members of the board of directors, board of commissioners, and board of supervisors of SOEs are not classified as state officials. In conjunction with this, Article 4B explicitly states that profits or losses of SOEs belong to the SOEs themselves. Manik and colleagues describe this as a shift from public law to private law logic, aimed at negating the automatic presumption equating SOE losses with state losses a presumption that has historically enabled criminalization (Alimudin, 2026). Whether this constitutes a genuine paradigm shift depends on the interpretation of Article 4B in relation to Article 2 paragraph (1) of Law Number 17 of 2003 concerning State Finances, which still classifies separated state assets as part of state finances (Indonesia, 2003). If Article 4B is read merely as reallocating the institution that determines losses without altering their legal classification under corruption law then the change is better understood as an administrative restructuring rather than a doctrinal shift in public–private law boundaries. This paper adopts the latter interpretation and revisits its implications in the Critical Reflection section.

Jurisprudence also supports this construction. One key reference is Supreme Court Decision Number 121 K/Pid.Sus/2020 in the case of Karen Galaila Agustiawan, former President Director of PT Pertamina (Persero). In that decision, the Supreme Court issued an acquittal (*ontslag van alle rechtsvervolging*), holding that the acquisition of a 10% Participating Interest in the BMG Australia Block "did not depart from the realm of the business judgment rule, characterized by the absence of fraud, conflict of interest, unlawful acts, and intentional fault." The legal principle derived is that losses arising from BJR-protected decisions are not criminal acts, provided no fraud, conflict of interest, illegality, or gross negligence is present (Zulfikar & Muryanto, 2025). This normative structure forms the benchmark against which Decision Number 68/Pid.Sus-TPK/2025/PN Jkt.Pst is assessed.

Factual Construction of Decision Number 68/Pid.Sus-TPK/2025/PN Jkt.Pst

The case with register number 68/Pid.Sus-TPK/2025/PN Jkt.Pst was examined by a panel of judges consisting of three members: Sunoto as Chair, accompanied by Nur Sari Baktiana and Mardiantos. The Public Prosecutor's team, on the opposing side, came from the Corruption Eradication Commission (*KPK*); its personnel were Rio Frandy, Wawan Yunarwanto, and Nur Haris Arhadi. The root of the case originated from a Business Cooperation Agreement (*KSU*) for ship operations between PT ASDP Indonesia Ferry (Persero) and PT Jembatan Nusantara (PT JN). This *KSU* did not stop there but continued with the acquisition of PT JN by PT ASDP in the 2019–2022 period. The transaction scheme involved a single large payment, IDR 1.272 trillion, channeled from PT ASDP to Adjie as the beneficial owner of PT JN (Decision No. 68/Pid.Sus-TPK/2025/PN Jkt.Pst).

A series of factual findings by the panel were deemed violations, both procedural and substantive. Several of them are worth highlighting. The defendants, for example, revised Board of Directors Decree Number KD 86/2019 by inserting a clause exempting *KSU* requirements that, in practice, facilitated PT JN. Next, the *KSU* agreement was signed before the Board of Commissioners granted its approval. Furthermore, the risk analysis already prepared by the Vice President of Risk Management and Quality Assurance was apparently not reviewed by the defendants. Not only that, the content of the *KSU* implementation approval submitted to the Board of Commissioners differed from that reported to the Minister of State-Owned Enterprises. Finally, the 2016 rejection letter from the Board of Commissioners, a document that highlighted concerns regarding the condition of PT JN's fleet, was not taken into consideration (Decision No. 68/Pid.Sus-TPK/2025/PN Jkt.Pst, pp. 412–415).

At the valuation stage, several indicators of manipulation also emerged. KJPP MBPRU issued an asset valuation report whose content was adjusted according to the request of Defendant III and Adjie. KJPP SRR, represented by Heribertus Eri Hestiyanto, used this report without reviewing the working papers or conducting a revaluation; simultaneously, due diligence findings were ignored and the revenue growth assumption was set at 6%. Furthermore, the defendants set the Discount for Lack of Marketability (DLOM) at 20%, whereas the more conservative figure should have been 30%. Even vessels that had sunk or were heavily damaged were valued as if they were operational ships. The *KPK*'s calculation of PT JN's equity value using the net asset method showed a negative figure of IDR 96.3 billion; consequently, the acquisition worth IDR 1.272 trillion resulted in a substantial state financial loss. The transfer of PT JN's IDR 583 billion debt to PT ASDP is retained here because it is later used by the majority panel as supporting evidence of total and permanent loss (Kamila et al., 2024), the remaining figures, docking costs and payments for affiliated vessels, are not directly invoked in the panel's reasoning on either culpa lata or loss-character indicators and are therefore omitted from the analysis below to keep the discussion focused on the two core issues.

Based on these findings, the majority panel sentenced Ira Puspadewi to 4 years and 6 months in prison, accompanied by a fine of IDR 500 million, with subsidiary imprisonment of 3 months. Meanwhile, Muhammad Yusuf Hadi and Harry Muhammad Adhy Caksono each received 4 years in prison, with a fine of IDR 250 million and subsidiary imprisonment of 3 months. This decision was based on the Second Alternative Indictment, namely Article 3 of the Corruption Law in conjunction with Article 55 of the Criminal Code (*KUHP*). One notable point is that the panel did not impose any restitution payment, since no evidence was found that the defendants personally obtained financial benefits (*Dandapala*) (Ramdani & Sumiyati, 2026).

Juridical Construction of the Majority Panel: Rejection of BJR Application

The argumentation built by the majority panel in dismissing the BJR from the decision can be mapped into four layers identifiable in the text of the verdict itself. These four layers are not headings used verbatim by the panel; rather, they are this paper's analytical reconstruction of the panel's reasoning, grouping the considerations set out across the verdict's deliberation section (Decision No. 68/Pid.Sus-TPK/2025/PN Jkt.Pst, pp. 380–420) into four recurring lines of argument. The first layer relates to the non-fulfillment of the conditions of good faith and due care as stipulated by Article 97 paragraph (5) letter b of the Company Law and Article 9F paragraph (1) letter b of the 2025 SOE Law. The three pillars of professionalism (independence, objectivity, and due care) in the panel's reading were assessed as having failed to be upheld by the defendants during the valuation and due diligence process of the IDR 1.272 trillion acquisition (Dian et al., 2025). As a comparison, in the Karen Agustiawan case, the Supreme Court's stance was the opposite, the application of the BJR was accepted. Why? Because due diligence there was conducted by a credible external consultant, namely PT Deloitte Konsultan Indonesia, and commissioner approval was obtained before signing. Those two prerequisites were precisely absent in the ASDP case.

The second layer relates to the fulfillment of the element of abuse of authority in Article 3 of the Corruption Law as the exit path from the BJR. Hasiholan and colleagues formulate it like this: BJR in Indonesia will not shield SOE directors when a significant violation of fiduciary duty accompanied by abuse of authority is found (Hasiholan et al., 2025). From the panel's perspective,

several actions were interpreted as forms of formal abuse of authority, including: the revision of KD 86/2019, signing the *KSU* before the commissioners gave their blessing, and submitting approval content to the Board of Commissioners that differed from that submitted to the SOE Minister.

The third layer is the construction of *culpa lata*, or gross negligence, as a bridge between administrative error and criminal liability. One important thing, that the parameters of *culpa* here were carefully constructed by the panel, with reference to the prudential standard inherent in SOE directors as holders of fiduciary duty (Dian et al., 2025). The question that arises: how high is the standard of care demanded? For the panel, the answer: higher than that of ordinary administrative officials, and this is reasonable, considering the expectations of the state as the controlling shareholder. Therefore, the defendants' negligence (ranging from failure to validate KJPP reports, ignoring the Board of Commissioners' warnings, to accelerating the *KSU* stages) was not merely a common business failure; it was a fundamental violation of fiduciary duty.

The fourth layer touches on the aspect of real and quantifiable state losses. Unlike the Karen Agustiawan case (which was classified as impairment, i.e., a fluctuating decrease in asset value) in the present case, the *KPK* calculation was accepted by the panel. This calculation placed the IDR 1.25 trillion loss as a concrete price vs. value difference. This argument is reinforced by another fact, namely the transfer of PT JN's debt burden of IDR 583 billion to PT ASDP. And there is one more fact: until 31 December 2024, PT JN as a subsidiary of PT ASDP has not yet been able to repay the shareholder loan provided, a fact confirming that the loss is indeed total and permanent (CNN Indonesia) (Kamila et al., 2024). This conclusion, however, is not uncontested. As the dissenting opinion discussion below shows, the BPKP declined to calculate the state loss, the BPK found the acquisition to have proceeded in accordance with applicable regulations, and expert valuations diverged substantially. The majority panel's acceptance of the *KPK*'s net-asset-based figure therefore reflects a choice between competing methodologies rather than an uncontroversial finding of fact, and this paper treats the IDR 1.25 trillion figure accordingly, as the basis the majority panel relied upon, not as a settled quantum of loss.

Dissenting Opinion of Judge Sunoto: Three Layers of Doubt

The argumentation built by Sunoto, the Presiding Judge, in his dissenting opinion is based on three layers of fundamental doubt (Kumparan) (Sahal & Rusdiana, 2026). The first layer touches on the aspect of *mens rea*, or criminal intent. Sunoto places emphasis on several key points: the defendants received no personal benefit whatsoever; there was no conflict of interest; and no clear economic motive was found. On the contrary, PT ASDP's business performance was positive, evident from a revenue contribution of IDR 2.1 trillion and a market share increase of 45.65%. Conceptually, what Sunoto's reasoning addresses is best described as the absence of *dolus* (intent or purposeful wrongdoing), rather than *mens rea* in its broader sense, since negligence-based liability (*culpa*) is itself a form of *mens rea* recognized under Article 3 of the Corruption Law. The absence of personal benefit, conflict of interest, and economic motive highlighted by Sunoto therefore goes to the question of whether the defendants' conduct rises to the level of *culpa lata* required to displace BJR protection, rather than to the existence of *mens rea* as such.

The second layer concerns doubt over state losses. Sunoto made several notes: the *KPK* team, based on a Supreme Court Circular Letter (*SEMA*), is not an institution authorized to calculate state losses; the BPKP itself refused to calculate state losses; while the BPK concluded that the acquisition had proceeded in accordance with applicable regulations; additionally, there were significant discrepancies among expert opinions. This argument is intertwined with the doctrine contained in Supreme Court Decision 121 K/Pid.Sus/2020, the doctrine distinguishing actual loss from asset value impairment (Zulfikar & Muryanto, 2025).

The third layer examines the boundary between business decisions and corruption offenses within the context of *Business Decisions or Corruption? The Business Judgment Rule in Decision 68/2025*. For Sunoto, the acquisition of PT JN was a strategic corporate decision compatible with the Business Judgment Rule (BJR). Several reasons were put forward: first, the acquisition was undertaken in good faith, evident from comprehensive due diligence costing IDR 11.2 billion and involving seven professional consultants; second, adequate due care was

demonstrated through multi-layered approvals, from the Board of Commissioners and the General Meeting of Shareholders (GMS) to the Minister of State-Owned Enterprises; third, there was no conflict of interest; and fourth, the resulting business impact was positive. Sunoto stated firmly: "the acts of the defendants are proven to have occurred, but these acts do not constitute a crime because they were business decisions protected by the business judgment rule, and the elements of the criminal offense are not met." The logical consequence of this view is that the appropriate accountability instruments are civil lawsuits, administrative sanctions, and governance improvements, not criminalization (Tempo.co, 2025; Decision No. 68/Pid.Sus-TPK/2025/PN Jkt.Pst, Dissenting Opinion, pp. 421–430).

Operational Parameters for Distinction: Synthesis from the Decision

From the clash of opinions between the majority and the dissenting opinion described above, operational parameters can be derived to distinguish BJR-protected business decisions from corruption offenses under the post-2025 SOE Law. These parameters consist of five cumulative indicators. The cumulative nature of these parameters follows the normative structure of Article 97(5) of the Company Law and Article 9F paragraph (1) of the 2025 SOE Law, both of which require directors to prove all four statutory conditions "simultaneously and cumulatively" (Article 97(5) of the Company Law (Wijayati et al., 2025) in order to obtain relief from liability. Because the failure of any single statutory condition is sufficient to defeat the BJR defense under both the Company Law and the 2025 SOE Law, the same all-or-nothing logic is carried into the five operational parameters proposed here: each parameter operationalizes one or more of those statutory conditions, and the failure of any one parameter signals that the corresponding statutory condition has not been met. The indicators are described as follows.

First indicator: quality of the decision-making process. A decision seeking to obtain BJR protection requires three elements simultaneously, comprehensive due diligence, independent valuation free from undue influence, and compliance with the corporate approval hierarchy (starting from the board of directors, proceeding to the board of commissioners, then the GMS, and finally the minister/ shareholder). Failure at any point (for example, revising *KSU* prerequisites, conditioning the KJPP assessment, or executing a contract before commissioner approval) is sufficient to void BJR protection.

Second indicator: degree of negligence. Ordinary negligence inherent in risky business decisions remains shielded by the BJR. However, *culpa lata*, which reflects a complete abandonment of the prudential standard expected of SOE directors, receives no protection. This *culpa lata* indicator includes three manifestations: ignoring formal warnings from supervisory organs (commissioners), using manipulated valuation documents, or escalating decisions without adequate risk assessment (Dian et al., 2025).

Third indicator: integrity of documents and substance of approvals. Consistency between the substance submitted to supervisory organs (commissioners) and the substance forwarded to shareholders/SOE minister is a measure of good faith. Material discrepancies, as can be seen in Decision Number 68/Pid.Sus-TPK/2025/PN Jkt.Pst, indicate an abuse of authority that may open the door to Article 3 of the Corruption Law.

Fourth indicator: character of loss. Losses in the form of impairment, a fluctuating decrease in asset value due to market dynamics (market risk), are conceptually different from losses arising from a real, quantifiable, and permanent price-versus-value discrepancy. Supreme Court Decision 121 K/Pid.Sus/2020 recognizes impairment as part of business risk. Conversely, Decision Number 68/Pid.Sus-TPK/2025/PN Jkt.Pst rejected the BJR precisely because the IDR 1.25 trillion loss was characterized as a total loss (Kasma & Andersen, 2024).

Fifth indicator: existence of fraud and conflict of interest. Although the defendants in the ASDP case were proven not to have received direct personal benefits, the majority panel still found that substantial benefits flowed to Adjie as the beneficial owner of PT JN. Valuation conditioning that benefits a third party outside the SOE qualifies as constructive fraud not protected by the BJR; simultaneously, it also satisfies the element of "benefiting another person" under Article 3 of the Corruption Law. This indicator should not be interpreted as contradicting the earlier finding that the defendants themselves obtained no personal benefit. The fifth indicator does not require that benefits accrue directly to directors; Article 3 of the Corruption Law is

satisfied where the conduct enriches "another person or corporation," and the majority panel identified that benefit in Adjie as the beneficial owner of PT JN rather than in the defendants. The absence of personal enrichment by the directors therefore relates to the mens rea/culpa lata indicator (second indicator), while the flow of benefit to a third party relates to this fifth fraud-and-conflict-of-interest indicator; the two operate on different elements of the offense and are not in tension.

Read comparatively, these five parameters echo, while also sharpening, standards found in other jurisdictions. The first and second indicators correspond closely to the Delaware courts' requirement that directors act on an informed basis and in good faith for the business judgment presumption to apply, with gross negligence operating as the recognized exception. The third and fourth indicators, integrity of approval documentation and the character of loss, align with the OECD's emphasis on transparent decision-making processes and accountability mechanisms within SOEs as safeguards against the misuse of commercial discretion (Baum et al., 2024). The fifth indicator, meanwhile, parallels the Japanese Supreme Court's approach in the Apamanshop line of cases, where the BJR's protection is conditioned on the absence of self-dealing and on a documented, reasonable decision-making process, with Japanese courts scrutinizing the substance of that process more closely than their Delaware counterparts (Goto, 2024; Puchniak & Nakahigashi, 2012). Positioned against these three benchmarks, the five-parameter framework proposed here does not merely import a foreign standard; it operationalizes a comparable underlying logic (informed, good-faith, conflict-free decision-making subject to a documented process) into a form that responds directly to the cumulative-condition structure of Indonesian BJR doctrine under the 2025 SOE Law.

Critical Reflection: BJR and the Risk of Impunity Post-2025 SOE Law

The codification of the BJR in Articles 9F and 9G of the 2025 SOE Law, in essence, brings consequences that operate in two directions. In the first direction, it provides legal certainty that was previously absent and, along with it, brings SOE governance closer to internationally applicable good corporate governance standards. In the other direction, the formulation of Article 9G, which does not categorize SOE directors as state officials, has the potential, if interpreted too broadly, to become a loophole for impunity. This risk is further heightened by the presence of Article 4B, which separates SOE losses from state losses. This separation, unfortunately, conflicts with the provisions of Article 2 paragraph (1) of Law Number 17 of 2003 concerning State Finances, which affirms that separated state assets remain part of state finances (Indonesia, 2003; Umar, 2026).

Decision Number 68/Pid.Sus-TPK/2025/PN Jkt.Pst provides a firm answer to this tension: the BJR is not an absolute form of immunity. Manik and colleagues, in their writing, further emphasize that Article 4B should not be interpreted as an expansion of immunity for SOE organs; instead, it should function as a distinguishing instrument, separating corporate losses arising from ordinary business risks from losses resulting from criminal conduct (Alimudin, 2026). The application of the BJR involves a burden of proof placed on the directors, requiring them to demonstrate compliance with the four cumulative conditions under Article 9F paragraph (1). When this burden is not met, particularly regarding good faith and due care, BJR protection is lost, and the conduct in question falls within the scope of the Anti-Corruption Law.

It should be noted that neither Article 97(5) of the Company Law nor Article 9F of the 2025 SOE Law explicitly uses the term "reversal of the burden of proof." What both provisions explicitly state is that a director "may obtain release from liability … provided they prove" the four cumulative conditions, meaning that the evidentiary burden is placed on the director invoking the BJR defense, rather than on the prosecution to disprove it. This paper therefore characterizes the operation of the BJR as a form of reverse burden of proof derived from doctrinal interpretation of the statutory structure, not as terminology used verbatim by the legislature.

The legal construction above is consistent with the approach outlined by Loren and Prasetyo (2025). This approach limits the application of the BJR to pure business decisions that result in operational losses, while still allowing liability for business decisions involving conflicts of interest or abuse of authority (Loren & Prasetyo, 2025). Ultimately, Decision Number 68/Pid.Sus-TPK/2025/PN Jkt.Pst reinforces the jurisprudential balance: the BJR functions as a

shield for professionalism; it is not a shield for gross negligence. The tasks ahead are twofold, developing comprehensive BJR implementation guidelines and strengthening understanding among law enforcement officials, so that the distinction between legitimate business risk and criminal conduct can be applied consistently (Shafira et al., 2022).

CONCLUSION

For the journey of the Business Judgment Rule doctrine in Indonesia, Decision of the Corruption Crime Court at the Central Jakarta District Court Number 68/Pid.Sus-TPK/2025/PN Jkt.Pst deserves to be placed as an important milestone, especially after the enactment of Law Number 1 of 2025 concerning SOEs, as reflected in "Business Decisions or Corruption? The Business Judgment Rule in Decision 68/2025". Based on the analysis of the two problem formulations proposed, two main conclusions can be drawn.

For the first problem formulation regarding the juridical construction of the BJR, the majority panel positions the BJR as a doctrine bound by the cumulative conditions stipulated in Article 97 paragraph (5) of the Company Law and Article 9F paragraph (1) of the 2025 SOE Law. Gross negligence (*culpa lata*), manifested in failed due diligence, conditioning of KJPP valuation, violation of corporate procedures, and disregard for warnings from supervisory organs, eliminates BJR protection. Sunoto's dissenting opinion highlights the absence of *mens rea*, the uncertainty of the state loss calculation methodology, and the presence of multi-layered due diligence costing IDR 11.2 billion as indicators of BJR fulfillment. The tension between these two opinions affirms that the BJR post-2025 SOE Law is not an absolute immunity but a conditional protection that requires proof of compliance with the four cumulative requirements under Article 9F paragraph (1).

For the second problem formulation regarding operational parameters, from the contrast between the majority opinion and the dissenting opinion, five cumulative parameters can be formulated to distinguish BJR-protected business decisions from corruption offenses. These include: (1) the quality of the decision-making process, covering comprehensive due diligence, independent valuation, and compliance with the corporate approval hierarchy; (2) the degree of negligence, where BJR protects ordinary negligence but not *culpa lata*; (3) the integrity of documents and substance of approvals, measured by the consistency of information submitted to supervisory organs and shareholders; (4) the character of loss, distinguishing fluctuating impairment from a real, quantifiable, and permanent price-versus-value difference; and (5) the existence of fraud and conflict of interest, including constructive fraud in the form of benefits flowing to third parties outside the SOE. These five parameters are cumulative: failure in any one indicator is sufficient to negate BJR protection.

The contribution of this paper to the development of corporate law and corruption law in Indonesia is threefold. In terms of object, this paper is among the first comprehensive studies of Decision Number 68/Pid.Sus-TPK/2025/PN Jkt.Pst following the enactment of the 2025 SOE Law. In terms of approach, it elevates the analysis of *culpa lata* as an exit path from the BJR, a dimension not sufficiently explored in prior research. In terms of concept, the five operational parameters formulated are expected to serve as guidance for panels of judges in the Corruption Court. moreover, this study limits to its analysis is based on a single decision and its dissenting opinion; while Decision Number 68/Pid.Sus-TPK/2025/PN Jkt.Pst is, to date, among the few post-2025 SOE Law rulings explicitly testing the BJR, the five operational parameters proposed here have not yet been validated against other cases and should be treated as a working framework rather than a settled doctrinal standard.

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