Understanding the Strengthened Business Judgment Rule for Indonesian SOEs in 2025

How Law No. 1/2025 Redefines Director Liability and Corporate Autonomy in State-Owned Enterprises

A Doctrinal Analysis of the Business Judgment Rule Under the Revised SOE Law

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I. Introduction

The handcuffs that once awaited SOE directors — from Pertamina's Karen Agustiawan to jailed Garuda executives — may no longer be relevant. With Law No. 1/2025, the fate of directors will be handled differently, and jail may no longer be the end of the story. On 24 February 2025, the Government of the Republic of Indonesia enacted Law No. 1 of 2025 on the Third Amendment of Law No. 19 of 2003 on State-Owned Enterprises (hereinafter referred to as the "Revised SOE Law"). An important aspect of this update is the strengthening of the application of the Business Judgment Rule (BJR), which explicitly provides legal protection to the board of directors when making strategic business decisions.

In the midst of global challenges, digital disruption and post-pandemic economic dynamics, state-owned enterprises (SOEs) are required not only to survive, but also to grow competitively. However, SOE boards have often been inhibited from taking business risks due to concerns about criminalising business decisions. In fact, not all losses are the result of illegal activity. Many losses are the normal consequence of calculated business risk.

The principle of the business judgment rule is an important concept in company law, whereby the directors of a company cannot be held legally liable for decisions they take, even if those decisions may result in losses to the company. As long as the decision is made in good faith, has clear objectives, is implemented in a reasonable manner based on rational considerations and is carried out with prudence, this principle provides protection to directors. Therefore, as long as directors act in accordance with these principles, they can conduct the company's business more independently without fear of adverse legal consequences. In this regard, the presence of the BJR in the revised BUMN Act is a key basis for encouraging bold decisions without losing sight of the principles of prudence and accountability.

II. Redefining Boundaries: The Legal Line Between SOE Losses and State Losses

A. The Pre-2025 Legal Landscape

The revised SOE Law 2025 brings a more progressive approach by strengthening the Business Judgment Rule doctrine. This doctrine juridically confirms that SOE Directors function as corporate decision makers and not as public officials. This new perspective provides legal certainty, stating that as long as business decisions are made in good faith, based on information, and within the limits of legal authority, the Board of Directors cannot be held criminally liable for the risk of loss that may arise from such decisions. This reformulation is expected to create a more dynamic investment climate and competitive SOE management, as well as encourage courage in taking strategic steps, while maintaining the principle of accountability.

Prior to the Revised SOE Law 2025, the financial status of SOEs was explicitly considered part of state finances under Law No. 17 Year 2003 on State Finances, within the meaning and scope of state finances. This is regulated in Article 2 letter g of Law No. 17 Year 2003 on State Finance, which is formulated as below:

> *"State Finance as referred to in Article 1 number 1, includes: [...] (g) state assets/regional assets managed by itself or by other parties in the form of money, securities, receivables, goods, and other rights that can be valued in money, including assets separated in state companies/regional companies."*

Prior to the amendment of the revised SOE Law, SOEs, as legal entities formed with separated state finances, were required to be audited by the BPK. The regulation of SOE finances and the BPK's authority to conduct audits were based on Law No. 17/2003 on State Finances and Law No. 15/2006 on the Supreme Audit Agency (BPK). At that time, the financial status of SOEs was explicitly considered part of state finances, so the BPK had full authority to examine their management and accountability. Consequently, SOE directors were often positioned as state officials who could be held criminally liable for business losses. This creates fear among SOE management. Directors tend to take an overly conservative approach, avoid innovation, and are reluctant to make strategic business decisions due to high personal risk. This contradicts the need for SOEs to be adaptive and aggressive in facing market challenges.

B. The Constitutional Court's Position

This has been tested in the Constitutional Court (MK). In Decree No. 62/PUU-XI/2013, according to the Court, the design of the State Finance Law Package is constitutional because SOE finances are state finances so the BPK is authorised to examine the management and financial accountability of SOEs. Otherwise, if the SOE's finances are not state finances, the BPK does not have the authority to examine the management and financial responsibility of the SOE. Conversely, if at any time SOE finances are no longer included in the category of state finances, the BPK's authority will be revoked automatically. This decision reflects the legal status quo before the revision of the SOE Law, where there was no clear separation between SOE finances and state finances, so the BPK remained the institution authorised to conduct supervision.

C. The Revised SOE Law 2025: Core Definitional Changes

However, the revised SOE Law has expanded the scope of SOEs as defined below:

> *Revised SOE 2025: "State-Owned Enterprises, hereinafter referred to as SOEs, are business entities that fulfil at least one of the following conditions: (a) all or most of its capital is owned by the Republic of Indonesia through direct participation; or (b) there are special rights owned by the Republic of Indonesia."*

Changes to the definition of State-Owned Enterprises (SOEs) in the Revised SOE Law have significant legal consequences, particularly in relation to the ownership structure of companies with SOE status. The definition now includes the element of "state privilege" as an additional factor in determining SOE status. With this change, the state can maintain control of a company as an SOE without having to own the majority of shares. This privilege is further explained in Article 4C of the Revised SOE Law, which states that the Republic of Indonesia continues to own series A Dwiwarna shares with privilege, allowing the state to influence strategic aspects of the company.

Furthermore, the Revised SOE Law 2025 introduces a legal framework that emphasises a clearer separation between state entities and state corporations (SOEs). This is emphasised in provisions stating that SOEs are not part of the state finances directly, and losses incurred by SOEs are not automatically considered state losses. Article 4B of the Revised BUMN Law underlines that profits or losses experienced by BUMNs belong to the BUMN itself, and do not automatically become state profits or losses. In line with this provision, Article 4A (5) emphasises that the capital of SOEs, whether derived from the State Budget (APBN) or non-APBN sources, is the wealth that is the right and responsibility of the SOE. This assertion is very important as a basis for the application of the Business Judgment Rule, as it can reduce the risk of criminalisation for directors for unsuccessful business decisions. As a consequence, it answers the question of whether SOE losses are also considered state losses.

In accordance with the assertion that SOEs are separate state assets, Article 71 and Article 72 of the Revised SOE Law stipulate that the audit of the annual financial statements of SOEs is no longer conducted by the Supreme Audit Agency (BPK), but by an independent public accountant or auditor registered with the BPK. However, Article 71 (2) and (3) still authorise the BPK to conduct a specific purpose audit at the request of the organs of the House of Representatives of the Republic of Indonesia (DPR RI) in charge of SOEs. This specific purpose audit includes audits related to the use of government funds, such as equity participation, and not in the context of corporate business. These new provisions provide a solution to the long-standing debate about losses incurred by SOEs and their subsidiaries as part of state financial losses, which in some cases can lead to corruption crimes.

D. The Business Judgment Rule: Key Provisions

The Business Judgment Rule paradigm is further strengthened by the provisions in Article 3X (1), Article 9G, and Article 87 (5) of the Revised BUMN Law. These provisions broadly emphasise that: (i) BPI Danantara's organs and employees, as well as (ii) members of the board of directors, board of commissioners, supervisory board, and employees of SOEs are not considered state officials. Therefore, they should not be subject to the legal responsibilities applicable to state administrators.

The revised SOE Law also clearly strengthens the Business Judgment Rule (BJR) paradigm by adopting the principle of legal protection for SOE Directors for business decisions made in a professional and good faith manner. A key provision in this regard is found in Article 3Y of the Revised SOE Law, which stipulates that the Minister of SOEs and BPI Danantara's organs and employees cannot be held legally liable for losses if they can prove:

(a) the loss is not due to his/her fault or negligence;

(b) has carried out management in good faith and prudence in accordance with the aims and objectives of investment and governance;

(c) has no direct or indirect conflict of interest over investment management actions; and

(d) not obtaining unauthorised personal benefit.

In accordance with these provisions, Article 9F(1) of the Revised SOE Law states that members of the board of directors of SOEs cannot be held legally liable for losses, provided they can prove that:

(a) the loss was not due to their fault or negligence;

(b) they have carried out management in good faith and prudence for the interests and in accordance with the objectives of the SOE;

(c) has no direct or indirect conflict of interest; and

(d) has taken measures to prevent the incurrence or continuation of such losses.

This regulation creates an adequate legal framework to protect management's business discretion, as long as such decisions are taken within the limits of authority and with sufficient information and reflects a paradigm shift from government judgment rule (supervision based on state power) to business judgment rule (supervision based on good corporate governance principles), as suggested by the Constitutional Court in Decision No. 62/PUU-XI/2013. Basically, this provision confirms that the liability of limited liability company organs follows the provisions in the Limited Liability Company Law (UUPT). Accordingly, the responsibility of directors and commissioners of SOEs in the future will follow the corporate mechanism in accordance with the UUPT, no longer the state financial system.

III. Implications: Toward a More Dynamic Investment Climate

The strengthening of the business judgment rule doctrine in the revised SOE Law 2025 should create a more dynamic investment climate and competitive SOE management. Directors of SOEs will have greater discretion to make strategic business decisions without fear of adverse legal consequences, as long as such decisions are made in good faith, based on adequate information and within the limits of legitimate authority. At the same time, the principle of accountability will be respected through corporate oversight mechanisms under the Limited Liability Company Law, rather than through government financial instruments.

> ***"The paradigm shift from government judgment rule to business judgment rule represents Indonesia's most significant corporate governance reform in a generation — liberating SOE directors to innovate while preserving accountability through the mechanisms of corporate law, not state finance.***

IV. Conclusion

The 2025 Revised SOE Law marks a pivotal shift in Indonesia's corporate governance landscape by fortifying the Business Judgment Rule (BJR), liberating SOE directors from the specter of criminal liability for good-faith business decisions. By redefining SOEs as distinct legal entities separate from state finances and replacing BPK audits with independent oversight, the law fosters a climate where calculated risk-taking and innovation can thrive — provided directors act with prudence, transparency, and alignment with corporate objectives. This paradigm shift not only aligns Indonesia with global corporate governance standards but also addresses long-standing fears that stifled strategic decision-making in state enterprises.

However, this newfound freedom demands rigorous accountability mechanisms to prevent abuse. The law's success hinges on balancing entrepreneurial autonomy with robust checks — ensuring that the BJR serves as a shield for legitimate risk-takers, not a loophole for negligence. As Indonesia navigates this transformative era, the ultimate test will be whether SOEs can leverage this legal protection to drive competitiveness while maintaining public trust in their governance. The 2025 reforms thus represent both an opportunity and a challenge: to redefine the role of state enterprises in a modern, dynamic economy.