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Management of State-Owned Enterprises Before Law No. 1 of 2025

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Abstract

SOEs, in addition to being regulated in Law No. 40/2007 concerning Limited Liability Companies, are also regulated by Law No. 19/2003 concerning SOEs and Law No. 17/2003 on State Finance, which carries consequences that if SOEs lose their jobs, they will be subject to criminal liability, namely corruption. The issuance of Law No. 1/2025 concerning the third amendment to Law No. 19 of 2003 brought about a change in the responsibility of directors of SOEs that suffered losses. Prior to Law No. 1/2025, the Business Judgement Rule was not considered in Court decisions, and losses by state-owned companies were a criminal act of corruption. In the case of Karen Agustiawan as President Director of PT Pertamina (Persero) and President Commissioner of PT Pertamina Hulu for the action of BMG Block Participating Interest Australia, the Cassation Decision applied the Business Judgement Rule, but in the second case, the Panel of Cassation Judges did not apply it, so it was sentenced. Under Law No. 1/2025, SOEs' losses are treated as business risks rather than as state losses that can be punished. The method used is normative law research with various approaches, namely positive law and its changes.

1. Introduction

State-Owned Enterprises (SOEs) play an important role in a country's economic development. The Board of Directors of SOEs is responsible not only for the company's sustainability and growth but also for the interests of shareholders, the government, and society in general. In this context, the Business Valuation Rules are a significant legal basis in guiding decision-making and civil liability in SOEs. Business Entities whose capital is wholly or mostly owned by the State through direct participation derived from separate state assets, SOEs in the form of limited liability companies whose capital is divided into shares wholly or at least 51% (fifty-one percent) owned by the State of the Republic of Indonesia, whose main purpose is to pursue profits.

Law of the Republic of Indonesia Number 19 of 2003 concerning State-Owned Enterprises, article 2 regulates the purpose and objectives (1) of contributing to the development of the national economy in general and state revenues in particular; (2) the pursuit of profit; (3) providing general benefits in the form of providing high-quality and adequate goods and services and/or for the fulfillment of people's livelihoods; (4) pioneering business activities that cannot be carried out by the private sector and cooperatives; (5) actively provide guidance and assistance to entrepreneurs in economic groups, cooperatives, and vulnerable communities.

Assistance to entrepreneurs from weak economic groups, cooperatives, and communities. When it is associated between the provisions in the Limited Liability Company Law and the Law on SOEs, the management of SOEs in the form of a limited liability company, is state property that has been separated in accordance with the doctrine of business valuation rules regulated in Law No. 40/2007 Article 97 paragraph (5) letter b which stipulates that members of the board of directors who manage and represent the company cannot be held liable for business losses if they are managed in good faith and prudence fully in accordance with the company's intentions and objectives, but because the Indonesian state adheres to a continental legal system or civil law that makes written rules the main source of law.

The management of SOEs that result in losses is not only regulated by Law No. 40/2007, but also regulated by Law No. 19/2003 on SOEs and Law No. 17 of 2003 on State Finance, the consequences of which can be examined and prosecuted as criminal cases, of course will be contrary to the doctrine of Business Judgment Rules, this concept stipulates that where the Company's Board of Directors cannot be legally responsible for the decisions it takes. Furthermore, with the issuance of Law No. 1 of 2025 concerning the three amendments to SOEs. This law changes several provisions in the old SOE Law, one of which is regarding the status of SOEs, which are no longer considered as losses or state profits, Because the profits and losses of SOEs are no longer owned by the state, it raises thoughts about how the responsibility or status of directors for losses within the scope of SOEs, especially related to corruption.

The legal system that applies in Indonesia like this, will cause legal problems for the board of directors, even though the board of directors has carried out their duties, management is always careful, always prioritizes the interests of the company and in good faith and the implementation of its duties in accordance with the company's intentions and objectives as stated in the company's articles of association, but it turns out that economic conditions are not conducive so that the company suffers losses. Based on the Business Valuation Rules, the Company's Board of Directors cannot be held legally liable for decisions that cause losses; In fact, this is not the case. In the practice of managing state-owned companies, SOE directors' losses are treated as a special crime, namely corruption.

This happened in the case of the President Director of Pertamina, Karen Agustiawan, in the decision. Decision Number 15/Pid.sus/TPK/2019/PN.Jkt.Pst which states that Karen Agustiawan has been legally and convincingly proven guilty of committing a crime of corruption committed jointly as in the additional indictment, imposes a prison sentence of 8 (eight) years and a fine of Rp 1,000,000,000 (one billion rupiah) with the provision that if the fine is not paid, it will be replaced with a prison sentence of 4 (four) months). In the appeal against Decision Number 34/Pid.Sus-Tpk/2019/PT DKI, which upheld the decision of the Central Jakarta District Court on behalf of Karen Agustiawan, while in the Cassation decision Number 121 K/Pid.sus/2020, it released Karen Agustiawan as a director for PT Pertamina's losses. Furthermore, in other cases, also at PT. Pertamina for the loss of LNG procurement which resulted in losses of up to IDR 2.1 trillion, was sentenced to 9 years in prison and a fine of IDR 500,000,000 (five hundred million rupiah), as stated in Decision No. 12/Pid Sus-TPK/2024/PN.JKT.PSt, which was strengthened by Decision No. 41/PID. SUS-TPK/2024/PT. DKI and cassation decision No. 1076/K/PID. Sus/2025 worsens the prison sentence to 13 (thirteen) years.

Issue Law No. 1 of 2025, amending Law No. 19 of 2003 concerning SOEs. This law brings a transformation of the responsibility of the board of directors for losses in the management of SOEs, which were originally responsible in addition to civil liability must also be criminally responsible, and SOE losses as a form of corruption, while in Law No. 1 of 2025 there is a paradigm shift in state finance, because this law expressly distinguishes between state wealth that is separate from the state budget which is no longer considered a state loss.

With this change in regulation, it raises a problem, how is the responsibility of the directors of SOEs for the losses of the companies they manage?

The purpose of this research is to provide answers and clarity about the legal status of SOE losses, namely losses that occur due to business activities, not state losses. For this reason, the author is interested in writing about the Contradictions in the Application of Business Valuation Rules on the Management of State-Owned Enterprises [LDN5.1] that Suffer Losses Before the Issuance of Law Number 1 of 2025 concerning State-Owned Enterprises.

2. Methods

The method used is normative law research with various approaches, namely positive law. With the primary legal material, namely Law (*legal approach*), it is an approach by analyzing all laws and regulations related to legal issues that are being studied while still being guided by laws and regulations and the principles of laws and

regulations [1] , and *the case* approach) is an approach by examining the judge's reasons in a decision (primary law), while secondary legal material is books, expert opinions, writings from various materials for the formation of law, and so on.

3. Discussion and Findings

There is no clear understanding of the Business Valuation Rules, but legal expert Japheth Yosafet Wilben Rissy translates them into business valuation rules.[2] However, it does not provide a definition *of Business Valuation Rules*, for it is based on the opinion of Henry Campbell, who gave a definition of business valuation rules based on the definition of a legal dictionary, which means the following:

"*A rule that immunizes the management of a company from liability for an act resulting in a corporate transaction either within the power of the corporation or the management authority where there is a reasonable basis to show that the transaction was conducted with care and good faith".*[3]

This means a rule that gives immunity from the management of a company from liability for actions resulting in a corporate transaction being carried out within the power of the corporation and the management authority, where reasonable grounds are obtained showing that the transaction was carried out with care and good faith.

Regarding good faith, there are 4 (four) conditions that must be met in business decisions). First, decisions should be based on research. Second, it must gather all the information that reinforces the belief that the business decision is reasonable. Third, the decision must be taken in good faith, if the directors know that the act violates the law, it will not be protected from the *business valuation rules.* Fourth, the director does not have personal interests, including financial interests.[4]The Board of Directors is the official organ of the company functioning as its governing body, representing the company both inside and outside the company in accordance with the articles of association.[5]

3.1. Duties and Functions of the Board of Directors

The Board of Directors is one of the organs of a limited liability company, with the Board of Commissioners and the GMS, which are interrelated. The Board of Directors has representative duties as stipulated in {original 1 number 5 of Law No. 40/2007. The Board of Directors is a legal entity that is fully authorized to manage and represent the company for its benefit, in accordance with the company's intentions and objectives. As a legal entity, a limited liability company has the rights and obligations to carry out these actions, represented by a person (director); therefore, they must be responsible for management and representative actions. For the action of the directors of managing the company, there are 2 (two) general actions and exclusion actions.[6]

Administrative actions *are* the day-to-day tasks of management. These daily tasks are part of the routine to achieve the company's goals and objectives.[7] Whereas beschking actions are specific actions related to third parties, which are basically other actions related to the company's business.[8] The obligation of representation is the obligation of the two directors for their actions to enter and exit for and on behalf of the limited liability company, with reference to Article 92 Jo. 97 paragraph (1) of Law No. 40/2007, because the first task is realized as a management task, which is ensured in the internal management of the company, the legal entity must take legal action against a third party to take action, namely, business actions to carry out the company's goals and objectives.

In carrying out representative duties, the directors can take legal action in the form of transfer or sale of limited company assets to third parties. It can be said that this action is a further implementation of the purpose and objectives of the establishment of a limited liability company as stipulated in the articles of association. One of the characteristics of a limited liability company that is relevant to the representation function is the investor's

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[1] Peter Mahmud Marzuki, *Legal Research, Jakarta*: Kencana Prenada Media Group, 2005, pp. 181-182.

[2] Yafet Yosafet Wilben Rissy, "*The Rules of Biusiness Judgment". Provisions and Enforcement by Courts* in *the UK, Canada and Indonesia*", Legal Pulpit, Vol.32, no.2 (June 2020). Hmn 276. http://Jurnal.Ugm.ac.id.jmh.view, accessed February 20, 2024

[3] Henry Black Campbell, *A Dictionary of Black Law* (St. Paul Min: West Publishing aco, 1990). p. 200

[4] Asep N Mulyana, *Business Valuation Rules on Irregularities in the Management of SOEs/BUMDs.* Jakarta. PT. Grasindo, 2018. pp. 3-32.

[5] Republic of Indonesia, Law No. 40/2007 concerning Limited Liability Companies. Article 1 number 5.

[6] Rudhi Prasetya, the *independent position of a limited liability company is accompanied by a review in accordance with Law Number 1 of 1995 concerning Limited Liability Companies.* Bandung: PT. Citra Aditya Bakti, 1996, p. 32

[7] Siti Hapsah Isfardiyana, Business Judgement Rule by the Company's Board of Directors, Jurnal Panorama Hukum, Vol.1 June 2017.

[8] Rudhi Prasetyo " *The Position of the Role and Responsibility of Limited Liability Companies*: (paper in the Commercial Law Seminar of the National Legal Development Agency-Ministry of Justice, July 29-30, 1987). p. 17.

ownership structure to obtain protection based on the contract. Investors (shareholders) establish a corporation to carry out activities in accordance with the company's goals or objects as one of the steps to ensure the accountability of the board of directors in the company's representatives.

The function of representation in the sense that when the directors represent the company both in and out of court, therefore the company is bound by transactions carried out by the directors for and on behalf of the company, and the possibility that the transactions carried out by the directors result in losses for the limited liability company, therefore the principle *of fiduciary duty* applies to the Company when performing its [9]representative functionsCompany. The obligation to perform must be accompanied by *good faith (te goeder trouw),*[10] this is because the Board of Directors is not personally responsible for the agreement made for and on behalf of the Company, which is of course a general principle to protect the Board of Directors, but this can only be applied if the Board of Directors carries out its duties in good faith.

The Board of Directors in carrying out its representation function, in accordance with Article 98 of Law No. 40/2007, requires the directors of a limited liability company to carry out their duties or defend their interests, both before a judge and outside the court, as stipulated in Article 1796 of the Civil Code, namely to conduct representation in front of and outside the court. The function of representing the company outside of court causes the company as a legal entity to be bound by contractual transactions carried out by the directors on behalf of and for the benefit of the company[11] . The principle of corporate representation outside of court, a transaction or contract made by the directors on behalf of and for the benefit of the company, then the company as a legal entity will automatically be bound.[12]The definition of an extrajudicial function means that the board of directors binds or enters into a contract with a third party to carry out the company's purposes and objectives. For purposes outside the law, the board of directors represents the company, both as a plaintiff and a defendant.

The duties of the representative of the board of directors cannot be carried out if the duties are related to the personal interests of the directors, as stipulated in Article 99 of Law No. 40/2007. This makes perfect sense, as it creates a conflict of interest: defending the rights of the Board of Directors as individuals and carrying out management and representative duties in the best interests of the limited liability company. The obligation to represent the company by referring to Article 84 of Law Number 1 of 1995 concerning Limited Liability Companies, which basically regulates members of the board of directors who are not authorized to represent the company in court related to cases between the company and the directors or directors concerned, who have interests that are contrary to the interests of the company.[13] The provisions of Article 84 of Law No. 1/1995 are now regulated in the same way in Article 99 paragraph (1 (Law No. 40/2007), and logically the board of directors cannot represent two different interests.

3.2. Responsibilities of the Board of Directors

The purpose and purpose of the company has 2 (two) aspects, namely on the one hand for the existence of a legal entity, and on the other hand as a restriction on the actions of a legal entity. [14]The goals and objectives of the company are actually the business field and how the directors benefit from the business field, the directors must not do business or act outside the business field. In the articles of association, the company's business field will be mentioned. Certainty regarding the company's business field and its efforts to run it can be ensured through the issuance of the company's approval. In Article 2 paragraph (1) letter a of Law No.19/2003 concerning SOEs, it is expressly stated that the establishment of a company is to pursue profits. Meanwhile, in Law No. 40/2007, it is not stated that the establishment of a company is to seek profit, but if it is understood that the board of directors can be held personally liable for the company's losses if in the management of the board of directors violates *fiduciary obligations, logically the purpose of a limited liability company is to make a profit as well. It can be understood that the author of Law No. 19/2003 expressly states that the establishment of a company is for profit, while in Law No. 40/2007,* the establishment of a limited liability company for profit is concluded by interpretation.

To understand the actions of the directors and the responsibilities of the directors in managing and

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[9] Munir Fuady, *Modern Doctrine in Company Law and Its Existence in Indonesian Law* (Bandung: Citra Aditya), pp. 185-186.

[10] M.Yahya Harahap, *Limited Liability Company*, Jakarta: PT. Sinar Grafika, 2009,. p.374.

[11] Munir Fuady, *Op.Cit*, p. 30.

[12] *Ibid*

[13] Misahardi Wilamarta, Shareholder Rights *in the Context of Good Corporate Governance*,. Depok: Postgraduate Program, Faculty of Law, University of Indonesia, 2005. p.2

[14] Fred B.G Tumbuan, "*Duties and Authorities of Limited Liability Company Organs According to the Limited Liability Company Law", paper presented at "Legal Socialization of Limited Liability Companies",* organized by the Indonesian Notary Association (INI) in Jakarta, August 22, 2022. pp. 7-8.

representing a limited liability company, it can be interpreted that the purpose and objectives of the company are 2 (two), namely the main action and the secondary action. The main action is to carry out the function of the activity as stated in the purpose and objectives as stated in the articles of association, while the secondary action of the board of directors can carry out the function of activities not only contained in the company's intentions and objectives, but also carry out activities that can facilitate its duties within the scope or boundaries[15] company. obligations. Thus, those who have an interest in the company may question this if it turns out that the company has suffered losses as a result of performing such secondary acts. The Board of Directors can carry out its duties outside the actions specified in the articles of association, as long as it does not violate laws and regulations, called *Ultra Vires.*

In carrying out their representation, the directors of a limited liability company may be involved in *Ultra Vires actions. The term Ultra Vires* is broadly defined to include acts prohibited by the Articles of Association, acts that go beyond the authority granted to it, and actions that are contrary to public order[16]. The definition of ultra vires is very broad because it can include any action that is contrary to the law, even concerning the public interest, which is actually the affair of the state. If the company performs an action outside or outside the scope of the articles of association, the company has taken *Ultra Vires action*. [17]If a company signs a contract in the field of insurance, even though its articles of association do not regulate the conduct of the insurance business, the company has acted ultra vires. [18]Action *Ultra Vires* is a Board of Directors that exceeds the provisions stipulated in the Company's Articles of Association and Bylaws. [19]Actions taken outside the scope of the company's intentions and objectives are essentially null and void, [20]which in judicial practice such actions are brought to court as unlawful actions to be annulled by seeking redress. Any act of a legal subject outside the limits of authority stipulated/regulated in the articles of association of the legal entity *(Ultra Vires)* is only binding on the members of the management who do it and must be responsible. The action is not binding on other members of the board of directors, unless they expressly consent to the *aforementioned Ultra Vires action* [21] . In this case, the division of authority and the limits of the authority of the Board of Directors are ensured. Regarding the binding of administrators, it is ultimately closely related to personal accountability for the actions *of Ultra Vires*.

The civil liability of a limited liability company director who manages and represents a limited liability company in connection with *the Business Valuation Rules*, was first practiced in the *American Common Law system*, in a shareholder *(shareholder*) lawsuit against the bank's managing director for civil liability.[22]The court acquitted the bank's directors on the grounds that they had met ordinary business standards.[23]

3.3. The Application of the Doctrine of Business Valuation Rules in the General Law System and the Civil Law System

In the United States which adheres to the Common Law system, the actions of the Board of Directors to administer and represent a Limited Liability Company are related to the doctrine of the Business Valuation Rules, which fall within business law or corporate law, and are therefore examined and tried as civil cases. Civil liability of the directors of a limited liability company that manages and represents a limited liability company in relation to: *The Doctrine of Business Valuation Rules* It is important to know, to ascertain how the regulation and/or elaboration of the doctrine on the responsibility of the directors who manage and represent a limited liability company in Indonesia is in accordance with the civil liability legal system as stipulated in Law Number 40 of 2007 concerning Limited Liability Companies.

In Indonesia, the civil liability of directors based on the Business Valuation Rules is regulated by Law No. 40/2007 concerning Limited Liability Companies. The Board of Directors is an organ of a limited liability company.[24] As a subject of law, the human or individual who manages and represents a limited liability company is a subject of law, not an individual called a legal entity. The company's business form can be in the form of a

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[15] I.G.Ray Widjaya, *Company Law with the Special Meaning of Law Number 1 of 1995*. (East Bekasi: Kesain Blane), p. 1
[16] Munir Fuadi*, Doctrine...., Op.Cit.* pp. 102-103
[17] Johnny Ibrahim, "*The Doctrine of Ultra Vires and Its Consequences from Its Application to Private Legal Entities",* Journal of Legal Dynamics, Vol. 11, May 2, 2011, p. 250. https://dinamikahukum.fhoensoed.ac.id>Article>Funny, retrieved 24 February 2024
[18] *Ibid*
[19] Chatamarrasjid, *Corporate Veil Breaking and the Real Corporate Question*. Bandung: PT. Aditya Citra Bakti, 2004. p. 40.
[20] Gunawan Widjaja & Kartini Muljadi, Born Alliance, Covenant, Jakarta: Trisakti University Publishers. 2017. p. 250.
[21] *Ibid*
[22] Gerard V.Mantese &; Emily S. Proposes "*Business Valuation Rules*," Michigan Bar Journal, January 2020, p. 31. *https://www.manteselaw.com/The %20Business%20Judgment$Rule20M*. retrieved February 18, 2024.
[23] *Ibid*, p. 373
[24] Republic of Indonesia*, Law Number 40 of 2007*, *Article 1 number 5*

legal entity or a non-legal entity. The form of a legal entity or legal entity carries the consequences of the responsibility of the owner (shareholder) to third parties[25]and the company's obligations to *non-shareholder*

stakeholders[26]. Members who include *Non-shareholder stakeholders are creditors, employees, and the public. Unsound company management will create a temptation to abuse positions that can be detrimental to stakeholders.*[27] The Board of Directors is in charge of managing the company, based on the principles of company management. The Board of Directors in managing a company must pay attention to governance as defined by the OECD (Organization *for Economic Co-operation and Development).* [28] *There are 5 (five) principles of company management, namely:* Transparency*, Accountability, Responsiveness,* Independence*, and Fairness*.[29] These five principles, if applied, will bring healthy company management. Explanations of these principles will be given one at a time. Transparency is about openness, both in the decision-making process and in the provision of material and relevant information about the company. *Accountability* is related to two (2) things, namely the clarity of the function and the implementation of organizational accountability, so that the company is managed effectively. Responsibility (Responsive) related to conformity in the management of the company with laws and regulations as well as the application and application of sound company principles. Independence is professional company management without *conflicts of interest and* influence/pressure from any party. If the company's management is unprofessional and there is a conflict *of interest*, or healthy company principles. In accordance with the explanation of Article 4 of Law No. 40/2007, the principle *of good corporate governance is one of the principles that must be adhered to by a limited liability company*. 3 (three) other principles are obtained, namely the principle of good faith, the principle of propriety and the principle of compliance.[30]

The Company must have the purpose and objectives as well as business activities that do not conflict with laws and regulations, public order and morality as stipulated in the general provisions in Article 2 of Law No. 40/2007. In the explanation of Article 18 of Law No. 40/2007, it is emphasized that the company's intentions and objectives must be detailed in the articles of association, meaning that there are a number of activities carried out by the company in achieving the company's goals and objectives. The inclusion of the company's intentions and objectives in the articles of association is a function of principle, because the company's intentions and objectives are the legal basis for the management of the company's board of directors. In this case, the contract made with the parties must not deviate from the articles of association. [31]

The Board of Directors in carrying out *fiduciary duties,* includes the obligation *of care* and always prioritizes the interests of the company (*duty of loyalty*), as well as *good faith*. The Board of Directors in carrying out their duties must be in accordance with the purposes and objectives of the limited liability company (intra vires). If the board of directors does not carry out their duties in accordance with the purpose and objectives of the limited liability company, then *said Ultra Vires*. The doctrine *of Business Valuation Rules* applies to the Board of Directors of a Limited Liability Company after an investigation into alleged breaches*, fiduciary obligations,* and bad faith and actions of *Ultra Vires.* The early days of *the doctrine of Ultra Vires* were practiced in England which adhered to a *common law system*, in the case *of Ashbury Railway Company and Iron Co. Ltd v Hector Riche (1875*) which was attributed to the capacity of directors to [32]the capacity of contractors. In this action, it is ascertained whether the actions taken by the directors to represent the company are in accordance with the Company's business field (the company's object), so that the board of directors has the capacity to take legal action against third parties or business partners, because the capacity in question is focused on the Company's business field, so that the capacity has been associated with the Company that has a business field.

The Ultra Vires *Action Benchmark* is the arrangement of the company's business area (object) in the Articles of Association e.g. *Ashbury Railway Company and Iron Co Ltd, in accordance with the Companies Act 1862,* the Business Sector *of Ashbury Railway Company and Iron Co Ltd*, i.e. borrowing or leasing carriages or anything relating to the leasing, sale of railway carriages.[33] So the focus was on the rental of carriages, something that made sense, because at that time the railways were still simple, but in fact the directors *of the Asbury Railway*

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[25] Sentosa Sembiring*, Limited Liability Company Law*, Bandung: CV. Aulia, 2006. pp.12-13

[26] Shishwant Sutoyo & A. Jho Aldries, *Good Corporate Governance,* Jakarta: P.T. Damar Mulia, 2008, p.

[27] *Ibid*

[28] *https://www.oecd,org, OECD is an international organization, whose goal is to work with policies for a better life*, accessed February 18, 2024

[29] Joni Emirzon, *The Principles of Good Corporate Governance A New Paradigm in Indonesian Business Practices*. Yogyakarta: Genta Press 2007,. pp. 96-98.

[30] Siti nurhasanah, Principles of Good Corporate Governance (GCG), Journal of Fiat Justice, Journal of Law of the University of Lampung, vol.4, number 2, September 2010.

[31] M. Yahya Harahap, *Ltd. Low Responsibility Company*, Jakarta, Sinar Graphic, 2009. p. 61

[32] Johnny Ibrahim, *Loc.Cit*., p. 244.

[33] Johnny Ibrahim, *Loc. Cit*., p. 245.

Chareholder) ompany and Iron Co Ltd instead made a contract or agreement with *Hector Riche* for the construction of the railway in Belgium, which was not included in the articles of association, [34] because the Company's business

is to rent railway cars, which means that the construction of the railway line is not in accordance with the business of *the Asbury Railway Company and Iron Co Ltd*, so it can be included in the *Ultra Vires category*. The shareholders (*shareholders) of the Ashbury Railway Company and Iron Co Ltd* disagreed with the contract and raised objections through an independent association, and *the House of Lords* said that building a railway was different from renting a railway carriage, as it was not the Company's area of business. The company did not have the capacity to produce trains, so the contract with *Hector Riche* to build the railway in Belgium was cancelled.

Hector Riche Decides not to be entitled to damages for breach of contract.[35]This case is very important, and can be a serious problem for third parties who, in carrying out their business in good faith, ultimately have to bear losses due to inaccuracies or actions of the company's directors who are partners or business partners.

Corporations represented by the board of directors that commit acts that exceed their authority and violate laws and regulations and articles of association are called *Ultra Vires.* 2 (two) theories related to the Doctrine *of Ultra Vires* of the Board of Directors were obtained, namely *the reality of authority and abuse of authority* related to the possibility of losses suffered by third parties due to the actions of the Board of Directors.[36] *Real authority*, that is, although the articles of association expressly state that the Board of Directors has no authority, a third party considers the Board of Directors to have perfect authority. For this reason, the directors in carrying out their duties must be in good faith. Meanwhile, in *the abuse* of power, that is, the directors as agents of the company and as *holders of fiduciary obligations*, have authority, it turns out that they do not abuse power in contracts with third parties.[37]

Indonesia as one of the countries that adheres to the civil law system, *the Doctrine of Business Valuation Rules* contained in Article 1 number 5 of Law No. 40/2007, stipulates that the Board of Directors carries out management and representative duties in accordance with the Company's Articles of Association and the Company's Articles of Association as the basis for decision-making in the GMS.

3.4. The Court's Decision on the Responsibility of the Board of Directors for the Management of State-Owned Companies that Suffered Losses

There are 2 (two) decisions, regarding the application of the Business Valuation *Doctrine* to companies limited to SOEs, where there is a difference in the content of the same decision based on *the Doctrine of Business Valuation Rules*. In decision Number 121 K/Pid.sus/2020. Jo. Decree Number 15/Pdt.sus/TPK/2019/PN.Jkt.Pst Jo. Decree Number 34/Pid.sus-Tpk/2019/PT DKI on behalf of Karen Agustiawan, this decree exempts the directors of limited liability companies from civil liability that manages and represents limited liability companies, while decree number 217/K.sus/2014. Jo Decision No. 41 PK/pid.sus/2015. Decision Jo No. 36/Pid.TPK.2012/PN. JKT. PST. on behalf of Hotasi D,P. Nababan, who is responsible for the company's losses.

In Decision No. 121K/Pid.sus/2020 Jo Decision No. 34/Pid.Sus-TPK/2019/PT. DKI. Jo15/Pid.sus-TPK/2019/PN. JKT. PST, on behalf of Karen Agustiawan who is in charge of taking action in managing and representing PT. Pertamina (Persero) and the President Commissioner of Pertamina Upstream Energy caused losses to the company. In the judge's legal considerations, it was examined about the application *of the Piercing the Corporate Veil Doctrine* that applies to the board of directors. The Public Prosecutor indicted Karen

Agustiawan as the president director of PT. Pertamina (Persero) together with other directors have enriched Roc Oil Company Limited (ROC.Ltd) Australia in the amount of Rp. 568,066,000,000 (five hundred and sixty-six billion) in connection with the Company's decision to allocate *10% Participating Interest (PI)* in the BMG Australia block which generates state finances. *Roc Oil Company Limited (ROC.Ltd)* as a legal entity whose characteristic is limited liability.

Corruption together, meaning that Karen Agustiawan as a member of the Board of Directors and other members of the Board of Directors are held accountable by interested parties in the company based on Article 97 paragraph (3) and paragraph (4) of Law No. 40/2007. The Public Prosecutor is jointly responsible for his actions in managing and representing legal entities, in accordance with the theory of collective legal responsibility. In accordance with the indictment of the Public Prosecutor, the interested party is the state as a shareholder represented by the public prosecutor, who according to the law of the company filing the lawsuit is a shareholder

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[34] Johnny Ibrahim, *Ibid*.
[35] *Ibid*
[36] Freddy Haris & Teddy Anggoro, *Limited Liability Company: Notification Obligations by the Board of Directors* (Jakarta: Ghalia Indonesia, 2010). p. 68.
[37] *Ibid.*

against the directors who are suspected of committing unlawful acts. Law No. 19/2003 on SOEs does not regulate the norm that shareholders can file a lawsuit against the company's board of directors, this is in accordance with the principles of Law No. 40/2007.

Central Jakarta District Court Decision Number 15/Pid.Sus/TPK/2019/PN. JKT. PST stated that Karen Agustiawan was guilty of taking legal action in managing and representing the company. The verdict stated that Karen Agustiawan was guilty of committing a criminal act of corruption, along with other members of the board of directors that harmed the state's finances. Karen Agustiawan was sentenced to 8 (eight) years in prison, and a fine of Rp. 1,000,000,000.00 (one billion rupiah), with the provision that a maximum prison sentence of 4 (four) years must be served if the fine is not paid. Regarding the authority of the limited liability company's board of directors to take legal action, the panel of judges concluded that Karen Agustiawan abused her authority in her position as the president director of PT. Pertamina (Persero) and President Commissioner of PT. Upstream Energy. The legal considerations of the Central Jakarta Court Judge with reference to Law No. 40/2007 are appropriate, because the principles and provisions in Law No. 40/2007 are applied in Law No. 19/2003.

The essence of Article 92 paragraph (1) of Law No. 40/2007 is the basis for the board of directors to make business decisions, namely the actions of the company's directors for the benefit of the company and in accordance with the company's objectives. The essence of Article 97 paragraph (2) of Law No. 40/2007 regarding how actions are taken, namely the implementation of management for the benefit of the company and in accordance with the intentions and objectives in good faith and full of responsibility is very important to be considered by the company's board of directors. The jury stated that in his position as President Director of PT. Pertamina (Persero) and President Commissioner of PT. Pertamina Hulu Energi is responsible for control, monitoring acquisition actions, and company evaluation and analysis. In *the Participating Interest* action, it was concluded that abuse of authority was found[38]. Regarding the authority with the company's losses, the Central Jakarta District Court Judge concluded that the actions of Karen Agustiawan as the President Director of PT. Pertamina (Persero) has harmed the state's finances and benefited third parties, in this case *ROC Ltd*. The Central Jakarta District Court judge conducted legal considerations, that the acquisition made by PT. Pertamina (Persero) in Basker Manta and Gummy Block (BMG) Australia in 2009 worth Rp. 568,066,000,000,- (five hundred and sixty-six billion) resulted in state financial losses.

The legal considerations of the Central Jakarta District Court Judge are correct, using the legal norms of Law No. 40/2007, but it is a norm in civil law, but Karen Agustiawan was examined and tried in a criminal case. Law No. 40/2007 does not contain criminal sanctions for violations of norms in Law No. 40/2007, criminal sanctions can be found in other laws and regulations. On this decision, both parties, namely the Public Prosecutor and Karen Agustiawan, appealed to the Jakarta High Court. In the appeal decision Number 34/Pid-Sus-TPK/2019/PT. Jakarta upheld the Central Jakarta Court's decision, then the Public Prosecutor and Karen Agustiawan both filed an appeal. Based on Cassation Decision Number 121K/Pid-Sus/2020, the cancellation of the Decision of the DKI Jakarta High Court which in its lawsuit rejected the appeal from the Public Prosecutor, granted the appeal from Karen Agustiawan, stating that Karen Agustiawan was proven to have committed the act as charged by the Public Prosecutor, but the act did not constitute a criminal act, releasing the Defendant (Karen Agustiawan) from all lawsuits. In legal considerations, the Supreme Court stated that the losses suffered by PT. Pertamina Hulu Energi as a subsidiary of PT Pertamina (Persero) is not subject to Law Number 17 of 2003 concerning State Finance and Law Number 19 of 2003 concerning SOEs. Furthermore, other legal considerations state that the steps taken by the Defendant (Karen Agustiawan) as the President Director of PT. Pertamina (Persero) and President Commissioner of PT. Pertamina Upstream Energy does not go out of the realm of *Business Judgement Rule*.

From the legal considerations of the Supreme Court that examined and tried Karen Agustiawan for two positions in two legal entities, the doctrine of business valuation rules is actually focused on the legal actions of the directors. With these legal considerations, the steps taken by Karen Agustiawan as the president director of PT. Pertamina (Persero) and President Commissioner of PT. Pertamina Upstream Energy must be proven by opening everything or related to the action of determining *the Participating Interest (PI)* of BMG Blok Australia. As such, the principle of business valuation rules is essential to ensure Karen Augustiawan's action on the Participating Interest in ROC Ltd. BMG Block Australia.

In the second case, Karen Agustiawan is still serving as the president director of PT. Pertamina was sentenced to 9 years in prison and a fine of Rp 500,000,000 (five hundred million rupiah) for the loss of LNG procurement which resulted in losses of up to Rp 2.1 trillion in prison, as stated in Decision No. 12/Pid Sus-TPK/2024/PN.JKT.PSt, which was corroborated by Decision No. 41/PID. SUS-TPK/2024/PT. DKI and cassation decision No. 1076/K/PID. Sus/2025 worsens Karen Agustiawan's prison sentence to 13 (thirteen) years.

[38] Decree Number 15/Pid.Sus/TPK/2019/PN. JKT. PST

For comparison, in the application of the rules of Business Decisions, Decree Number 41PK/Pid.Sus/2015, Decision Jo Number 217K/Pid.sus/2014. Decision Jo No. 36/Pid.TPK/2012/PN. JKT. PST, on behalf of Hotasi D.P. Nababan. In the main indictment, the Public Prosecutor (JPU) charged Hotasi D.P Nababan as President Director of PT Merpati Nusantara Airlines (MNA) together with Tony Sudjiarto as General Manager for violating Article 2 paragraph (1) Jo. Article 18 paragraph (1) letter b of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes which has been amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption, Jo. Article 55 paragraphs (1) to 1 of the Criminal Code. In essence, D.P. Nababan's Hotasi action on the plan to lease Boeing 737-400 and Boeing 737-500 aircraft from *the Thirstne Aircraft Leasing Group (TALG)* can enrich themselves or other people or corporations so that they harm the state's finances.

In the additional indictment, the prosecutor charged Hotasi D.P. Nababan with Tony Sudjiato as General Manager for violating Article 3 Joarticle 18 paragraph (1) of Law No. 31/1999 concerning the Eradication of Corruption Crimes which has been amended by Law No. 20/2001 concerning Amendments to Law No. 31/1999 Jo. Article 56 paragraph (1) to -1 of the Criminal Code. The point is the action of Hotasi D.P. Nababan over the plan to lease Boeing 737-400 and Boeing 737-500 aircraft from *Thirstne Aircraft Leasing Group (TALG)* which can enrich themselves or other people or corporations by abusing their positions or authority to the detriment of the state's finances. From the indictment, it can be ascertained that regarding the management and representation of a limited liability company and civil liability regulated in Article 1 number 5, Article 92 paragraph (1) and paragraph (2), article 97 of Law No. 40/2007 is not only requested by the board of directors, including persons or legal subjects related to or involved in such legal actions.

The indictment against Hotasi D.P. Nababan was filed because the lease of 2 (two) aircraft, namely Boeing 737-499 and Boeing 737-500, was not carried out from TALG, even though PT MNA had paid *a Security Deposit* of US$ 1000,000.00 to TALG in cash to *Hume & Associates* (a law firm). The indictment alleges that Hotasi D.P. Nababan's actions were unlawful because *the Security Deposit* was used for the upfront payment of TALG's purchase of Boeing B 737-500 aircraft to *East Dover Ltd*. This action is contrary to the principles of *Good Corporate Governance* as stipulated in Article 5 paragraph (3) of Law No. 19/2003 concerning SOEs. These principles are, transparency, efficiency. Professionalism, accountability, accountability and fairness. In addition, the actions of Hotasi D.P. Nababan are also contrary to the Decree of the Minister of Finance No. Kep.116/KMK.01/1991 and the Decree of the Minister of SOEs Number 101/MBU/2002 concerning the Preparation of Work Plans in Article 3 letter e Ko. Another appendix to section number 8.

In the decision of the Central Jakarta District Court Number 36/Pid.TPK.2012/PN. JKT. PST. It was stated that Hotasi D.P. Nababan was not legally and convincingly proven guilty of the crime of corruption and acquitted the Defendant Hotasi D.P. Nababan of all charges. In connection with legal considerations, Hotasi D.P. Nababan as the President Director of PT. MNA leased the Boeing 737-400 and Boeing 737-500 aircraft by making a *Security Deposit* payment of US$ 1,000,000.00 to TALG in good faith, carefully in accordance with the interests of PT MNA[39] De which is in charge of ascertaining whether or not the doctrine of business valuation rules applies to the business decisions of the board of directors. With these legal considerations, the board of directors has carried out management in good faith, carefully in accordance with the interests of PT. MNA, which is part of *the fiduciary duty* to ascertain whether *or not the doctrine of the Business Valuation Code is upheld* on the business decisions of the Board of Directors.

Regarding the action of Hotasi D.P. Nababan who made a bail payment of US$ 1,000,00.00 to TALD who was accused of benefiting himself or the corporation with a payment deposited to *Humes & Partners*, the judge of the Central Jakarta District Court made a legal consideration, payment *of the Security Deposit* as a continuation of the agreement between PT. MNA with TALD to lease Boeing 737-400 and Boeing 737-500 aircraft to PT. The Judge's legal considerations stated that the *payment of the Securities deposit* of US$ 1,000,000.00 by PT. MNA is deposited into *the Humes&M account; Partners*, law offices trusted by PT MNA and TALG *can be returned*.[40]

The refundable nature means that Hotasi D.P. Nababan who issues or pays a sum of money to another party in this case to *Humes & Associates*, for the planned lease of Boeing 737-400 and Boeing 737-500 aircraft, will get a refund at a later date if the performance in the agreement, in accordance with Article 1234 of the Civil Code is not carried out. Actually, with *its reversible nature*, this is an effort to prevent losses for the company as one of the reasons for exemption from legal liability. The panel of judges of the Central Jakarta District Court stated that Hotasi D.P. Nababan knew that the *Security Deposit would be used* by *TALD* as an advance to *East Dower*, but

[39] Decree Number 36/Pid.TPK.2012/PN. JKT. PST. p.114
[40] *Ibid*, p. 122

did not eliminate the *refundable nature*, even though TALD ultimately did not return the money.[41] The panel of judges of the Central Jakarta Court is of the opinion that D.P. Nababan as the president director of PT. MNA plans to lease the Boeing 737-400 and Boeing 737-500 aircraft and provide *a security deposit of US$ 1,000,000.00 to TALD* in good faith, with care in accordance with the company's interests. Payments are based on information available at the time of decision-making. Thus the elements that violate the law are related to the actions of Hotasi.D.P. The cause of the violation that is considered careless and violates *good corporate governance* is not legally proven.[42]

In the examination of the case, it was not found that the payment of the *Security Deposit of US$ 1,000,000.00 was related to the interests of Hotasi D.P. Nababan or did not have a* conflict of interest. A conflict of interest is the substance of a loyalty obligation that is part of *a fiduciary duty.* On the basis of these legal considerations, the Central Jakarta District Court Judge released Hotasi D.P. Nababan from legal responsibility for the management and representation of the Boeing 737-400 and Boeing 737-500 lease plans. Based on the decision, the Public Prosecutor (JPU) submitted a legal remedy to the Supreme Court of the Republic of Indonesia. The Supreme Court granted the Public Prosecutor's application and canceled the Central Jakarta District Court Decision Number 36/Pid.TPK.2012/PN. JKT. PST. With Cassation Decision number 217K/Pid.sus/2014 which states that the Defendant Hotasi D.P. Nababan is legally and convincingly proven to have committed the crime of Corruption together, imposing a sentence of 4 (four) years in prison and a fine of Rp. 200,000,000.00 (two hundred million rupiah).

Hotasi D.P. Nababan as President Director of PT. MNA has long planned the procurement of leases to strengthen its fleet in an effort to improve the financial performance of PT. MNA. The availability of aircraft is something important and decisive in the aviation business. The Boeing B 737-400 and Boeing B737-500 lease plans, are legal actions in accordance with the company's intentions and objectives or *intra vires actions.* The Board of Directors is obliged to make business decisions in the management of the company in accordance with the company's purposes and objectives as stipulated by the articles of association. From the legal considerations of the Central Jakarta District Court Judge, the action is to improve the financial performance of PT. The MNA with the strengthening of the fleet has long been planned with the intention (*Mens Rea*) of Hotasi D.P. Nababan.[43]However, the act of Hotasi D.P. Nababan that was carried out did not meet the requirements of formality or process, so it can be categorized as an unlawful act, this is in accordance with the legal considerations of the Supreme Court which states that:*The Defendant as the President Director of PT. The MNA does not report or propose changes or amendments to the GMS after the approval of the previous GMS....*[44]

The cassation judge considered, regarding the decision making of the leasing of Boeing B737-400 and Boeing B737-500 aircraft, to ensure the application of *the Business Valuation Rules*, by examining the decision-making process. Legal considerations state that Hotasi D.P. Nababan as the President Director of PT. MNA does not report or propose changes or resubmit changes to the General Meeting of Shareholders (GMS). The GMS is an organ of the Company that has the authority to decide on the implementation of the Company's intentions and objectives. These goals and objectives have been started since 2006. The aircraft was once approved for the planned lease of the Boeing B737-400 and Boeing B737-500 aircraft, as it had to be re-approved by GMS. Several things were obtained in the legal considerations of the cassation judge to ensure the enforceability of *the Business Decision Rules*:

1. Regarding the obligation of the board of directors to make business decisions in the management of the company based on the provisions of laws and regulations and articles of association or *intra vires actions*. The Board of Directors is obliged to make business decisions in the management of the company in accordance with the company's purposes and objectives as stipulated by the articles of association. Business decisions, i.e. aircraft leasing plans must be in accordance with the company's intent and objectives or *intra vires actions*.
2. The prudential measures of the directors in ensuring that the business decisions taken are safe for the company, do not violate *fiduciary obligations.* Both relate to *intra vires actions, the fiduciary duty* to ensure that the doctrine of *business valuation rules* applies or not to D.P. Nababan Hotasi. For the fulfillment of formalities or procedures in business decisions, the directors must be careful in ensuring a safe decision for the company in conducting transactions with third parties, in accordance with *fiduciary obligations.* In the case of a relationship, the director needs to obtain or obtain adequate information, in the broadest sense, of the rules or regulations relating to the business act or decision.

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[41] *Ibid*
[42] *Ibid*
[43] Decision No. 36/Pid.TPK.2012/PN. JKT. PST, p.114
[44] Verdict. 417 K/Pid.Sus/214. p. 58

The cassation judge ruled that Hotasi D.P. Nababan had committed an unlawful act by not following and/or not taking standard actions in making transactions or payments in the lease of Boeing B737-400 and Boeing B737-500 aircraft. The legal considerations are*: ".... pay a security deposit of US$. 1,000,000.00 not by Letter of Credit or Escrow Account, but in cash paid to PC Hume & PC account; Associates, even if there is no Purchase*

Agreement.....[45]. From the above legal considerations, when it comes to the doctrine of *penetrating the company's veil,* Hotasi D.P Nababan turns out to have made *a cash payment to the account of PC Hume & associates,* without a guarantee of refund if the purchase of Boeing B 737-400 and Boeing B 737-500 aircraft is not completed, even TALG has not purchased Boeing B737-400 and Boeing B737-500 aircraft from *East Dower* to be leased by PT. D.P. Nababan's failure to pay the *Security Deposit* of US$ 1,000,000.00 before signing the *Purchase Agreement* is a breach *of fiduciary duty*, namely carelessness and carelessness in guaranteeing the risk *of legitimate paymentThe Security Deposit of US$ 1,000,000.00* for the lease of Boeing B737-400 and Boeing B737-500 aircraft. Hotasi D.P. Nababan also committed an unlawful act as in the judge's legal consideration, because it violated Article 22 paragraphs (11) and (2) of Law No. 19/1003 concerning SOEs Jo. Article 35 paragraphs (1) and (2) of Government Regulation No. 45 of 2005 concerning the Establishment, Management and Dissolution of SOEs which is the implementing regulation of Law No. 19/2003.

In Article 22 paragraph (1) of Law No. 19/2003, it is stipulated that the Board of Directors is obliged to prepare a draft work plan and company budget which is an annual and long-term elaboration, which is then submitted to the GMS (Minister) for approval. In Article 35 paragraphs (1) and (2) of Government Regulation Number 45 of 2005, the Board of Commissioners/Board of Supervisors as an organ of the company signs the Work Plan and State Revenue and Expenditure Budget (RKAP) as a condition for obtaining approval from the GMS. The signing of the RKAP can be categorized as sufficient information, to perform the core business actions of *the maintenance tasks.* The submission of the RKAP is a requirement to obtain the approval of the GMS as one of the processes for implementing *the Business Decision Rules*. If the planned lease of Boeing B737-400 and Boeing B737-500 aircraft is included in the RKAP, then it is an intra-vires action, but it must still be ensured related to the *Security Deposit* of US$ 1,000,000.00.

Hotasi's action argument, D.P. Nababan, stated that his action qualifies as a civil legal action, because the plan to lease Boeing B737-400 and Boeing B737-500 aircraft to *TALG,* is for and on behalf of PT. MNA as a legal entity that carries out civil legal actions and *TALG* is a civil legal entity that already has a *Certificate of Establishment.* With this decision, it means that *the Doctrine of Business Valuation Rules* does not apply to Hotasi D.P. Nababan, but in fact his actions are actually not a criminal act, if it is based on the substance of civil law, namely regarding the relationship of persons or legal subjects of PT MNA who transact business with *TALG* as a legal entity. If the planned lease of the Boeing B737-400 and Boeing B737-500 aircraft is included in the RKAP and has been separated, but *the US$ 1,000,000.00 Security Deposit is not returned by TALG, even though the clause is refundable,* it is likely that the Panel of Judges of Cassation will likely make a different legal consideration, by applying *the rules of business valuation doctin,* i.e., if the company suffers a loss, and the Board of Directors breaches *fiduciary* In carrying out its duties, *the Doctrine of Business Valuation Rules will be applied.* For this reason, the board of directors must be responsible for it, and as an organ of the company, the responsibility of the board of directors to third parties becomes very relevant.

3.5. The Contradiction of the Application of Sanctions Against the Management Directors of State-Owned Companies that have Suffered Losses

There is a contradiction between regulations in private law and public law, especially in the management of SOEs in the form of limited liability companies. If the company suffers losses and results in state losses, then state losses bring consequences for alleged corruption crimes, as stipulated in Law Number 31 of 1999 which was updated with Law Number 20 of 2021. As a result, the board of directors will be held accountable for these losses as a criminal act of corruption.

Meanwhile, in the provisions of civil law, the management of a company does not distinguish between SOE and non-SOEs, the regulation is the same as that stipulated in Law Number 40 of 2007 concerning Limited Liability Companies, Article 97 paragraph (5) which stipulates that members of the board of directors cannot be held liable for losses if they can prove that the losses are not due to their fault, has conducted management in good faith and prudence for the interests and in accordance with the Company's intentions and objectives, has no direct or indirect conflict of interest in management actions that result in losses, and has taken steps to prevent the occurrence or continuation of losses.

[45] *Ibid*

Contradictions can be seen in the criminal case on behalf of Karen Agustiawan who serves as the director of Pertamina's SOEs as stated in Decree number 15/Pid, Sus/TPK/2019/PN.Jkt.Pst Jo. Decree number 34/Pid-sus/TPK/2919/PT. DKI Decree Jo. 121K/Pid.Sus/2020. In the decision of the First Agency: Declaring that the Defendant Ir. Karen Agustiawan is legally and convincingly proven to have committed the crime of "Joint Corruption Crime" as in the Additional Indictment; Similarly, in the appeal decision that upheld the first-instance decision, but in cassation annulled the High Court's decision, where Karen Aguswan's actions did not constitute a criminal offense, acquitting the Defendant from all lawsuits. The panel of cassation judges has applied the rules of Business Decision in this case, but it turns out that in the second case which was also carried out by Karen Agustiawan as the president director of PT. Pertamina is

Meanwhile, the same case regarding the management of SOEs that suffered losses but the content of the decision was different, namely the management of PT. Merpati Nusantara.As in decision number 36/Pid.TPK.2012/PN. JKT. PST on behalf of D.P. Hotasi Nababan, the board of directors who manages and represents PT. Merpati Nusantara Air Lines (PT. MNA) which is a state-owned enterprise. In the verdict, it is stated that the Defendant is Hotasi. D.P Nababan **was not legally and convincingly proven guilty of committing a criminal act of corruption**, but in the cassation decision, Decision number 217K/Pid.Sus/2014, **annulled the decision of the court of first instance and stated that the defendant Hotasi D.P. Nababan was legally and convincingly guilty of committing the crime of "joint corruption"**, then in the PK Decision No.41PK/Pid.Sus/2015 **rejecting the PK's application, so that D.P. Hotasi Nababan's actions remain a criminal offense.**

Of the two cases that have similarities, regarding the management of SOE companies that suffered losses, one of them is the state-owned company Pertamina which acquitted Karen Agustiawan in the Cassation decision, because it was stated by the panel of judges that Karen Agustiawan's actions were not criminal acts but civil actions that applied the doctrine of Business Decision Rules, while for the case of Hotasi Nababan, acts of harm to the state are criminal offenses. and there was no legal consideration from the judge in applying the doctrine *of Business Valuation Rules* to the case of D.P. Hotasi Nababan in the management of SOEs that suffered losses at PT. Merpati Nusantara Air Lines (PT MNA)

4. Conclusion

a. Indonesia as a country that adheres to the Civil Law system, written regulations are the main source of law, this has consequences for the management of limited liability companies, especially the Board of Directors that manages state-owned companies. The regulation of SOEs is not only with Law Number 40 of 2007 concerning Limited Liability Companies, but also Law Number 19 of 2003 concerning SOEs which has been perfected by Law Number 1 of 2025, Law Number 17 of 2003 concerning State Finance, Law Number 31 of 1999 concerning Corruption Crimes Jo. Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Corruption Crimes. Thus, the losses of state-owned companies become the examination and responsibility of the directors not only from a civil but also criminal side. If a state-owned company suffers losses, then the board of directors is considered to have committed a criminal act of corruption, whether the Doctrine of Business Valuation Rules is applied does not depend on the legal considerations of the panel of judges. With the issuance of Law No. 1/2025, there has been a paradigm shift from government valuation rules to business valuation rules so as to provide stricter legal protection for SOE managers, so that directors can act more actively as managers without worrying about being criminally investigated for losses that may arise if they have carried out their duties according to good professional standards, and still maintain a responsible relationship with the state.

b. There is a contradiction in the application of the Doctrine of Business Valuation Rules in Indonesia. This is based on Decision No.121K/Pid.Sus/2020, Decision Jo No.34/Pid.Sus-TPK/2019/PT. DKI, Decision Jo No. 15/Pid.Sus/TPK/2019/PN. JKT. PST, on behalf of Karen Agustiawan, what is important in this case is the action of the directors over business decisions that cause losses to PT. Pertamina (Persero) was settled in the context of a criminal act. After conducting a thorough examination, the cassation judge made a legal consideration that Karen Agustiawan's actions were not a criminal act. In its legal considerations, its directors and staff are not outside the realm *of the Business Valuation Rules* which are civil legal actions. However, in the second case, it is also about the losses of PT. Pertamina Karen Agustiawan is still being sentenced to a criminal act in accordance with Decision No. 12/Pid Sus-TPK/2024/PN.JKT.PSt, which was confirmed by Decision No. 41/PID. SUS-TPK/2024/PT. DKI and cassation decision No. 1076/K/PID. Sus/2025 worsens the prison sentence to 13 (thirteen) years. Meanwhile, Decision No. 217K/Pid.Sus/2014, Jo. Decision No.

41PK/Pid.Sus/2015 Jo. Decision No. 36/Pid.TPK.2012/PN. JKT. PST, on behalf of Hotasi D.P. Nababan, the legal considerations of the Cassation Judge stated that Hotasi D.P. Nababan was not careful in carrying out his duties to manage and represent the Company, there were 2 (two) careless things, namely: First, not being careful in leasing Boeing B737-400 and Boeing B737-500 aircraft, because it is not in the Company's Work Plan and Budget in accordance with Article 22 paragraph (2) of Law No. 19/2003 Jo. Article 35 paragraph (1) and (2) of Government Regulation Number 45 of 2005 concerning the Establishment, Management, Supervision and Dissolution of SOEs as one of the business implementation processes Doctrinal assessment rules. Second, the security deposit of US$. 1,000,000.00 cannot be disbursed, despite the guarantee of Hume &; Partner. The Cassation Judge gave legal considerations that the Security Deposit is silent, only as a guarantee if in the future business transactions do not occur in accordance with the Decree of the Minister of Finance Kep. 116/KMK.01/1991.

Based on the criminal verdict on behalf of Karen Agustiawan and Hotasi D.P. Nababan, in the management of state-owned companies, the application *of business valuation rules* depends on proving whether there are aspects of prudence and goodwill of the directors in managing the company, for that it proves whether there is an error of the directors for the company's losses will be proven through criminal law, even though managing the company is an action regulated in business law or civil law.

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