

APPLICATION OF BUSINESS JUDGMENT RULE (BJR) TO REGIONALLY OWNED ENTERPRISES OF PT WAY KANAN MAKMUR PERSERODA IN LAMPUNG PROVINCE

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ABSTRACT

Business Judgment Rule (BJR) is a corporate legal doctrine that provides protection to directors for business decisions taken in good faith and prudence as stipulated in Article 97 paragraph (5) of Law Number 40 of 2007 concerning Limited Liability Companies. The application of BJR to Regionally Owned Enterprises (BUMD) presents its own complexity because BUMD has a dual character, namely as a profit-oriented business entity as well as a manager of regional wealth sourced from the APBD. This article aims to analyze the implementation of the BJR principle by the Director, the application of legal sanctions against the Director who does not carry out the BJR, and the factors that hinder its application to PT Way Kanan Makmur (Perseroda). The research uses a normative juridical method with a statute approach, a case approach to Decision Number 42/Pid.Sus-TPK/2025/PN TJK, and a theoretical approach. The results of the study show that the business decisions of the Director of PT Way Kanan Makmur (Perseroda) do not meet the four cumulative requirements of BJR, so they cannot obtain legal protection and lead to criminal liability for corruption. Factors that hinder the implementation of BJR include weak Good Corporate Governance, lack of due diligence, weak financial accountability, conflicts of interest, and limitations in organizational structure and professionalism of human resources.

Keywords: Business Judgment Rule; Regionally-Owned Enterprises; Director's Accountability

A. BACKGROUND

Regionally-Owned Enterprises (BUMD) are strategic instruments for local governments in implementing regional autonomy, increasing Regional Original Revenue (PAD), and providing services to the community.¹ The existence of BUMD cannot be separated from the ideals of a welfare state as enshrined in the fifth precept of Pancasila, which places the state as a provider of social and economic welfare for its citizens. Indonesia's ² legal framework regulates the status and management of BUMDs through Law Number 23 of 2014 concerning Regional Government³ and Government Regulation Number 54 of 2017 concerning Regionally Owned Enterprises.⁴ One form of BUMD is a Regional Company (Perseroda), which is a legal entity with a Limited Liability Company structure whose capital is at least 51% (fifty-one percent) owned by one region.

As a company, the management organ of BUMD Perseroda, namely the Director, has broad authority to make business decisions as stipulated in Article 92 of Law Number 40 of 2007 concerning Limited Liability Companies.⁵ This broad authority inherently carries legal risks, as not all business decisions result in profits. To answer this problem, corporate law recognizes the doctrine of Business Judgment Rule (BJR), which is a doctrine that protects directors from personal liability for company losses due to business decisions taken, as long as the decision is made in good faith.⁶ Normatively, this doctrine is codified in Article 97 paragraph (5) of the Limited Liability Company Law, which states that the Director cannot be held personally liable for the company's losses if he can prove that the loss was not due to his fault or negligence, the management was carried out in good faith and

¹Rayninta's Girl. A. 2022. Regionally Owned Enterprises (BUMD) That Have Not Changed Their Status to Perumda or Perseroda, Notary Law Journal, Vol. 1 (2), p. 118.

²Rizkiyawan Hasan. 2024. The Dynamics of the Welfare State Concept in Indonesia: Between Constitutional Promises and Economic Reality, Lex Generalis Law Journal, Vol. 5 (10), pp. 3-4.

³Law No. 23 of 2014 concerning Regional Government (Statute Book of the Republic of Indonesia No. 244 of 2014, Supplement to Statute Book of the Republic of Indonesia No. 5587), Article 331.

⁴Government Regulation Number 54 of 2017 concerning Regionally Owned Enterprises.

⁵Law No. 40 of 2007 concerning Limited Liability Companies (Statute Book of the Republic of Indonesia No. 106 of 2007, Supplement to Statute Book of the Republic of Indonesia No. 4756), Article 92 and Article 97 paragraph (5).

⁶Tri Budiyo. 2007. Legal Transplantation, Harmonization and Potential Conflicts, Grijamodra, Jakarta, p. 258.

prudence, there is no conflict of interest, and he has taken action to prevent the occurrence or continuation of losses.

Strictly speaking, the BJR doctrine should be a safe harbor for directors to make business decisions professionally without being overshadowed by excessive fear of the risk of lawsuits and criminal prosecutions, so that corporations, including BUMDs, can develop optimally.⁷ However, in terms of *das*, the application of BJR to BUMDs cannot be equated with pure private corporations. The dual character of BUMD as a profit-oriented private legal entity as well as a manager of regional wealth that is separated from the APBD, causes every business decision of the Director of BUMD to be assessed not only based on corporate standards, but also based on accountability for the use of state/regional finances.⁸ This gap creates ambiguity in law enforcement practices, where BUMD losses are often immediately qualified as regional financial losses without first testing whether the business decision has met the elements of good faith and prudence as required by the BJR.⁹

This problem is concretely illustrated in the management of PT Way Kanan Makmur (Perseroda), a BUMD owned by the Government of Way Kanan Regency, Lampung Province, which was formed based on the Regional Regulation of Way Kanan Regency Number 11 of 2006 as amended by Regional Regulation Number 6 of 2019.¹⁰ After receiving regional capital participation of IDR 1,600,000,000.00 (one billion six hundred million rupiah) in 2020, plus capital from other shareholders of IDR 125,000,000.00 (one hundred and twenty-five million rupiah), the Director of PT Way Kanan Makmur (Perseroda) carried out a number of business cooperations, including investment in the provision of fuel oil with PT Rajawali Indo Nusantara, broiler chicken farming partnership with PT Nai Nau Nam Mandiri, the management of the Rice Milling Plant with CV IRM Jaya, the trade of

⁷Prasetio. 2021. The Dilemma of the Application of Business Judgment Rule in SOE Commercial Transactions, *Journal of Master of Law*.

⁸Mukhammad Hykhal. S.A. 2025. The Financial Status of SOEs Before and After Law Number 1 of 2025: Reorientation of State-Corporate Financial Relations, *Al Wasath Journal of Legal Sciences*, Vol. 6 (2), pp. 95-106.

⁹Indah Kusumawati and Supraji. 2026. Limits of Legal Protection for Directors of State-Owned Enterprises (SOEs) Based on Business Judgment Rule after Law Number 1 of 2025, *UNES Law Review*, Vol. 8 (4).

¹⁰Way Kanan Regency Regional Regulation Number 6 of 2019 concerning Amendments to Way Kanan Regency Regional Regulation Number 11 of 2006 concerning the Establishment of Regional Owned Enterprises PT Way Kanan Makmur.

basic necessities with MSMEs Dapur Way Kanan, and the delivery service of goods with PT Lion Express.¹¹ Based on the results of the audit on which the indictment is based, the series of cooperation caused regional financial losses of Rp661,000,000.00 (six hundred and sixty-one million rupiah).

Empirical data shows that the business cooperation is carried out without being preceded by a feasibility study, risk analysis, or adequate verification of the legality and authority of the partner.¹² There was also a conflict of interest, because the Commissioner of PT Rajawali Indo Nusantara, one of the business partners, simultaneously served as a Business Manager at PT Way Kanan Makmur (Perseroda).¹³ For this series of actions, the Tanjungkarang District Court through Decision Number 42/Pid.Sus-TPK/2025/PN TJK stated that the Director of PT Way Kanan Makmur (Perseroda) was legally and convincingly proven guilty of committing a criminal act of corruption, and was sentenced to 2 (two) years in prison, a fine of IDR 150,000,000.00, and the obligation to pay compensation of IDR 411,000,000.00.¹⁴

This phenomenon confirms the gap between the protection norms offered by the BJR and the reality of BUMD governance in the field. The absence of Standard Operating Procedure (SOP), weak due diligence, lack of transaction documentation, and dual positions that cause conflicts of interest, are structural obstacles that cause the Director's business decisions to lose the basis of legal justification to be protected by the BJR doctrine.¹⁵ This situation presents the urgency of an in-depth legal study, because without a clear boundary between reasonable business risks and abuse of authority that is hidden behind the BJR's pretext, law enforcement against BUMD Directors has the potential to lose legal certainty, while on the other hand a healthy

¹¹Public Prosecutor's Indictment in Case Number 42/Pid.Sus-TPK/2025/PN TJK, District Prosecutor's Office Way Kanan.

¹²Interview results with Muhidin, Assistant Inspector V at the Way Kanan Regency Inspectorate, 2026.

¹³Minutes of the Examination of Witness Askur Muttaqin in the investigation of Case Number 42/Pid.Sus-TPK/2025/PN TJK, document of the Way Kanan District Prosecutor's Office.

¹⁴Tanjungkarang District Court Decision Number 42/Pid.Sus-TPK/2025/PN TJK.

¹⁵Robin Panjaitan, Martono Angusti, and Roida Nababan. 2021. Application of the Principle of Business Judgment Rule to Directors Who Carry Out Policies That Harm the Company, *Patik: Jurnal Hukum*, Vol. 10 (1).

regional corporate governance climate is difficult to realize.¹⁶ Therefore, this article offers a turning point in the form of strengthening the Good Corporate Governance (GCG) framework as an objective prerequisite for assessing the applicability of BJR to BUMDs, so that legal protection for Directors is not abused and regional financial accountability is maintained.¹⁷

Based on the above background description, the problems analyzed dialectically in this article are formulated as follows: how is the implementation of the principles of Business Judgment Rule by the Director in the management of PT Way Kanan Makmur (Perseroda), how is the application of legal sanctions against Directors who do not implement the Business Judgment Rule in the management of PT Way Kanan Makmur (Perseroda), and what are the factors that are obstacles in the implementation of the Business Judgment Rule to PT Way Kanan Makmur (Perseroda) as a Regionally Owned Enterprise?

B. RESEARCH METHODS

This research uses the normative legal research method, which is research that focuses on tracing and studying legal principles, norms, and doctrines that are relevant to the legal issues being studied, by utilizing primary, secondary, and tertiary legal materials.¹⁸ To answer the three problem formulations comprehensively, this study uses three complementary approaches, namely the legislative approach, the case approach, and the theoretical approach.

1. Legislative Approach: The legislative approach is carried out by examining all laws and regulations relevant to the doctrine of Business Judgment Rule and BUMD governance, especially Law Number 40 of 2007 concerning Limited Liability Companies, especially Article 92 and Article 97 paragraph (5) of Law Number 23 of 2014 concerning Regional Government, Government Regulation Number 54 of 2017 concerning Regionally Owned Enterprises, and Regional Regulation of Way Kanan Regency Number 11 of 2006 as amended by Regional Regulation Number 6 of 2019 concerning the Establishment of BUMD PT Way Kanan

¹⁶Japheth Jehophth. 2020. Provisions and Implementation of Business Judgment Rule in America, Australia, and Indonesia, *Journal of Legal Issues*, Volume 49 (2).

¹⁷Ridwan Khairandy and Camelia Malik. 2007. *Good Corporate Governance*, Kreasi Total Media, Yogyakarta, pp. 45-50.

¹⁸Peter Mahmud Marzuki. 2005. *Legal Research*, Kencana Prenada Media Group, Jakarta, pp. 93-95.

Makmur. This approach is used to find coherence and consistency of norms between the corporate law regime (private) and the state/regional financial law regime (public) which simultaneously applies to BUMDs in the form of Perseroda.

2. **Case Approach:** The case approach is carried out by examining the Tanjungkarang District Court Decision Number 42/Pid.Sus-TPK/2025/PN TJK as a unit of concrete analysis (grounded case) to empirically test how the business decisions of the Director of PT Way Kanan Makmur (Perseroda) are assessed by the judge in relation to the BJR doctrine. The verdict data is complemented by the Public Prosecutor's indictment, the minutes of the witness examination, and the results of interviews with the Assistant Inspector of the Way Kanan Regency Inspectorate and the Investigating Prosecutor at the Way Kanan District Attorney's Office¹⁹, as supporting data to reconstruct the chronology and context of business decision-making that is the object of the case.
3. **Theoretical Approach:** A theoretical approach is used to dissect the problem conceptually through three analytical knives. First, Utility Theory (utilitarianism) as developed by Jeremy Bentham, which assesses the validity of a legal or business decision from the greatest benefit generated for the broader good.²⁰ Second, the Piercing the Corporate Veil Theory, which is a doctrine that allows the company's legal responsibility to be transferred to its management if actions taken on behalf of the company violate the principles of propriety and justice.²¹ Third, the Theory of Development Law from Mochtar Kusumaatmadja, which views law as a tool of social engineering, is relevant to assess how the BJR doctrine should be directed as an instrument for reforming BUMD governance, not just a normative shield for the Director.²² The three theories are used cumulatively to analyze the boundaries between

¹⁹Results of an interview with Joni Saputra, S.H., M.H., Investigating Prosecutor at the Way Kanan District Attorney's Office, 2026.

²⁰Endang Pertiwi, et al. 2022. Jeremy Bentham's Theory of Utilitarianism: Legal Purposes or Methods of Testing Legal Products, *Journal of the Constitution*.

²¹M Pasha Arifin Nusantara. 2025. A Study on the Application of the Doctrine of Piercing the Corporate Veil in Individual Companies, *JIHHP: Journal of Law, Humanities and Politics*, Vol. 5 (4), p. 3086.

²²Muhammad Renal Anugrah Saputra, et.al. 2025. Mochtar Kusumaatmadja's Thoughts on Law as a Means of Development: A Study of Legal Philosophy on the Concept of Legal Dynamics, *Das Sollen: Journal of Contemporary Studies of Law and Society*, Vol. 4 (1).

legally protected business risks and abuses of authority that must be accounted for.

C. RESULTS AND DISCUSSION

1. Implementation of the Principle of Business Judgment Rule by the Director in the Management of PT Way Kanan Makmur (Perseroda)

The doctrine of the Business Judgment Rule (BJR) was originally developed in the corporate jurisprudence of the United States as an instrument to prevent courts from second-guessing business decisions that have been taken by the directors based on proper information and good faith. Black's Law Dictionary defines the business judgment rule as a presumption that in making business decisions, the directors act based on sufficient information, in good faith, and with the belief that the action is in the best interest of the company.²³ In Indonesia, this doctrine is positively affirmed through Article 97 paragraph (5) of Law Number 40 of 2007 concerning Limited Liability Companies, which stipulates four cumulative conditions for the Director to be free from personal responsibility for the company's losses, namely: (a) the loss is not due to his fault or negligence; (b) has conducted management in good faith and prudent for the benefit and in accordance with the Company's intentions and objectives; (c) do not have a direct or indirect conflict of interest for the management actions carried out; and (d) has taken action to prevent the occurrence or continuation of such losses.

The application of these four conditions to BUMD in the form of Perseroda cannot be separated from its dual character. Munir Fuady emphasized that the success of business entities is not only measured by the acquisition of profits, but also by compliance with legal norms and the principle of prudence in its management.²⁴ In Perseroda, the principle of prudence has two dimensions: on the one hand it is a standard for profit-oriented private corporations, on the other hand it is a standard of accountability for the management of regional wealth that is separated from the APBD.²⁵ Consequently, the scope of BJR

²³Bryan A Garner. 2010. Black's Law Dictionary, Thomson Group, West America, p. 226.

²⁴Munir Fuady. 2008. Corporate Law in the Paradigm of Business Law, Citra Aditya Bakti, Bandung, p. 74.

²⁵Arifin P. Soeria Atmadja. 2005. Public Finance in Legal Perspective: Theory, Practice, and Criticism, University of Indonesia Publishing Agency, Jakarta, p. 112.

protection for BUMDs is structurally narrower than that of pure private corporations, because every business decision has the potential to cause administrative, civil, and criminal legal consequences if it conflicts with the provisions of state/regional financial management.

To assess whether the business decision of the Director of PT Way Kanan Makmur (Perseroda) meets the requirements of the BJR, it is necessary to first trace the process of appointment of organs and the initial policy of the company's management. In 2019, the Way Kanan Regency Government restructured through open selection in collaboration with the University of Lampung to elect Commissioners and Directors of PT Way Kanan Makmur (Perseroda), as outlined in the open announcement Number 013/I.06-WK/PANSEL. CKD-PTWKM/2020.²⁶ On January 29, 2020, the Regent of Way Kanan Regency appointed a Director based on the Regent's Decree Number B.29/1.06-WK/HK/2020 for the term of office for the period 2020 to 2024. Based on the Minutes of the General Meeting of Shareholders (GMS) dated February 3, 2020, the Way Kanan Regency Government approved the capital reinvestment plan for the 2019-2023 period of Rp8,000,000,000.00 (eight billion rupiah), with a share ownership composition of 95% (ninety-five percent) owned by the Regional Government and 5% (five percent) owned by other parties.²⁷ In March 2020, the funds realized to PT Way Kanan Makmur (Perseroda) amounted to Rp1,600,000,000.00 (one billion six hundred million rupiah), plus capital from other shareholders of Rp125,000,000.00 (one hundred and twenty-five million rupiah), bringing the total initial operating capital of the Company to Rp1,725,000,000.00 (one billion seven hundred and twenty-five million rupiah). With this capital, the Director prepares a business strategy outlined in the Company's Work Plan and Budget (RKAP), which is further realized through five forms of business cooperation.

As conveyed by M. Yahya Harahap, the authority of the Director in managing the company is fiduciary, so that every decision taken must be accountable based on the standards of propriety of a good manager (prudent businessman standard).²⁸ Based on this, the author

²⁶Annual Report of PT Way Kanan Makmur (Perseroda) Year 2020, document of the Way Kanan Regency Inspectorate.

²⁷Minutes of the General Meeting of Shareholders of PT Way Kanan Makmur (Perseroda) Number 03 dated February 3, 2020, Notary Agus Zulkarnain, S.H., M.Kn.

²⁸M Yahya Harahap. 2021. Limited Liability Company Law, Sinar Grafika, Jakarta, p. 371.

examines five business collaborations carried out by the Director of PT Way Kanan Makmur (Perseroda) against the four cumulative requirements of Article 97 paragraph (5) of the Limited Liability Company Law.

- a. **Collaboration with MSMEs Dapur Way Kanan.** This basic food trade cooperation was carried out on April 29, 2020 with a capital budget of IDR 158,000,000.00. Based on the information of Assistant Inspector V of the Way Kanan Regency Inspectorate, this decision to cooperate was not based on a proposal or formal submission from MSMEs from Dapur Way Kanan to PT Way Kanan Makmur (Perseroda). The absence of a formal proposal shows that the decision-making process does not go through a standard partner feasibility assessment mechanism, so that the requirements of good faith and prudence (duty of care) in letter (b) of Article 97 paragraph (5) are difficult to prove to be fulfilled procedurally, even though nominally the losses from this cooperation are relatively small compared to other business units.
- b. **Broiler Chicken Farm Cooperation with PT N3M.** In this cooperation, it was found that there was a large amount of operational costs for making cages that were not accompanied by adequate transaction supporting documents, and there was a difference between the price stated in the agreement and the price in the invoice. The absence of adequate documentation makes the verification process of the use of funds difficult, so that the element of prudence and accountability which is an immanent prerequisite of good faith in the sense of Article 97 paragraph (5) cannot be objectively proven.
- c. **Rice Milling Plant Management Cooperation with CV IRM Jaya.** This collaboration is a critical point in testing BJR requirements. The results of the study show that the party who signed the cooperation agreement is not listed in the management structure of CV IRM Jaya and does not have a valid power of attorney to represent the company. The application for cooperation is also not accompanied by a feasibility study, joint business plan, or risk management documents. The Director's inaccuracy in verifying the legal authority of the partner is a fundamental violation of the duty of care, because the Director as the company's management should not treat the cooperation proposal as sufficient information to make business decisions without first verifying the legality and legal capacity of the party proposing the cooperation.

- d. **Fuel Oil Investment Cooperation with PT Rajawali Indo Nusantara.** This collaboration contains more serious problems due to the dual positions: the Commissioner of PT Rajawali Indo Nusantara, namely Teguh Sunandar, simultaneously serves as Business Manager at PT Way Kanan Makmur (Perseroda). Rumondang Sihite explained that dual positions that create a dual interest relationship between the company's internal parties and external partners have the potential to violate the principle of fiduciary duty, especially the duty of loyalty, because it obscures objectivity in the decision-making process. This condition is directly contrary to the condition of letter (c) of Article 97 paragraph (5) of the Limited Liability Company Law, namely the absence of a conflict of interest, so that business decisions in this cooperation lose the basis for BJR's protection from the beginning.
- e. **Freight Forwarding Service Cooperation with PT Lion Express.** Compared to the other four collaborations, this collaboration has relatively minimal administrative problems, but it is still carried out without a comprehensive risk analysis documented as part of the Director's overall business policy, so it must still be assessed within the overall framework of weak decision-making patterns.

From the five collaborations, it can be drawn that the business decisions of the Director of PT Way Kanan Makmur (Perseroda) were taken without being preceded by a due diligence mechanism, without proper supporting documentation, and on several occasions were colored by conflicts of interest. Robin Panjaitan, Martono Angusti, and Roida Nababan emphasized that BJR can only be applied to business decisions made through an informed decision-making process, not to decisions taken unilaterally without adequate analysis. Thus, cumulatively, the four conditions of Article 97 paragraph (5) of the Limited Liability Company Law are not fulfilled in the management of PT Way Kanan Makmur (Perseroda), so that the Director's business decisions cannot obtain legal protection based on the BJR doctrine.

The author is of the view that the fundamental problem in the case of PT Way Kanan Makmur (Perseroda) lies in the blurring of the boundary between legal authority and corporate discretion. Legal authority shows that the Director formally has the legal authority to make decisions based on Article 92 of the Limited Liability Company Law, while corporate discretion shows how the authority should be exercised based on the principles of prudence and good corporate

governance.²⁹ In the practice of BUMD management, the two concepts are often not clearly distinguished, so the existence of formal authority is considered to automatically include justification for the way it is used. The firm separation between the two concepts is an important instrument to test whether the management actions of the Director of PT Way Kanan Makmur (Perseroda) can be protected by the BJR doctrine or actually lead to unlawful acts (*onrechtmatige daad*). Ridwan Khairandy and Camelia Malik emphasized that the principles of Good Corporate Governance of transparency, accountability, accountability, independence, and fairness are objective parameters to assess whether the discretion used by the Director has been carried out professionally. With these parameters, empirical facts show that the Director of PT Way Kanan Makmur (Perseroda) uses his legal authority without adequate corporate discretion, so that the management actions carried out are outside the scope of BJR's protection and shift into actions that have the potential to violate the law.

2. Application of Legal Sanctions Against Directors Who Do Not Implement Business Judgment Rule in the Management of PT Way Kanan Makmur (Perseroda)

The Business Judgment Rule is essentially conditional protection, not absolute immunity. If the four cumulative conditions of Article 97 paragraph (5) of the Limited Liability Company Law are not fulfilled as analyzed in section D.1, then the legal consequence is that the Director must be held accountable for the business decisions he takes, either criminally, civilly, or personally against the company. In the case of PT Way Kanan Makmur (Perseroda), the non-fulfillment of BJR's requirements obtained concrete judicial affirmation through the Tanjungkarang District Court Decision Number 42/Pid.Sus-TPK/2025/PN TJK. The director's liability for the inconsistency in the application of the BJR can be analyzed through the Piercing the Corporate Veil Theory, which is a legal doctrine that allows the transfer of responsibility from the company as a legal entity to the individuals behind it, especially when legal actions taken on behalf of the company violate the principles of propriety and justice. The basic principle of corporate law is the separation of responsibilities (separate legal

²⁹M Kamal Hadi. 2025. Nature, Authority, Duties and Responsibilities of Company Organs in the Implementation of Good Corporate Governance According to the Law on Limited Liability Companies, *Al-Mashrafiyah Journal*, Vol. 4 (2).

entity) between the company and its management; However, this principle is not limitless. When the management uses the company's position or legal entity as a means of obtaining personal profits, systematically violates the principle of prudence, or acts outside the limits of legal authority, the veil of separation of responsibilities can be pierced so that responsibility shifts to the personal management. In the context of PT Way Kanan Makmur (Perseroda), the legal facts revealed in the trial, namely the absence of risk analysis, the absence of adequate transaction documentation, and the existence of a conflict of interest are sufficient grounds to apply the doctrine of Piercing the Corporate Veil. Thus, losses arising from the business decisions of the Director of PT Way Kanan Makmur (Perseroda) can no longer be categorized as ordinary business risks that are solely the responsibility of the corporation, but shift to the result of the Director's personal mistakes and negligence that must be accounted for individually.

Based on Decision Number 42/Pid.Sus-TPK/2025/PN TJK, the Panel of Judges of the Tanjungkarang District Court stated that the defendant Askur Muttaqin as the Director of PT Way Kanan Makmur (Perseroda) was legally and convincingly proven guilty of committing a criminal act of corruption as the first primary charge. For this act, the Panel of Judges sentenced him to imprisonment for 2 (two) years, a fine of Rp150,000,000.00 (one hundred and fifty million rupiah), a subsidy for imprisonment for 70 (seventy) days, and an additional penalty in the form of an obligation to pay compensation of Rp411,000,000.00 (four hundred and eleven million rupiah). The decision also stipulates that if the compensation is not paid after the decision obtains permanent legal force, the defendant's property can be confiscated and auctioned to cover the replacement money, and if the property is insufficient, the defendant is subject to a substitute prison sentence of 1 (one) year. Land and building assets in the name of the defendant were also confiscated and auctioned to cover the shortage of replacement money.

It is important to note that the basis of the Director's criminal liability in this case does not solely lie in the amount of regional financial losses of Rp661,000,000.00, but in a series of acts in the management of capital participation and the implementation of business activities that have been assessed and proven in the judicial process as a criminal act of corruption. This confirms a fundamental principle in corporate law: the company's losses or regional financial losses in themselves are not enough to turn a business decision into a

criminal act. What determines is the quality of the decision-making process—whether it is based on good faith, prudence, and adherence to the General Principles of Good Governance (AUPB)—not merely the end result.³⁰ The author agrees with Muhammad Yusuf's view that ambiguity in interpreting the good faith of the Director is often a legal loophole, so that proof of concrete facts such as the absence of legality documents and feasibility studies in this case is crucial to establish the boundary between reasonable business risk and abuse of authority.

In addition to criminal liability, the Director of PT Way Kanan Makmur (Perseroda) can also be held personally liable based on the company's law, as long as there is a causal relationship between his fault or negligence and the loss incurred. The basis of this personal liability does not solely lie in the amount of the loss, but in the extent of the Director's mistake or negligence in carrying out the duty of care that is directly related to the occurrence of the loss. The fact that the cooperation with CV IRM Jaya was carried out without the support of adequate legality documents and feasibility studies, as well as the expenditure of funds that were not supported by proper transaction documentation, shows that there are irregularities that can no longer be viewed as ordinary business failure, but as gross negligence in carrying out the company's management functions.

Based on Jeremy Bentham's Theory of Utility, the author is of the view that the imposition of sanctions on the Director of PT Way Kanan Makmur (Perseroda) is philosophically justified as long as the benefits are greater than the harms, namely providing a deterrent effect and restoring regional financial losses without having to negate the overall protective function of the BJR for business decisions that are really taken in good faith. This view is in line with Gustav Radbruch's Dialectical Theory of Justice, Certainty, and Utility, which emphasizes that law enforcement must accommodate the three basic values of law proportionately: justice for victims of regional financial losses, legal certainty through the application of clear BJR requirements, and benefits for the sustainability of the BUMD business climate in the future.³¹

³⁰Muhammad Yusuf. 2020. Limitation of the Meaning of Directors' Good Faith Towards Limited Liability Companies, *Jurnal Mutiara Hukum*, Vol. 3 (2), pp. 30-64.

³¹Muhammad is the Star of Paradise. 2025. Dialectics of Justice, Certainty, and Legal Utility in Gustav Radbruch's Perspective on Indonesian Law, *Journal of Legal and Public Policy Studies*, Vol. 3 (1).

Decision Number 42/Pid.Sus-TPK/2025/PN TJK has broader normative implications than just individual case resolution. The ruling affirms that the limit of BJR's protection can be exceeded when the exercise of the Director's authority is no longer within the legitimate business discretionary space, but has shifted to an act that is contrary to the law. Indah Kusumawati and Supraji emphasized that the expansion of the loose interpretation of the BJR on SOEs/BUMDs can actually be counterproductive if it is not balanced with strict proof of the fulfillment of the cumulative requirements in the law. Thus, the legal sanctions imposed on the Director of PT Way Kanan Makmur (Perseroda) should set a precedent for other BUMD Directors to understand that BJR is not absolute legal immunity, but conditional protection that can only be obtained through an informed, prudent, loyal, and free decision-making process that is informed, prudent, loyal, and free from conflicts of interest.

3. Factors that are obstacles in the implementation of the Business Judgment Rule at PT Way Kanan Makmur (Perseroda) as a Regionally Owned Business Entity

The application of BJR in BUMDs is not solely determined by the existence or absence of legal norms that provide protection to Directors, but is also greatly influenced by institutional conditions, corporate governance, legal culture, and the quality of human resources who carry out business activities.³² Based on the results of a study on PT Way Kanan Makmur (Perseroda), the author identifies five structural factors that cumulatively hinder the effective implementation of BJR.

- a. Not Optimal Implementation of Good Corporate Governance (GCG):** The first factor is the lack of optimal application of the principles of Good Corporate Governance in the management of PT Way Kanan Makmur (Perseroda). The results of the study show that the company does not have adequate Standard Operating Procedures (SOP) as a guideline for the implementation of business activities, and does not have standard procedures in the process of selecting business partners and standards for assessing the feasibility of cooperation. The absence of SOPs causes the business

³²Mirzan Awi, at.al. 2024. Analysis of Regional Tax Contributions, Regional Levies and Profits of Regionally Owned Enterprises (BUMD) to Regional Original Revenue Sources in Riau Province, *Journal of Economica*, Vol. 12 (1), p. 91.

decision-making process to be highly dependent on the individual considerations of the Director, without a risk-based checks and balances mechanism. M Kamal Hadi emphasized that the company's organs, including the Director, are obliged to carry out their functions based on the GCG principle as a prerequisite for the legitimacy of the use of corporate authority. Without a clear SOP, there are no objective parameters to assess whether the Director has made decisions carefully, professionally, transparently, and accountably in accordance with fiduciary duties.

- b. Weak Due Diligence Process and Risk Analysis:** The second factor is the weak due diligence process and risk analysis before the Director makes a decision to carry out a business cooperation. Ideally, investment decisions and cooperation with third parties should be preceded by an assessment of the partner's capacity, legality, financial condition, business viability, business prospects, and risks inherent in the cooperation. However, as described in section D.1, cooperation with CV IRM Jaya is carried out with parties who do not have the legal authority to represent the partner company, without being accompanied by a feasibility study or risk management documents. The author is of the view that failure to conduct proper due diligence is not just an administrative weakness, but a violation of the duty of care which is one of the main pillars of BJR, thus directly aborting the basis of legal protection for the Director.
- c. Weak Administration, Documentation, and Financial Accountability:** The third factor is weak administration and documentation in financial management and the implementation of cooperation. The results of the study showed that almost all expenditure reporting was not supported by adequate transaction documents such as notes, receipts, and invoices, and it was found that there was a difference between the price stated in the agreement and the price in the invoice in the broiler chicken farm cooperation. Transparency and accountability are not just a matter of administrative reporting on decisions that have been implemented, but are part of proving that the decision was indeed taken for the benefit of the company. Without adequate documentation, the decision-making process becomes difficult to test objectively, and this makes it difficult for both companies and supervisors to ensure that funds have been used according to the purpose of business activities, a condition that directly weakens the

basis for proving the fulfillment of the elements of prudence and good faith in the implementation of BJR.

- d. Potential Conflict of Interest and Weak Independence of Decision Making:** The fourth factor is the potential for conflict of interest in the cooperative relationship of PT Way Kanan Makmur (Perseroda), as reflected in the dual position of Commissioner of PT Rajawali Indo Nusantara who simultaneously served as Business Manager at PT Way Kanan Makmur (Perseroda). Independence is one of the important elements in good corporate governance, so every business decision of the Director should be taken solely for the benefit of the company and not influenced by personal interests or the interests of certain parties. This kind of dual position creates a potential structural bias in the cooperation evaluation process, because the party that should objectively assess the feasibility of the partner actually has an interest in the party being assessed.
- e. Limitations of Organizational Structure and Professionalism of Human Resources:** The fifth factor is the limitation of organizational structure and human resources. In 2020, the organizational structure of PT Way Kanan Makmur (Perseroda) has not been fully filled; Of the three main divisions planned, only two managerial positions were filled, and there were even duplicates between the General Manager and the Financial Manager. This condition shows that the company's problem is not solely a lack of employees, but an organizational structure that is able to divide functions, authorities, and responsibilities proportionally. As a result, the entire decision-making process is centralized on the Director without adequate support from the business, financial, administrative, legal, and supervisory functions according to their respective competencies, so that the quality of business decisions on which BJR is protected becomes vulnerable to these structural weaknesses.

The five inhibiting factors can be tested using the Legal Theory of Development from Mochtar Kusumaatmadja, who views law as a tool of social engineering. BUMD is present as a means of renewal for the community to manage funds disbursed by the local government for productive business activities. However, as Zulfi Diane Zaini emphasized in the context of the development of the financial legal system, the success of the transformative function of law is highly dependent on the readiness of the institution that implements it, not

just the availability of norms on paper.³³ As long as these five inhibiting factors—weak GCG, due diligence, financial accountability, independence, and organizational structure—have not been improved systemically, BUMDs, including PT Way Kanan Makmur (Perseroda), will continue to face recurring risks in the form of business decisions that are not protected by BJR and lead to regional financial losses and criminal liability of the Director, so that the function of BUMD as an instrument to increase Regional Original Revenue (PAD) cannot run optimal.³⁴

D. CONCLUSION

Based on the results of the analysis that has been described, it can be concluded that three main things can be concluded as the answer to the formulation of the research problem. **First, the implementation of the** principle of Business Judgment Rule by the Director of PT Way Kanan Makmur (Perseroda) has not been carried out in accordance with the cumulative requirements of Article 97 paragraph (5) of Law Number 40 of 2007 concerning Limited Liability Companies. The five business cooperation carried out by the Director was carried out without due diligence, feasibility studies, and adequate documentation, and was colored by a conflict of interest in fuel oil investment cooperation. Thus, such business decisions cannot be viewed as business risks that are automatically protected by the BJR doctrine, but must be judged by the quality of the decision-making process.

Second, the application of legal sanctions against Directors who do not run BJR is realized through criminal liability and personal liability. Through Decision Number 42/Pid.Sus-TPK/2025/PN TJK, the Director of PT Way Kanan Makmur (Perseroda) was declared legally and convincingly proven guilty of committing a crime of corruption, and was sentenced to 2 (two) years in prison, a fine of IDR 150,000,000.00, and the obligation to pay compensation of IDR 411,000,000.00, with the provision of a prison subsidy of 1 (one) year if the compensation is not paid and the property is insufficient. The

³³Zulfi Diane Zaini. 2012. Implementation of Development Law in the Banking System in Indonesia, *Journal of Banking and Central Banking*, Vol. 10 (3).

³⁴Ibn Sam Widodo. 2021. Changes in the Form of Regionally Owned Business Legal Entities Based on Government Regulation Number 54 of 2017 in an Effort to Increase Regional Original Revenue, *Journal of Jurispruden*, Vol. 4 (1).

doctrine of Piercing the Corporate Veil is relevant to explain the transfer of responsibility from the company to the Director, because the liability does not solely rely on the value of losses, but on real mistakes and omissions that are directly related to the losses that arise.

Third, there are five factors that are obstacles to the implementation of BJR at PT Way Kanan Makmur (Perseroda), namely: (1) the implementation of Good Corporate Governance has not been optimal; (2) weak due diligence and risk analysis processes; (3) weak financial administration, documentation, and accountability; (4) the existence of potential conflicts of interest and weak independence of decision-making; and (5) the limitations of organizational structure and the professionalism of human resources. These five factors are interrelated and show that the effectiveness of BJR protection in BUMDs does not solely depend on the prudence of individual Directors, but also on the readiness of the company's governance and institutional systems.

In line with Mochtar Kusumaatmadja's Development Law Theory, the author recommends that PT Way Kanan Makmur (Perseroda) immediately establish a Standard Operating Procedure which includes due diligence, feasibility studies, risk analysis and mitigation, partner legality checks, conflict of interest control, and continuous supervision and evaluation mechanisms. BUMD Directors, including in other regional companies, should understand BJR not as legal immunity from all forms of liability, but as conditional protection for reasonable business risks taken through the correct process. Meanwhile, the Way Kanan Regency Government as the majority shareholder needs to strengthen the coaching and supervision function proportionately, without shutting down the director's business discretion in carrying out the management function professionally and responsibly.

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