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Criminal Liability and Business Judgment Rule in Indonesia's Sovereign Wealth Fund: The Case of BPI Danantara

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ABSTRACT

This article examines the issue of criminal liability of corporate executives within the structure of Indonesia's Sovereign Wealth Fund, particularly BPI Danantara, in relation to investment losses and anti-corruption enforcement. It highlights how regulatory inconsistencies and institutional overlap complicate legal accountability when public wealth is managed through a private corporate model. The purpose of this article is to critically analyze the legal construction of executive responsibility in BPI Danantara by examining the interplay between the Business Judgment Rule (BJR), the principle of public accountability, and the current limitations of corruption law enforcement in Indonesia. This study employs normative legal research using statutory, conceptual, historical, and case-based approaches. Legal sources include primary laws and constitutional court rulings, supported by secondary materials such as legal journals and authoritative commentaries. Analysis is conducted through juridisch denken (legal reasoning) to assess the consistency of norms. The findings of this study reveal that the current legal framework provides de jure protection to executives under the BJR, but in the absence of oversight and transparency, it may foster legal impunity. The classification of state-invested assets as private capital under BPI Danantara limits the scope of criminal liability, highlighting the urgent need for harmonization between corporate governance standards and anti-corruption legal norms in the context of sovereign wealth fund operations.

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Introduction

The researcher examines criminal liability of Investment Management Agency Daya Anagata Nusantara (BPI Danantara) executives for investment decisions causing financial losses, analyzed through the Business Judgment Rule (BJR) for managing State-Owned Enterprises (BUMN) via Indonesia's Sovereign Wealth Fund mechanism. The study addresses legal ambiguity in corruption offenses, considering Article 3H paragraph (2) of Law Number 1 of 2025, which states that BPI Danantara's investment profits or losses are institutional. Article 4 B affirms that SOE profits or losses are corporate, not state losses.

The establishment of the *Investment Management Agency Daya Anagata Nusantara* (BPI Danantara) marks an ambitious initiative by the Government of Indonesia to manage state assets through the creation of a sovereign wealth fund (SWF). With managed assets estimated at approximately IDR 14,000 trillion, BPI Danantara is expected to play a strategic role in driving national economic growth through targeted investments across various sectors. However, the appointment of executives and supervisory board members holding concurrent positions in multiple state institutions has raised significant concerns regarding potential conflicts of interest and the overall effectiveness of corporate governance within the agency.

The practice of dual office holdings within the leadership structure of BPI Danantara sparked a significant debate concerning the transparency and accountability of public investment fund management. Bhima Yudhistira, Executive Director of the Center of Economic and Law Studies (Celios), emphasized that the accumulation of multiple official positions is not only laden with conflicts of interest but also poses a substantial risk of inefficient use of state resources (*kompas.id*). These concerns are further reinforced by international experiences such as the 1Malaysia Development Berhad (1MDB) scandal in Malaysia, which illustrates how weak governance structures can create opportunities for misusing public funds.[1]

A comparative analysis of corruption cases involving sovereign wealth funds (SWFs) includes the high-profile scandal of Malaysia's *1Malaysia Development Berhad* (1MDB). Established in 2009, the fund successfully raised billions of dollars through bond issuances intended to finance investment projects and joint ventures. However, it was ultimately revealed as a vehicle for large-scale corruption involving Prime Minister Najib Razak. The misappropriation of over USD 4.5 billion from 1MDB serves as a critical lesson for Indonesia, particularly in light of the regulatory leniency afforded to state investment practices under the BPI Danantara. This precedent underscores the importance of maintaining rigorous oversight and legal safeguards to prevent the abuse of public financial instruments.

The application of the Business Judgment Rule (BJR) must be examined in governing sovereign wealth funds (SWFs) and state-owned enterprises (BUMNs) in Indonesia. The BJR protects directors' good faith business decisions, but requires mechanisms to prevent authority abuse. Good governance in SWF management requires transparency, accountability, and avoiding conflicts of interest to align public investments with public interest.[2]

Article 3X paragraph (1) of Law Number 1 of 2025 on the Third Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises (BUMN Law) stipulates that members of governing organs and employees are not state officials. Article 9G confirms that Board of Directors, Board of Commissioners, and Supervisory Board members are not state officials. Article 87 paragraph (5) reinforces that BUMN employees are not state officials.

Investment decisions by BPI Danantara are protected under the Business Judgment Rule (BJR) in Article 3Y of Law No. 1 of 2025, amending Law No. 19 of 2003 on State-Owned Enterprises (BUMN Law). This shields the Minister, governing bodies, and executives of BPI Danantara from liability for losses if they prove:

a) The loss wasn't due to fault or negligence.
b) Management was in good faith, with due care, aligning with investment objectives and governance principles.
c) There was no conflict of interest; and
d) They didn't unlawfully benefit personally.

Article 2(1) of Law No. 31 of 1999, amended by Law No. 20 of 2001 on Corruption Crimes Eradication, states that anyone unlawfully enriching themselves or others, causing state financial losses, faces 4-20 years imprisonment and fines of IDR 200 million to 1 billion. Article 3 states that those who abuse their authority for personal benefit, causing state financial losses, may receive life imprisonment, 1-20 years imprisonment, and/or fines of IDR 50 million to 1 billion.

A legal issue arises when analyzing corruption provisions' application to BPI Danantara's investment decisions, which are protected under Article 3Y of the BUMN Law. If evidence of fraud, conflict of interest, or unlawful acts causing state financial loss is discovered, could these decisions be prosecuted under the Anti-Corruption Law, despite protections granted to BPI Danantara executives? This question is pertinent given the fraud risk due to politically affiliated figures, such as the presidential campaign team head and expatriate professionals managing global portfolios. While BPI Danantara needs

[1] Ni Made Sukmasari, "Ada Yang Khawatir Danantara Bisa Bernasib Sama Dengan 1MDB Malaysia: Kronologi Kasus 1MDB," Tempo, February 28, 2025.

[2] Chandra Noviardy Irawan, Pujiyono Pujiyono, and Irma Cahyaningtyas, "Implementation of Business Judgement Rules in Indonesia: Theories, Practices, and Contemporary Cases," *Indonesian Journal of Advocacy and Legal Services* 4, no. 1 (April 26, 2022): 1–24, https://doi.org/10.15294/ijals.v4i1.53335.

high-level expertise for its strategic functions, its governance structure presents significant risks of conflicting interests between maximizing returns and advancing private interests of executives.

The phrase "causing losses to state finances or national economy" traditionally applies to state officials, not BUMNs or entities like BPI Danantara engaging in commercial investments for the state. Law No. 1 of 2025 promotes managerial professionalism and provides legal immunity for investment losses meeting BJR criteria. However, this creates inconsistency as public officials following due diligence may face criminal prosecution under Anti-Corruption Law for state losses, while BPI Danantara actors have broad protection despite controlling public resources. This disparity raises concerns about legal equality in state asset management.

When compared directly, both BPI Danantara executives and public officials manage state funds. However, only public officials can be prosecuted under anti-corruption law for financial losses, while BPI Danantara executives cannot be held liable as they are not classified as state administrators. State-Owned Enterprise losses are no longer defined as state losses, decriminalizing BUMN corporate directors, despite both groups operating within the same fiscal system and being equally vulnerable to fraudulent practices that can lead to state losses.

The involvement of law enforcement institutions (Attorney General's Office, Corruption Eradication Commission) and audit bodies (Audit Board, Financial and Development Supervisory Agency, Financial Transaction Reports and Analysis Center) creates legal ambiguity. These agencies supervise BPI Danantara's investments, raising questions about the Oversight and Accountability Committee's legal responsibility if fraud, conflicts of interest, or actions causing state financial losses occur.

Experiences from various jurisdictions show that effective governance of sovereign wealth funds (SWFs) requires robust, independent institutional structures. The appointment of professionals free from conflicts of interest enhances public confidence. The case of Angola, where family appointments to key SWF positions led to controversy and corruption allegations, demonstrates the importance of stringent oversight in executive appointments.

Therefore, this research aims to analyze the implications of dual office holdings and potential conflicts of interest within the leadership structure of BPI Danantara on the effectiveness and transparency of public investment fund management. By examining these dynamics, this study seeks to formulate policy recommendations that strengthen Danantara's governance in support of sustainable economic development.

Based on the background issues outlined above, this study addressed the following legal questions:

1. Why do the financial losses of BPI Danantara and BUMN not consider state losses?
2. How does the Business Judgment Rule serve as a legal defence for BPI Danantara's investment decisions that result in losses?
3. What are the institutional and legal barriers faced by law enforcement and supervisory bodies in prosecuting corruption offenses related to the BPI Danantara?

The welfare state represents a paradigm where government ensures citizens' socioeconomic well-being through public services and fiscal policies. The state acts as both regulator and investor, utilizing mechanisms like sovereign wealth funds (SWFs), including Indonesia's BPI Danantara. This raises questions about balancing economic efficiency with public accountability when managing assets under corporate governance but funded by public money.

As a manager of state funds separated from the national treasury, BPI Danantara operates within welfare state policy, requiring professional management while upholding public values. When conflicts of interest emerge in investment governance, state risks face legitimacy crises. The welfare state must therefore be measured by governance quality, transparency, and social justice, not just economic outcomes.[3]

According to Tan Kamello, responsibility or liability comes from "responsibility" or "liability" in English and v*erantwoordelijkheid* in Dutch. The Dutch word *aansprakelijkheid* means "*legal accountability*" or "*liability*." Juridically, this refers to legal consequences of acts by legal subjects, whether natural persons or legal entities.[4]

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[3] Irpan Jamil, "Negara Kesejahteraan (Welfare State) Dalam Konteks Kebijakan Politik Ekonomi Islam Di Indonesia," *El-Ecosy: Jurnal Ekonomi Dan Keuangan Islam* 1, no. 2 (2021): 183–97.

[4] Tan Kamello, "Kajian Pidana Dalam Perbuatan Korupsi Pengadaan Barang Pemerintah Di Sumatera Utara," 2006.

Criminal liability signifies blame attribution to a legal subject for a criminal offense. Liability occurs when the perpetrator committed the act and it was deemed blameworthy. A person cannot be held criminally liable without committing a criminal act, though liability does not automatically follow such acts.

Criminal liability is a fundamental principle of criminal law, emphasizing that an individual can only be punished when there is evidence of both an unlawful act and culpability, whether in the form of negligence (*culpa*) or intent (*dolus*). In the context of legal entities such as BPI Danantara, criminal liability may be imposed not only on the corporation itself, but also on individual executives who actively commit or passively allow the commission of criminal offenses.[5] Such culpability may include abuse of authority, gross negligence, or failure to exercise due diligence in the execution of investment decisions.

Imposing criminal liability on corporate officials poses challenges in proving mens rea or gross negligence. Thus, strict liability and vicarious liability doctrines allow criminal sanctions without direct proof of intent, when conduct harms public interest or state finances.[6] This framework becomes especially relevant in evaluating investment decisions made by BPI Danantara, which results in financial loss to the state, but may not meet the threshold for classification as corruption due to the statutory immunity granted to its officials.

Law enforcement translates legal normative values into social reality through authorized institutions. According to Rahardjo, law enforcement must extend beyond literal legal text to be responsive to public justice.[7] In the case of BPI Danantara, one of the most significant challenges in law enforcement arises from regulatory gaps and overlapping institutional jurisdictions, particularly when there is conflict between the application of the *Business Judgment Rule* and the criminal elements outlined in Indonesia's Anti-Corruption Law (*Undang-Undang Tipikor*).[8]

Effective law enforcement depends on three components: legal structure (framework), legal substance (norms), and legal culture (values and behaviors). A deficient component prevents optimal legal system function.[9] Urgent reform is needed to strengthen oversight and revise legal norms governing state losses from BPI Danantara's sovereign wealth fund actions. Without reforms, systemic impunity risks substantial harm to state finances due to legal loopholes preventing criminal accountability.

A Sovereign Wealth Fund (SWF) is a state-managed investment entity that preserves national wealth and generates long-term returns. Indonesia's BPI Danantara SWF manages state assets outside the budget while serving public interest. SWFs allow governments to invest fiscal surpluses and resource revenues in diversified investments for national development, though this raises accountability challenges.

BPI Danantara operates like a state-owned enterprise but has autonomy in investment decisions. The Business Judgment Rule protects directors making decisions in good faith and without conflicts of interest, preventing criminalization of financial losses made without malicious intent.[10]

Although the BJR shields corporate officers from criminal liability for legitimate business decisions, it must not protect against legal accountability in cases of misconduct, fraud, or conflicts of interest. In managing public funds through SWFs, BJR must align with Good Corporate Governance (GCG) and public transparency, or SWFs risk becoming instruments of unchecked power vulnerable to corruption and authority abuse, as seen in the 1Malaysia Development Berhad (1MDB) scandal.[11]

As part of corporate criminal liability, the BJR applies when executives demonstrate professional investment decisions with due diligence. The legal system must establish parameters to distinguish managerial errors from criminal misconduct. This distinction ensures SWF executives at BPI Danantara can perform duties without undue criminalization while remaining accountable. The BJR implementation requires strong, independent oversight mechanisms.

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[5] Eddy O S Hiariej, "Korupsi Di Sektor Swasta Dan Tanggung Jawab Pidana Korporasi," *Masalah-Masalah Hukum* 49, no. 4 (2020): 333–44.

[6] Hendra Wijaya, Budi Santoso, and Muhamad Azhar, "Pertanggungjawaban Pidana Korporasi Atas Pencemaran Lingkungan Hidup," *Notarius* 14, no. 1 (2021): 206–20.

[7] Satjipto Rahardjo, *Penegakan Hukum Progresif* (Penerbit Buku Kompas, 2010).

[8] Wiwik Sri Widiarty, "Perlindungan Hukum Bagi Direksi Berdasarkan Business Judment Rule Terhadap Kerugian Perusahaan Terbatas," *Rio LAW JURNAL* 5, no. 1 (2024): 37–43.

[9] Achmad Ali, *Menguak Teori Hukum (Legal Theory) Dan Teori Peradilan (Judicialprudence)*, 1st ed. (Jakarta: Kencana, 2022).

[10] A. Fauzi, *Business Judgment Rule Dalam Perspektif Hukum Korporasi Indonesia* (Jakarta: Sinar Grafika, 2019).

[11] Ni Made Sukmasari, "Ada Yang Khawatir Danantara Bisa Bernasib Sama Dengan 1MDB Malaysia: Kronologi Kasus 1MDB."

BPI Danantara operates through two holding companies: an investment holding company and an operational holding company. The investment holding company is a State-Owned Enterprise whose capital is owned by the state, with BPI Danantara managing dividends and optimizing SOE assets. State capital participation may come from cash, state-owned goods, or state-owned shares.

This investment-holding entity is established as a limited liability company under Law Number 40 of 2007. The share structure comprises 1% Series A "Dwiwarna" shares held by the state and 99% Series B shares by BPI Danantara. The functions include managing investments, optimizing asset value, executing tasks delegated by the Minister of SOEs or BPI Danantara, and clicking or tapping here to enter the text.

Likewise, the operational holding company is also structured as a limited liability company, with 1% Series A shares held by the state and 99% Series B shares owned by the BPI Danantara. Pursuant to Law No. 1 of 2025, the operational holding company is responsible for overseeing the operational activities of SOEs and other related business ventures.

BPI Danantara's role is to manage SOEs, with powers including:

(1) Managing dividends from investments, operations, and SOEs
(2) Approving equity participation changes in SOEs from dividend management
(3) Co-establishing investment and operational holdings with SOE Minister
(4) Jointly approving SOE asset write-offs with Minister based on holding proposals
(5) Engaging in borrowing, lending, and pledging assets with presidential approval
(6) Endorsing holding companies' business plans and budgets with DPR commission.

Any profit or loss from Danantara's investments is a corporate gain/loss attributable to BPI Danantara. If profit is realized, a portion goes to the state treasury after allocations for reserves and capital accumulation. BPI Danantara may partner with third parties through asset management mandates to enhance value. Its assets come from capital contributions, returns, asset transfers, grants, and other lawful sources.

Method

This study adopts a normative juridical legal research approach that aims to analyze the relevant statutory regulations, legal doctrines, and public policies pertaining to the criminal liability of BPI Danantara's executives in the context of the *Business Judgment Rule* and the legal framework governing corruption eradication.[12] This type of research was chosen because it primarily focuses on the applicable legal norms and their interpretation in relation to legal facts that have emerged in the governance of sovereign wealth funds (SWFs) in Indonesia.[13]

This research utilizes several methodological approaches, including statute, case, historical, comparative, and conceptual approaches.[14] Through these approaches, the study examines the legal construction from a regulatory perspective, jurisprudential developments, historical evolution of SOE regulations, and compares models of criminal liability for SWF executives in other jurisdictions.Click or tap here to enter text.

Legal materials were collected through library research, including primary legal materials like Law Number 1 of 2025, the Indonesian Penal Code, and Anti-Corruption Law. Secondary materials comprised legal textbooks, journals, research reports, and expert opinions. Tertiary materials clarify legal terms and concepts.[15]

All legal materials are analyzed qualitatively using the *juridisch denken* approach, namely, normative legal reasoning that derives conclusions from legal norms to address identified legal issues. The analysis involves describing existing legal rules, interpreting the substance of these norms, and evaluating their coherence and effectiveness in ensuring legal protection and criminal accountability for executives managing state investment entities, such as BPI Danantara.[16]

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[12] Agustinus Yoga Primantoro, "Paradoks Profil Eksekutif Danantara," Kompas, April 7, 2025.

[13] S., & Mamudji, S. Soekanto, *Penelitian Hukum Normatif Dan Empiris* (Jakarta: Rajawali Pers, 2021).

[14] Peter Mahmud Marzuki, "Penelitian Hukum Edisi Revisi Cet," *Ke-12. Jakarta: Prenadamedia Group*, 2016.

[15] Parameshwara Parameshwara and Khairul Riza, "Ideal Management of Social Assistance Funds as a Prevention and Mitigation Effort Corruption," *Journal of Multidisciplinary Academic and Practice Studies* 1, no. 1 (February 23, 2023): 83–91, https://doi.org/10.35912/jomaps.v1i1.1529.

[16] Achmad Ali, *Menguak Teori Hukum (Legal Theory) Dan Teori Peradilan (Judicialprudence)*.

To address the legal issues raised in this article, three principal theories are employed as analytical tools: Welfare State Theory, the Theory of Criminal Liability, and the Theory of Law Enforcement. These theoretical frameworks are selected due to their direct relevance to the institutional characteristics and legal roles inherent in the management of public funds by *Badan Pengelola Investasi Daya Anagata Nusantara* (BPI Danantara) as Indonesia's sovereign wealth fund (SWF).

Welfare State Theory serves as a normative foundation for understanding the role of the state in managing public wealth with the aim of achieving social and economic welfare. In this regard, the establishment of BPI Danantara is not merely an expression of state investment strategy but also a manifestation of the state's responsibility to ensure economic justice and fiscally sound governance in the public interest. Thus, every policy and investment decision made by BPI Danantara's executives must be aligned with the state's function of delivering welfare to its citizens.

The Theory of Criminal Liability is applied to examine the boundary between the professional responsibilities of BPI Danantara executives and their potential involvement in corruption.[17] This theory is instrumental in distinguishing between lawful business risk-taking, protected under the *Business Judgment Rule*, and unlawful conduct, which may trigger criminal sanctions. It is essential to demarcate the line between managerial accountability and criminal culpability when exercising corporate governance.

Meanwhile, the Theory of Law Enforcement is utilized to assess the effectiveness of the legal system in monitoring and prosecuting violations within the investment activities of BPI Danantara. This theory explains how legal structures, substances, and cultures operate interactively to shape a legal framework that is fair and responsive.[18] Within this framework, this study analyzes the extent to which law enforcement and oversight institutions such as the Corruption Eradication Commission (KPK), Attorney General's Office, Audit Board of Indonesia (BPK), and Financial Transaction Reports and Analysis Center (PPATK) possess both legitimacy and institutional effectiveness in overseeing an entity that, while not classified as a state organ, manages large-scale public assets.

Results and Discussion

Losses of BPI Danantara and SOEs: Are they losses?

Findings from this normative juridical research show that Investment Management Agency Daya Anagata Nusantara (BPI Danantara) was established under Law No. 1 of 2025, concerning the Third Amendment to Law No. 19 of 2003 on State-Owned Enterprises (BUMN Law). BPI Danantara serves as Indonesia's Sovereign Wealth Fund (SWF), managing state wealth separated from the national treasury for strategic investment through a corporate entity under corporate governance principles.[19]

BPI Danantara comprises two core entities: an investment holding company and an operational holding company, established as Perseroan Terbatas. Articles 3E to 3J of the BUMN Law grant BPI Danantara authority to manage dividends, write off assets, issue loans, and pledge assets, subject to presidential and parliamentary oversight. Its capital comes from State Capital Participation, asset transfers, grants, and investment returns. These provisions establish BPI Danantara as an SWF with broad authority in managing state assets.

Articles 3H(2) and 4B state that profits or losses incurred by BPI Danantara or other SOEs are considered corporate, not state gains or losses. However, BPI Danantara's institutional structure reveals legal ambiguities. It operates as a corporatized entity with legal protection, including immunity from investment losses when complying with the Business Judgment Rule. Article 3Y states that BPI Danantara executives face no legal liability for investment losses if their decisions show due diligence without conflicts of interest.

This study finds that BPI Danantara manages separated state wealth through capital injection and asset transformation. These assets are not considered part of state public finances under Article 23 of the

[17] Aep Gunarsa and B Arief Sidharta, "Meuwissen Tentang Pengembanan Hukum, Ilmu Hukum, Teori Hukum, Dan Filsafat Hukum" (Refika Aditama, 2013).

[18] Lawrance M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russel Sage Foundation, 1975).

[19] Parameshwara Parameshwara and Khairul Riza, "Tindak Pidana Korupsi Dalam Konteks Pertanggungjawaban Pidana Korporasi (Corruption Crimes in the Context of Corporate Criminal Liability)," *Jurnal Studi Multidisiplin Ilmu* 1, no. 1 (2023): 25–34, https://doi.org/10.35912/jasmi.v1i1.1973.

1945 Constitution or State Finance Law. The funds managed by BPI Danantara thus operate outside conventional state financial oversight, creating a distinct legal regime for sovereign wealth governance.

This legal position is supported by the Constitutional Court Decision No. 62/PUU-XI/2013, which holds that state assets transferred into a corporatized entity are no longer subject to conventional fiscal oversight. Instead, such assets must be supervised under the principles of business governance and not through public finance regulation mechanisms.[20] The separation of state wealth through capital participation in BPI Danantara changes these assets' legal status to private entity assets governed by corporate logic. The Constitutional Court ruled that while state supervision remains, it must follow business judgment principles rather than government rules.

Within state-owned limited liability companies, business decisions must be evaluated for business risk and legal character, distinguishing between civil wrongful acts and criminal unlawfulness. The distinction between legitimate business risk and unlawful acts requires careful analysis, as misclassification by law enforcement can inappropriately criminalize directors' decisions and ignore Business Judgment Rule protections.

Law No. 40 of 2007 on Limited Liability Companies (UUPT) contains provisions to impose liability on directors under a mala prohibita rationale. Article 155 states: "The provisions regarding the liability of the Board of Directors and/or Board of Commissioners for errors or negligence shall not exclude criminal law provisions." This article enables criminal prosecution of corporate directors for regulatory breaches outside mala in these offenses. A director may be held criminally liable for breaches of statutory duties that trigger penal consequences under applicable laws.

Article 155 of Indonesian Company Law (Law No. 40 of 2007) allows criminal liability for BPI Danantara directors who violate provisions containing fault or negligence elements: Article 97(3): "Each Board of Directors member shall be personally liable for company losses resulting from fault or negligence in performing duties under paragraph (2)." Article 97(6): "Shareholders representing minimum 1/10 of voting shares may file district court claims against directors whose fault caused company losses."Article 104(2): "In bankruptcy cases where directors' fault caused insufficient assets for obligations, Board members are jointly liable for unpaid liabilities." Article 104(3): "This liability applies to Board members at fault who held positions within five years before bankruptcy declaration."

Articles 97 (3), 97 (6), 104 (2), and 104 (3)do not automatically render directors criminally liable. Ultimately, it is within the discretion of the judiciary, particularly the courts, to determine whether the fault or negligence referenced in these provisions constitutes a matter of civil liability or rises to the level of criminal liability. In principle, these provisions are civil in nature; however, if criminal elements can be identified in the conduct in question, they may serve as a legal basis for the criminal prosecution of Danantara's executives.

BPI Danantara's legal status as a public asset manager required a balanced legal accountability system. The legal immunity given to executives may create vulnerability in public oversight, particularly in authority abuse cases. From a normative perspective, BPI Danantara occupies a strategic yet precarious position between public and private entities. While its legal framework provides institutional legitimacy, it lacks comprehensive public accountability.

From the standpoint of Welfare State Theory, such a legal configuration contradicts the state's responsibility for equitable distribution of national wealth. When BPI Danantara's financial losses are no longer classified as state losses despite coming from state assets, this creates a gap in public oversight over welfare-serving assets.[21] Therefore, this shift in the legal status of public assets must be accompanied by a legal oversight mechanism equivalent in strength and scope to that of state officials.

Business Judgment Rule as a Excuse for Investment Losses

The Business Judgment Rule (BJR) is a legal standard in common law jurisdictions that protects corporate directors who make business decisions according to the rule's principles. It shields directors from liability for losses if decisions are made in good faith, without self-dealing, and with reasonable diligence.

[20] A. Fauzi, *Korporasi Dan Tindak Pidana Ekonomi: Konsep Dan Pertanggungjawaban Hukum* (Jakarta: Sinar Grafika, 2022).

[21] B Lora Christyanti, "PERUBAHAN REZIM HUKUM DAN RISIKO IMPUNITAS KORUPSI DI BADAN USAHA MILIK NEGARA," *Jurnal Suara Keadilan* 26, no. 1 (2025): 121–36.

This standard provides legal certainty by establishing that company losses do not automatically indicate wrongdoing by directors if decisions are made honestly and within their fiduciary duties.

The BJR protects corporate managers from legal accountability for adverse business outcomes when decisions are made in good faith, legally, and without conflicts. Under Article 3Y of the State-Owned Enterprises Law, executives and the Minister receive legal immunity from investment losses if decisions meet BJR criteria..

The findings show that the BJR doctrine was adopted in Indonesia's legal system through Law No. 1 of 2025, amending the SOE Law. Article 3Y provides legal protection to the Minister, governing bodies, and executives of BPI Danantara from investment losses, if decisions were made with good faith, due care, no conflict of interest, and without unlawful gain. This incorporation establishes the BJR as a legal basis for distinguishing between legitimate business risk and unlawful conduct.

The BJR protects corporate directors who act in the company's best interests with sufficient information and sound judgment. It prevents criminalization of managerial decisions resulting in losses, provided there is no fault, bad faith, or legal violations. While incorporated into Indonesia's Company Law, its practical implementation remains limited, with law enforcement often reacting to corporate losses even when they stem from acceptable business risks.

In BPI Danantara, the Business Judgment Rule (BJR) is crucial for preventing criminal liability for executives due to poor outcomes, as long as decisions are made with due care and lawful intent. Parameshwara (2016) highlights that the BJR offers protection and legal certainty for directors if decisions are based on it and there's no basis for accusations. Good faith is a key element of the BJR. Although this protection is included in Indonesia's Limited Liability Company Law, its implementation is lacking, and law enforcement is often excessive, especially when companies incur losses.

The BJR functions as a legal safeguard against criminalization of business decisions that may cause financial loss at BPI Danantara. Strategic decisions like share transfers and inter-entity lending carry substantial risk. The BJR provides executives discretion to make decisions based on due diligence and company objectives. According to Black's Law Dictionary, BJR presumes directors act on an informed basis and in good faith for the corporation's interests.[22]

Legal protection under the BJR is not absolute. Such protection depends on proving the decision was not an abuse of power. Where there is fraud, gross negligence, or conflict of interest, the BJR may be set aside and executives may face criminal liability. This aligns with the Theory of Criminal Liability, which requires fault for criminal sanctions, except in strict liability offenses.[23]

This study finds significant ambiguity in law enforcement's assessment of "good faith" and "due care" under the Business Judgment Rule (BJR). Limited oversight and restricted access to investment decisions impede authorities from distinguishing managerial errors from legal violations. There is a need to develop objective parameters for assessing business decisions within corporate criminal law. The lack of legal clarity and ineffective oversight leads to the legal system's failure to provide adequate protection or fair sanctions.

The findings conclude that BJR application in the BPI Danantara has a firm legal foundation for exemption from criminal liability. However, BJR's effectiveness as a protective doctrine depends on decision-making integrity, documentation transparency, and strong supervisory mechanisms. Without these elements, BJR risks becoming a shield for corporate elites to exploit their investment authority.

This research reveals that BPI Danantara executives' criminal liability must be assessed based on actus reus (criminal act) and mens rea (guilty mind). In corporate criminal liability, these elements apply to both the legal entity and individual executives who commit or negligently permit actions resulting in losses that may constitute criminal offenses. Therefore, corporate liability does not preclude individual criminal responsibility.

Directors play a central role within BPI Danantara in strategic decision-making for investments, partnerships, and separated state assets. Articles 92 and 97 of Law No. 40 of 2007 on Limited Liability Companies establish that directors bear responsibility for company management and must perform duties in good faith with accountability. Any action causing loss or contravening statutory provisions may constitute criminal liability if elements of culpability through negligence (culpa) or intent (dolus) are met.

[22] Salim, "Penerapan Teori Hukum Pada Penelitian Tesis Dan Disertasi."
[23] Edward Omar Sharief Hiariej and M SH, "Pengantar Hukum Acara Pidana," *Jakarta: Universitas Terbuka*, 2016, 128–45.

Within the Theory of Criminal Liability, the Business Judgment Rule cannot fully shield against criminal sanctions. If business decisions involve fraud, gross negligence, or clear conflicts of interest, criminal liability may be imposed. The theory holds that executives can be criminally responsible for unlawful conduct or failing to meet legal standards of care.[24]

The findings reveal shadow controllers within BPI Danantara's organizational structure - individuals who significantly influence corporate decisions while remaining unlisted officially. These figures manipulate directors as proxies while operating covertly. This arrangement helps evade criminal liability, with directors bearing legal consequences while actual controllers avoid accountability by rotating board members under their control.

This phenomenon is particularly relevant to BPI Danantara, whose leadership comprises elites holding positions in government and financial institutions. Such configuration enables investment decisions influenced by vested interests. Under corporate criminal law, shadow controllers may be liable if they played a role in both the actus reus and mens rea of the offense by directors.

It is also recognized that the directors of a corporation may not fully benefit from the profits derived from a corporate crime, yet they remain legally accountable for the unlawful acts committed. Conversely, shadow controllers may enjoy the indirect benefits of such misconduct while remaining beyond the reach of law enforcement due to their concealed involvement and lack of formal position within the corporate governance structure.

Criminal Liability Theory holds that shadow controllers do not absolve corporate directors of criminal responsibility. Law enforcement must trace control over unlawful decisions through causal chain analysis and role-based attribution to prevent prosecuting only nominal directors. For corporations like BPI Danantara, legal approaches must employ investigative procedures that reveal hidden influence structures.[25]

This study recommends adopting corporate criminal liability progressively, recognizing forms of participation including command responsibility and beneficial ownership. If an individual exercises de facto control over decisions leading to criminal conduct, despite lacking formal position, they should not be shielded by legal gaps. For BPI Danantara, this principle is crucial given the scale of public funds managed, conflict of interest risks, and limited oversight of investment decisions.

The Business Judgment Rule (BJR) must be understood as a limited exculpatory doctrine that does not preclude criminal liability where there is evidence of intentional misconduct. The BJR should be accompanied by compliance mechanisms and internal auditing to ensure corporate officers do not exploit its protective function.

Law Enforcement Obstacles to BPI Danantara Investment Decisions

One of the main obstacles to criminal law enforcement against BPI Danantara executives lies in their legal status as non-state actors under Articles 3X(1) and 9G of the State-Owned Enterprises Law. This creates ambiguity regarding their position within criminal liability for corruption offenses under the Anti-Corruption Law (UU Tipikor). Since they are not recognized as state officials, it becomes difficult to apply Anti-Corruption Law provisions, despite their actions potentially harming state finances.

According to the Theory of Law Enforcement, this reflects a weakness in legal structures adapting to institutional realities. When legal norms cannot address harmful conduct to the state and enforcement authorities face jurisdictional uncertainty, the system fails to deliver justice. Thus, legal substance must be revised to accommodate sovereign wealth funds' evolving status as public fund managers operating within state responsibility.

This study also found that Article 3Y of Law No. 1 of 2025 serves as a central legal provision that contributes to potential confusion in the enforcement process. This article provides legal immunity to the Minister, corporate organs, and executives of BPI Danantara from any form of legal accountability for investment decisions, as long as such decisions are made with due care, in good faith, without conflicts of interest, and do not result in unlawful personal gain.

Normally, this provision explicitly incorporates the principles of the Business Judgment Rule into Indonesia's legal system. However, in the absence of equivalent oversight mechanisms, this immunity risk

[24] Eddy Omar Sharif Hiariej, "United Nations Convention Against Corruption Dalam Sistem Hukum Indonesia," *OLD WEBSITE OF JURNAL MIMBAR HUKUM* 31, no. 1 (2019): 112–25.
[25] Lilik Shanty, "Aspek Teori Hukum Dalam KEJAHATAN KORPORASI," *PALAR (Pakuan Law Review)* 3, no. 1 (2017).

becomes a significant barrier to the effective prosecution of offenses that may result in financial harm to the state.

When comparing immunity provisions in the amended State-Owned Enterprises Law (Law No. 1 of 2025) with Law No. 31 of 1999 and Law No. 20 of 2001 on the Eradication of Corruption Crimes (Anti-Corruption Law), a substantive inconsistency emerges. The Anti-Corruption Law mandates that anyone who abuses authority or unlawfully enriches themselves, causing state financial loss, shall face criminal sanctions without exception.

Conversely, the revised BUMN Law explicitly excludes entities such as BPI Danantara from the category of state officials and asserts that the losses incurred by such corporate entities do not constitute state losses. This divergence in legal definitions creates a juridical vacuum, making it difficult to link the financial harm caused by BPI Danantara's executives to the elements of a criminal offense under Articles 2 and 3 of Anti-Corruption Law.

Law enforcement agencies, including the Attorney General's Office and KPK, face legal and structural constraints in investigating BPI Danantara cases. These challenges arise from unclear legal norms limiting jurisdiction over non-public officials who manage public funds.

Oversight institutions like the Audit Board (BPK), Financial and Development Supervisory Agency (BPKP), and Financial Transaction Reports and Analysis Center (PPATK) lack authority to fully audit investments managed by BPI Danantara, as the entity operates independently from the executive government branch..

A critical obstacle lies in law enforcement's difficulty maintaining neutrality during investigations of BPI Danantara. This stems from senior officials of oversight institutions—including the Attorney General, KPK Chair, PPATK Head, BPK and BPKP Chairs, and National Police Chief—serving as members of the BPI Danantara Oversight Committee. This dual role creates a conflict of interest, potentially causing enforcement paralysis due to conflicts between oversight duties and investigative mandates.

Beyond neutrality, conflict of interest is a central concern in assessing fraud potential in investment decisions. Several executives and advisors within BPI Danantara have direct affiliations with global investment entities as founders, shareholders, or fund managers. Individuals like Raymond Thomas Dalio (founder of Bridgewater Associates), Jeffrey David Sachs, Chapman Taylor (investor in Capital Group), Thaksin Shinawatra, and Helman Sitohang are connected to various profit-oriented financial institutions. Without robust oversight mechanisms, their involvement in BPI Danantara's governance poses risks of power abuse and conflicts of interest.

The lack of regulations governing independent oversight of Danantara BPI elite governance increases risk. When enforcement officers serve dual roles as supervisors and oversight subjects, it compromises justice system integrity. A new framework must separate internal oversight from law enforcement independence to prevent corruption in state-owned corporate investments.

From the Law Enforcement Theory perspective, this reflects poor integration between legal substance and structure. When legal norms in the SOE Law and Anti-Corruption Law lack harmonization, and institutions lack oversight authority, law enforcement becomes suboptimal. The legal culture among political elites and financial decision-makers, who view legal immunity as absolute protection, undermines anti-corruption efforts in public fund management.

Legal culture significantly influences accountability. When political elites and SWF executives maintain close ties to power and operate beyond legal scrutiny due to regulatory gaps, impunity emerges, eroding justice. Strengthening institutions like the Attorney General's Office, KPK, BPK, and PPATK requires expanding their jurisdiction and establishing special legal oversight for SWF officials.

This study emphasizes the need for regulatory harmonization between the SOE Law and Anti-Corruption Law, alongside strengthening oversight institutions to detect and prosecute corruption within entities like BPI Danantara. The unresolved legal ambiguity and weak institutional oversight continue to expand impunity for actors who should face criminal accountability.

Article 155 of Indonesian Company Law affirms that director/commissioner liability for errors under corporate law does not preclude criminal law provisions. While BPI Danantara executives may have protection through the Business Judgment Rule, they remain criminally liable if their actions exceeded legal conduct boundaries. Legal protection for investment decisions is not absolute immunity but remains subject to criminal accountability principles under rule of law.

The Constitutional Court's Consideration of State Assets in SOEs

Constitutional Court Decision No. 62/PUU-XI/2013 serves as a pivotal reference for determining the status of state assets invested in State-Owned Enterprises (SOEs) or private entities like BPI Danantara. While state assets may be transferred into SOEs, the state maintains supervisory authority. The management of these assets follows Business Judgment Rule principles rather than Government Judgment Rule, shifting from an administrative to corporate model and limiting corporate executives' legal liability.[26]

Although the Court rejected the petition, Justice Harjono's dissenting opinion provided an important perspective on the legal relationship between state and SOEs. He argued that once state assets become shares in a limited liability company, the legal relationship between state and assets is severed. The state cannot claim that SOE losses constitute state financial losses without evidence of authority abuse. This interpretation offers a basis for distinguishing between public and private dimensions in state asset management.

In the context of BPI Danantara as Indonesia's Sovereign Wealth Fund (SWF), this study concludes that Constitutional Court reasoning supports that investment losses cannot be automatically deemed state losses for criminal liability under anti-corruption laws. However, principles from the dissenting opinion should guide regulatory framework refinement to prevent legal loopholes enabling impunity. Failure to do so may create a legal accountability vacuum, benefiting strategic actors within the SWF system and weakening efforts to expose corruption disguised as failed investments..

Criticism of the Immunity Regime

The incorporation of the Business Judgment Rule (BJR) into BPI Danantara's regulatory framework may create an unbalanced legal immunity regime. While BJR aims to protect executives from criminal liability for good faith decisions, it could become a tool of impunity without objective mechanisms to verify decision-making integrity. Article 3Y of the amended SOE Law grants absolute immunity to BPI Danantara executives without judicial scrutiny, risking confusion between legitimate business risk and misconduct. The BJR's application requires critical examination when used to avoid criminal liability without proper oversight of investment decisions.

The governance of sovereign wealth funds (SWFs) like BPI Danantara must uphold both corporate law and public ethics through Good Corporate Governance (GCG) principles. Transparency, accountability, responsibility, independence, and fairness are essential for managing public funds.

This study shows that GCG principles require executives to disclose information and justify decisions to public and supervisory authorities, rather than having excessive legal protection. The rule of law must not be undermined by protection regimes that enable covert abuse through corporate autonomy.

Research shows that for BPI Danantara's public wealth management, corporate and individual accountability must be distinguished. Legal responsibility must extend beyond the corporate entity to individuals making decisions or benefiting from unlawful conduct, particularly as BPI Danantara's governing members manage their own investment entities.

The doctrine of piercing the corporate veil can impose personal liability on individuals who abuse their position. Without legal clarity, managing state assets through quasi-private entities like BPI Danantara will remain legally ambiguous, threatening justice and law supremacy.

Conclusion

Based on the discussion related to this problem, the following conclusions can be drawn: Losses incurred by BPI Danantara and State-Owned Enterprises are not classified as state financial losses, as assets are separated from state treasury through state capital participation, as per Articles 3H and 4B of the State-Owned Enterprises Law and Constitutional Court Decision No. 62/PUU-XI/2013. These assets follow corporate management principles rather than state financial administration. Any financial loss is the legal entity's responsibility, not the state's. However, BPI Danantara executives remain subject to criminal liability under Article 155 of Law No. 40 of 2007 on Limited Liability Companies, which states that corporate liability provisions do not exclude criminal law application. Thus, while BPI Danantara follows corporate

[26] Denny Indrayana, *Konstitusi Dan Mahkamah Konstitusi Dalam Transisi Politik Indonesia* (Jakarta: Kompas Media Nusantara, 2016).

governance principles protecting business risks, executives may face criminal charges for proven unlawful acts harming state or public interests.

The Business Judgment Rule (BJR) protects BPI Danantara's executives from criminal prosecution for high-risk investment decisions made in good faith, with due diligence, without conflicts of interest, and not for personal gain. This protection is codified in Article 3Y of the amended State-Owned Enterprises Law, affirming that corporate acts following BJR principles cannot trigger criminal liability without proven legal violations. However, breaching the Business Judgment Rule's principles may expose officers to civil and criminal liability, indicating deviation from professional standards and disqualifying executives from BJR protection. In such cases, executives must answer under applicable law, as BJR protection is not absolute immunity.

A primary obstacle to law enforcement for BPI Danantara stems from the regulatory overlap between State-Owned Enterprises Law and Anti-Corruption Law, creating jurisdictional uncertainty. The legal status of BPI Danantara executives, who are not classified as state officials, along with statutory immunity, limits the authority of enforcement institutions like the Corruption Eradication Commission (KPK), Attorney General's Office, Audit Board (BPK), and Financial Transaction Reports Center (PPATK) to investigate potential corruption in investment decisions. The situation is complicated when heads of these enforcement agencies serve on BPI Danantara's Oversight Committee, creating conflicts of interest and role ambiguity in enforcing criminal accountability against suspected personnel.

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Author Contributions Statement

Conceptualization and research design were formulated by PA and RA. Legal interpretation of the primary statutory materials and the Business Judgment Rule analysis were performed by PA and KR. The comparative study of global sovereign wealth funds and theoretical framework analysis using Welfare State Theory were conducted by RA and KR. The manuscript was written, reviewed, and finalized by all authors, with PA serving as the corresponding author.

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Conflict of Interest

The authors declare that there are no conflicts of interest regarding the publication of this article. The authors have no financial, professional, institutional, or personal relationships that could have influenced the research, analysis, interpretation, or presentation of the findings reported in this manuscript. All authors have reviewed the final content and explicitly agreed to its submission for publication in this journal.

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