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BUSINESS JUDGMENT RULE AND LIMITS OF LEGAL LIABILITY OF DANANTARA INVESTMENT MANAGEMENT AGENCY

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Abstract. The governance of state investment management bodies places directors in a strategic position that requires a careful balance between business decision-making flexibility and public accountability in managing separated state assets. The central challenge arises from the blurred boundary between legitimate business discretion and actions that may trigger legal liability. This article examines the legal construction of authority and responsibility of the directors of the Badan Pengelola Investasi Danantara through the perspective of the Business Judgment Rule and principles of sovereign investment governance. The analysis employs a statute-based approach, a conceptual approach, and a limited comparative approach with the governance models of Temasek (Singapore) and Khazanah (Malaysia), supported by library-based methods and qualitative normative analysis. The discussion focuses on the interaction between corporate law, state finance law, and the constitutional mandate of Article 33 of the 1945 Constitution of Indonesia. The findings highlight the urgency of establishing clearer normative boundaries to strengthen legal certainty, prevent abuse of authority, and preserve the effectiveness of strategic investment decision-making in state investment management.

Keywords: accountability; Business Judgment Rule; Danantara; state investment governanc

I. INTRODUCTION

In contemporary global economic governance, the role of the state has undergone a significant transformation from a passive regulator to an active economic actor. This shift is reflected in the growing prominence of *state capitalism*, a model in which governments directly manage strategic assets and investment portfolios through state-owned enterprises (SOEs) and sovereign investment vehicles [1], [2]. Rather than relying solely on market forces, states increasingly intervene through institutionalized investment mechanisms to secure long-term economic stability, national competitiveness, and public welfare.

Indonesia's economic system is constitutionally anchored in Article 33 of the 1945 Constitution, which mandates state control over strategic sectors of the economy for the greatest prosperity of the people. This constitutional framework legitimizes the state's involvement not only as a regulator but also as a direct participant in economic activities through SOEs and national investment institutions [3]. Consequently, investment governance becomes a crucial instrument for translating constitutional mandates into operational economic policy.

In line with global trends, many countries have established Sovereign Wealth Funds (SWFs) as strategic tools for managing state assets in a professional and commercially oriented manner. SWFs are generally designed to separate investment management from day-to-day political intervention while maintaining public accountability [4], [5]. International experiences demonstrate that SWFs such as Temasek Holdings in Singapore and Khazanah Nasional Berhad in Malaysia have contributed significantly to national economic resilience by combining corporate governance standards with long-term state objectives [6].

Indonesia has followed this trajectory through the establishment of Badan Pengelola Investasi Danantara (Daya Anagata Nusantara), which was formally institutionalized under Law Number 1 of 2025 as part of the reform of the SOE governance framework. Danantara is mandated to consolidate and optimize state investments, functioning as a strategic investment holding that manages separated state assets through operational and investment subsidiaries [7]. As a state investment authority, Danantara embodies the dual objectives of maximizing investment returns while advancing national development priorities.

However, the governance structure of Danantara presents a complex legal configuration. Although its subsidiaries are incorporated as limited liability companies, Danantara itself operates under a hybrid regime that intersects public law and private corporate law [8]. This dualistic legal character raises fundamental questions regarding the nature of managerial discretion, accountability mechanisms, and liability standards applicable to its directors and executives.

One of the most contentious issues arising from this hybrid structure concerns the distinction between legitimate business risk and state financial loss. In the Indonesian legal context, losses incurred by SOEs have often been conflated with state financial losses, potentially triggering criminal liability under anti-corruption laws [9]. This approach has generated uncertainty for corporate decision-makers, particularly when strategic business decisions result in unfavorable financial outcomes despite being made in good faith and with due diligence.

Within corporate law theory, the Business Judgment Rule (BJR) serves as a foundational doctrine that shields directors from liability for business decisions made prudently, in good faith, and in the best interest of the company [10]. The rationale underlying BJR is the recognition that courts are ill-equipped to second-guess complex business decisions ex post, and that excessive legal exposure may discourage responsible risk-taking essential for corporate growth [11].

In Indonesia, the Business Judgment Rule is implicitly recognized in Articles 92 and 97 of the Company Law (Law No. 40 of 2007). Nevertheless, its application within SOEs and state investment entities remains inconsistent and underdeveloped [12]. The absence of clear normative guidelines has led to divergent interpretations by law enforcement agencies and courts, often resulting in the criminalization of managerial decisions that should fall within the realm of acceptable business judgment.

The establishment of Danantara further amplifies this legal ambiguity. As an institution entrusted with managing separated state assets while operating through corporate entities, Danantara occupies a legal "grey zone" between public accountability and private law autonomy [13]. This condition complicates the determination of whether managerial actions constitute government actions (government acts) or corporate actions (corporate acts), particularly when investment decisions lead to financial losses.

Comparative legal studies suggest that clearer separation between state ownership functions and corporate management such as those adopted by Temasek and Khazanah enhances legal certainty and governance effectiveness [14]. These models demonstrate that strong corporate governance frameworks, combined with well-defined liability protections, can preserve both accountability and managerial flexibility in state-owned investment institutions.

Against this backdrop, this article aims to examine the legal construction of authority and liability of Danantara's management through the lens of the Business Judgment Rule. By analyzing statutory regulations, doctrinal principles, and comparative practices, this study seeks to identify normative gaps in the current legal framework and propose a more coherent approach to balancing legal accountability with effective investment decision-making in state investment governance [15].

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II. RESEARCH METHOD

This type of research is a normative legal research oriented towards the study of the legal norms that govern the authority and accountability of the management of the Investment Management Agency (BPI) Danantara in making investment decisions. A normative approach is used to examine the legal construction that frames the application of the principles of Business Judgment Rule in the management of segregated state wealth. According to Peter Mahmud Marzuki, the use of normative legal research is a step to find a rule of law, legal principles, and legal doctrine, with the aim of answering the legal issues faced [16].

This research presents conceptual and normative novelty through the development of a new analytical framework that integrates the doctrine of Business Judgment Rule (BJR) with the public-private legal character of the Danantara Investment Management Agency as a separate state wealth management entity. Previous studies have generally discussed the Business Judgment Rule in the context of a purely limited liability company or only placing SOEs as ordinary business entities, without specifically examining the dynamics of legal liability of the management of state investment management institutions operating in the gray area between the corporate law regime and the state financial law regime.

III. RESULT & DISCUSSION

1. Application of *the principle of Business Judgment Rule* to the management of BPI Danantara in strategic business decision-making on the management of separated state assets

State wealth that is separated as a state capital investment in Danantara is included in one of the scopes of state finance as stated in article 2 letter g of the State Finance Law "state wealth/regional wealth managed by itself or by other parties in the form of money, securities, receivables, goods, and other rights that can be assessed with money, including wealth that is separated from state companies/regional companies". This means that the state wealth that has been separated is still said to be state wealth.

W. Riawan Tjandra stated that the formulation of state finance in Law Number 17 of 2003 uses a broad and comprehensive definition construct. The approach is intended to provide a stronger guarantee of protection for state wealth sourced from public funds, both from taxes, levies, and Non-Tax State Revenue (PNBP). The consistency of the use of this broad definition is directed to close the loopholes that were previously contained in the legislative arrangements, so that the security of state assets can be carried out more effectively and comprehensively [17].

Extensive regulations in the State Finance Law were then followed by the Law on the Eradication of Corruption. In the General Explanation of the Corruption Law, it is explained that State Finance covers all state wealth in any form, whether separated or not, including all parts of state wealth along with the rights and obligations that arise because they are under the control, management, and accountability of SOEs/BUMDs, foundations, legal entities, and companies involving third parties based on agreements with the state. This formulation is the basis that opens up space for criminalization of business risks arising from the decision of the Board of Directors [18].

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However, if it is understood in relation to state capital in Danantara where the state itself owns 99 (ninety-nine percent) in SOEs which are series B shares through Danantara, the ownership of Danantara which oversees SOEs is severed from the relationship between state finances and SOE holdings that are legal entities of limited liability companies, so that the state finances cannot be considered public finance, but it has turned into private finance that is subject to Law 40. Year 2007 concerning Limited Liability Companies. Finance, which includes the State Budget, APBD and SOEs as well as BUMD, is not appropriate to use the term state finance, which is more appropriate to use the term Public Finance [12]

Doctrinally and normatively, state losses and business (corporate) losses are two different legal categories. State losses refer to the reduction of state wealth that resides in state finances, while business losses are an inherent risk of corporate activities that are subject to corporate law. The dominance of multi-interpretation norms in the Law on the Eradication of Corruption, especially Article 2 and Article 3, accompanied by the tendency to instrumentalize the law through nationalistic discourse and a broad interpretation of Article 33 of the 1945 Constitution, has practically weakened the position and effectiveness of the application of *the Business Judgment Rule* in the Indonesian legal system [19].

The dualism of contradictory views creates uncertainty and difficulties with clear and firm limits on the occurrence of state losses in SOEs entering the public or private sphere. The lack of clarity in the regulation regarding the limits of authority, audit mechanisms, and the accountability of the board of directors that cause losses to the company shows that the governance of SOEs has the potential to become vague and unable to clearly distinguish between the financial position of the state and the company's private finances. But one thing is certain that not all losses to SOEs are state losses that can ultimately ensnare the directors [20].

The birth of Law Number 16 of 2025 concerning the Fourth Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises (SOEs) brought major changes to the institutional structure and mechanism of segregated state wealth management. One of the fundamental updates is the affirmation of the role of BPI Danantara as an Indonesian legal entity that carries out a strategic function in the management of state investments. This law places Danantara not only as a financial institution, but as a business decision-making organ that represents the interests of the state in investment holding and operational holding of SOEs.

As has been raised in the introduction, several SOEs which are regulated by a Danantara operational holding in a regulatory mechanism, as well as the declaration of the form of holding as a limited liability company so that the legal regulation is closely related to Law Number 40 of 2007 concerning Limited Liability Companies. Since SOEs, in addition to playing a role as state administrators, also function as economic actors and market players who are tasked with supporting the welfare of the community, not automatically every policy taken by the board of directors can be directly qualified as an action that causes state losses so that it is more appropriate as a business loss [21].

Danantara as an entity that acts as a superholding of SOEs is constructed to apply the principles of *Good Corporate Governance* (GCG) in every aspect of its management. The implementation of GCG is a fundamental foundation so that the decision-making process runs transparently, accountably, independently, and oriented towards the interests of the company and its stakeholders. In this framework, the Limited Liability Company Law (UU PT) also contains important principles that are referenced in corporate governance, namely *the Business Judgment Rule*. The relationship between the principle *of Business Judgment Rule* and the existence of an affirmation of the position of SOEs as state assets that are separated from state finances, as stated in Article 4A paragraph (5) of the SOE Law and in Article 4B of the SOE Law which contains "Profits as referred to in Article 2 paragraph (1) letter a or losses experienced by SOEs are gains or losses to SOEs".

Business Judgment Rule is one of the doctrines in corporate law that protects the Board of Directors from business decisions which are the actions of a company that is not responsible for a loss incurred by an act of taking a business, which if the action by the Board of Directors is based on good faith and prudence. Through the application of the principles of *Business Judgment Rule*, Limited Liability Companies obtain a legal umbrella that affirms that business decisions do not require justification from shareholders or court intervention. The protection afforded by *the Business Judgment Rule* covers not only the substance of the decision, but also the process of making that decision. The directors are exempt from prosecution as long as they do not act irrationally. This protection is based on the belief that a judge may not have sufficient knowledge in the business field to be able to critically assess the decisions made by the board of directors [10].

The principle *of Business Judgment Rule* is implied in the provisions of Article 92 and Article 97 of Law Number 40 of 2007 concerning Limited Liability Companies. Article 92 paragraph (1) emphasizes that the board of directors is in charge of organizing the management of the company in accordance with the purpose and objectives of its establishment. Furthermore, Article 92 paragraph (2) provides space for the board of directors to carry out the management based on the policy considered most appropriate, as long as it remains within the limits set by the law and the company's articles of association.

The principle *of Business Judgment Rule* which gives flexibility to the board of directors in making strategic decisions in the best interests of the company is the main foundation in carrying out leadership and management functions. The breadth given to the board of directors is needed in accordance with the goals of the two of them, namely building state-owned enterprises (SOEs) that are agile, competitive, and create sustainable value. The situation is that there is no comprehensive understanding of the elements of *Good Corporate Governance* that are assessed in its implementation. The weakness to the principle of concern that the directors/management can take refuge behind *the Business Judgment Rule* as a legal basis that provides free space in strategic decision-making, thus opening up opportunities for them to carry out corporate interests while carrying the personal

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long-term agenda of the management is because it cannot be separated from political influence.

2. Limitation of the legal liability of BPI Danantara management for business decisions that cause losses to operational holding and investment holdings managed by it

The Sovereign Wealth Fund (SWF) was established to increase the value of the country's wealth in a sustainable manner. SWFs are understood as investment funds that manage assets for the long-term benefit, financial stability, and development of strategic sectors. According to the Santiago Principles (2008), SWF is obliged to implement governance standards that uphold transparency, accountability, and independence in order to reduce various risks, including potential investment losses. The application of strong governance principles is a must for BPI Danantara so that its implementation takes place effectively, professionally, and free from corruption, collusion, and nepotism practices [22].

The update of the State-Owned Enterprises (SOEs) Law has encouraged changes in Danantara's governance practices. Law No. 16 of 2025 tends to maintain the grand framework that has been regulated in Law No. 1 of 2025. One of the crucial changes in Law 1/2025 is the strengthening of the *Business Judgement Rule paradigm* [23]. The new provisions of Article 3X of Law 16/2025 stipulate that BPI Danantara organs and employees are obliged to comply with the principles of good governance and business. On the other hand, this regulatory change deletes Article 9G and Article 87 of Law 1/2025, which previously emphasized that directors, board of commissioners, supervisory boards, and employees of SOEs are not classified as state administrators. The abolition of this article has caused the regulatory structure regarding the status and governance of state-owned officials and employees to undergo a rearrangement.

The restructuring of Danantara's management structure has direct consequences for the pattern of legal accountability of each organ in it. Danantara's management is led by a *Chief Executive Officer* (CEO). The existence of Article 3F paragraph (2) letter c mandates the establishment of Investment Holding and Operational Holding. Investment Holding is led by the *Chief Investment Officer* (CIO), while *Operational Holding* is led by the *Chief Operating Officer* (COO). The Board of Directors or management as an organ of the company is an inseparable element. The dependence of legal entities on the board of directors gives birth to a fiduciary duty relationship between the company and its management. Fiduciary duty is an obligation that requires the directors to act responsibly in the interests of the company they represent, thereby creating dynamics related to the burden of liability [24].

Article 3F paragraph (2) regulates Danantara's authority to provide guarantees for investment holdings with the approval of the supervisory board. Furthermore, letter h emphasizes Danantara's obligation to set strategic guidelines and policies in the field of development and investment. In the future, as an investment management institution, Danantara has the potential to obtain optimal returns from the two holdings. However, business and investment dynamics always contain risks, including potential losses. This risk must be predictable through adequate calculations. Therefore, losses from holding activities do not necessarily become the basis for criminalization against the management, as long as there is no violation in the form of moral hazard.

Investment activities always contain risks, including potential losses if dividend distribution from strategic holdings or state-owned entities is carried out without financial prudence. Article 4B of Law No. 1 of 2025 emphasizes that every profit or loss is fully the responsibility of the relevant SOE entity. When BPI Danantara was first introduced, the market showed a skeptical attitude that reflected doubts about the effectiveness and openness of its management mechanisms. The implementation of Danantara's duties can be disrupted by the manager's track record, potential political pressure, and the risk of corruption, collusion, and nepotism that can ultimately cause losses. An example is the abuse of authority that is contrary to the principles of transparency and accountability.

Based on the legal framework, BPI Danantara management can be held legally liable for business decisions that are detrimental to the holding only if the decision is born from unlawful acts, mistakes, or negligence. Errors or omissions include situations such as: decision-making without an adequate feasibility study (beyond the limits of business fairness), speculative actions that are not in line with the company's objectives, neglect of required procedures and permits, or decisions taken in the interests of a particular individual or group (*self-dealing* or conflict of interest).

If losses arise, the management can be held accountable civilly or criminally if it meets the elements. In internal civil matters, the company's organs (such as the board of commissioners or shareholders) can demand the management to compensate the company's losses in accordance with Article 97 paragraph (3) of the PT. These claims can be realized through the GMS (for example, the decision of shareholders to claim compensation from negligent directors) or through a derivative action by shareholders [25] (*derivative action*). Danantara administrators who are proven to be negligent can be asked to personally bear losses to the holding as a result, for example due to investment failure due to not carrying *out due diligence.* Criminally, liability arises when a business decision is accompanied by an act against criminal law, such as corruption or fraud. For example, if the management accepts bribes to make adverse investment decisions, he can be charged with the Corruption Law because of the existence of corrupt men's rea. In this case, *the Business Judgement Rule* (BJR) does not provide protection because the goodwill requirements are not met. Similarly, if the actions of the administrator exceed the authority (*ultra vires*), he can be personally liable to the aggrieved third party.

A Limited Liability Company consists of several elements, namely the separation of assets, clear objectives, independent interests, and an organized organizational structure. The element of separation of wealth means that the company's capital or assets are separated from the personal wealth of the founders, investors, and shareholders. Shareholders, including BPI Danantara as the parent entity, are basically not personally responsible for the company's liabilities or losses in excess of

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the value of the invested capital. However, in exceptional circumstances such as abuse of a legal entity form or practices that are contrary to the principle of separation of entities, personal liability may be requested. Therefore, as long as Danantara's management acts in accordance with the law and does not use holding as a means to avoid liability, they still receive the protection of the principle of separation of legal entities that separate the responsibility and wealth of the parent from its subsidiaries [25].

A concrete indicator that the management is free from responsibility is if the entire decision-making process has been carried out according to the principles *of Good Corporate Governance*: transparent, accountable, accountable, independent, and reasonable. In addition, the GMS forum plays an important role. If the GMS of the holding approves the annual report and grants an *acquit et de charge* to the directors for management actions during one financial year, then the directors (including the Danantara management who sit on it) can generally no longer be sued for decisions in that period that have been approved by the GMS [18].

Internally, the management (directory) of SOEs, including the management of Danantara, bears fiduciary responsibility for the company they manage. They are obliged to act in the best interests of the company and are responsible to the capital owners (the State of the Republic of Indonesia and BPI Danantara) and are supervised by the board of commissioners/supervisory board. In the event of a loss due to a management decision, this internal accountability mechanism applies: shareholders or commissioners can request clarification, evaluate performance, or dismiss directors. The claim for civil damages against the management is made on behalf of the company through a resolution of the GMS or the board of commissioners, not by the shareholders personally [26].

On the other hand, in external relationships, the company's management generally does not deal directly with third parties for the company's actions, because what is legally bound is the company's own legal entity. If BPI Danantara's operational holding enters into a business contract with an outside partner and then suffers losses or defaults, the company (holding) is legally responsible to the partner as the legal subject, not the individual management. A third party cannot necessarily sue Danantara's management personally to cover the company's contractual losses, as long as the management acts in his official capacity as a representative of the company. This is a manifestation of the principle of limited liability and the separation of corporate legal identity.

IV. CONCLUSIONS

The position of the Danantara Investment Management Agency, which is located between the public law and private law regimes, has given birth to normative tensions in determining the limits of the management's accountability for business decisions. This ambiguity has an impact on blurring the distinction between state losses and corporate losses, as well as increasing the risk of criminalization of managers when investment decisions do not yield optimal results. In this context, the Business Judgment Rule should be understood as an instrument of legal protection inherent in business decision-making as long as it is carried out in good faith, prudence, and business rationality, not as an absolute shield that exempts from all forms of liability

Strengthening the role of the Business Judgment Rule in Danantara governance requires a reformulation of norms that expressly establish objective parameters to distinguish legitimate business risks from unlawful acts. Going forward, arrangements need to ensure that BJR protection is balanced with effective, transparent, and accountable oversight mechanisms, so as not to undermine public accountability. With this construction, legal certainty for the management can be strengthened without sacrificing the principle of prudence in the management of state assets, while maintaining the credibility of Danantara as a professional and globally competitive state investment management institution

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