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Criminal Liability in the Energy Sector Corruption Scandal: A Legal Analysis of Abuse of Authority in State-Owned Enterprises

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ABSTRACT

Corruption in the energy sector involving State-Owned Enterprises (SOEs) is a form of abuse of authority that significantly impacts state financial losses and weakens corporate governance. The complexity of energy sector management, which involves strategic business decisions, often raises debates about the boundaries between legitimate business risks and unlawful acts that can be qualified as corruption. This condition creates the need for a legal review of the construction of criminal liability of SOE officials in energy sector management. This study aims to analyze the legal construction of abuse of authority in corruption in the management of SOEs in the energy sector and examines the forms of criminal liability of SOE officials from the perspective of criminal law and corporate governance. The research method used is normative legal research with a statutory approach, a conceptual approach, and a case approach analyzed qualitatively. The results show that the criminal liability of SOE officials is determined by the fulfillment of the elements of fault, a causal relationship, and the existence of abuse of authority that causes state losses. The business judgment rule principle can provide legal protection for business decisions taken in good faith and based on the principle of prudence, but does not apply if there is a conflict of interest, bad faith, or a violation of the principles of good corporate governance. Therefore, it is necessary to construct a criminal liability model that is able to clearly distinguish between legitimate business risks and abuse of authority so that corruption eradication remains effective without hindering legitimate business decision-making in the management of state-owned enterprises in the energy sector.

Keywords: Criminal Liability, Energy Sector Corruption, Abuse of Authority, State-Owned Enterprises.

INTRODUCTION

Corruption is a fundamental problem in Indonesia's legal and governance system, which still exhibits a high level of complexity. From the perspective of the rule of law (rechtstaat) theory, governance should be based on the principles of the rule of law, accountability, and effective oversight of the use of public authority.[1] However, in practice, corruption thrives in strategic sectors with high economic value, including the energy sector, which is the backbone of national development. The energy sector plays a

[1] Hertanto, Y., Zahari, I., Faisal, F., & Triestanto, J. (2026). Kebijakan Publik Pemerintah Dalam Perspektif Maslahah Dan Prinsip Negara Hukum. *Jurnal Kolaboratif Sains*, *9*(1), 1451-1461. https://doi.org/10.56338/jks.v9i1.10233

vital role in ensuring the availability of resources for the community and supporting sustainable national economic growth.[2] Therefore, any deviation in its management will not only result in financial losses for the state, but also have the potential to disrupt economic stability and the welfare of society at large.

The energy sector's vulnerability to corruption is inextricably linked to its sectoral characteristics, which involve significant investment and various economic and political interests. From the perspective of legal political economy theory, sectors with high economic value tend to become contested spaces for various actors seeking to profit through access to state power and resources.[3] The complexity of regulations governing energy management, from exploration and production to distribution and investment cooperation, creates considerable discretion for public officials and business managers. While this is necessary to support flexible decision-making in strategic sectors, it also poses the potential for abuse if inadequate oversight mechanisms are not in place. Consequently, the energy sector is often vulnerable to abuse of power, leading to corruption.

From the perspective of the theory of abuse of authority in administrative law and criminal law, corruption in the energy sector generally occurs when officials who have public authority use their power in a way that is not in accordance with the purpose for which the authority was granted.[4] This principle is in line with the principle of detournement de pouvoir, namely the deviation of the use of authority from the objectives that should be determined by statutory regulations.[5] In practice, abuse of authority often manifests itself in the manipulation of energy project procurement processes, the establishment of non-transparent investment policies, and the granting of illegitimate benefits to certain parties. These irregularities ultimately not only harm state finances but also undermine the integrity of energy sector governance. Therefore, corruption in the energy sector must be understood not simply as a violation of criminal law, but also as a systemic failure in the management of public authority.

Empirically, various corruption cases in the energy sector show a relatively similar pattern: the involvement of officials or managers holding strategic positions in the decision-making process. This strategic position allows individuals to influence policy, determine project winners, or direct business partnerships to certain parties with economic interests. This phenomenon indicates that corruption in the energy sector is often closely linked to the abuse of power inherent in the organizational structure of companies or state institutions. From the perspective of organizational and power theory, the greater the authority held by a position, the greater the potential for abuse if not balanced by an effective oversight system.[6] This condition explains why corruption cases

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[2] Nurhidayanti, M. (2025). Pengelolaan Sumber Daya Energi Terbarukan Berbasis Komunitas untuk Ketahanan Energi dan Perekonomian Lokal. *Jurnal Energi Dan Ketahanan Vol*, *1*, 01-26. https://jurnal.samudrailmu.com/index.php/jek/article/view/19

[3] Zahwa, B. A. A., & Sari, P. I. (2025). Analisis Politik Ekonomi Dalam Pembangunan Infrastruktur Di Indonesia. *Jurnal Media Akademik (JMA)*, *3*(11). https://doi.org/10.62281/1t6kxj58

[4] Audia, S. (2025). Makna penyalahgunaan kewenangan dalam perkara tindak pidana korupsi. *Journal of Anti-Corruption*, 36-51. https://doi.org/10.30872/action.v1i1.1665

[5] Pietersz, J. J. (2024). Rekonseptualisasi Penyalahgunaan Wewenang Dalam Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan. *Konferensi Nasional Asosiasi Pengajar Hukum Tata Negara Dan Hukum Administrasi Negara*, *2*(1), 411-430. https://doi.org/10.55292/maarpt29

[6] Putra, Z., Wiridin, D., & Hariyadi, S. (2023). Telaah kritis penyalahgunaan wewenang jabatan (abuse of power) dalam perspektif UU Nomor 31 Tahun 1999 jo UU Nomor 20 Tahun 2001. *Jurnal Interpretasi Hukum*, *4*(3), 663-671. https://doi.org/10.22225/juinhum.4.3.7507.663-671

in the energy sector often involve high-level officials in state-owned enterprises and related government institutions.

Empirical data collected by the Corruption Eradication Commission (KPK) shows that the energy sector is highly vulnerable to corruption. This vulnerability is particularly relevant to energy project procurement processes, natural resource management, and long-term investment partnerships with the private sector. The complexity of business contracts and the sheer value of investments often create opportunities for collusion between government officials and business actors.[7] Furthermore, weak transparency in some strategic decision-making processes also increases the risk of irregularities. Thus, corruption in the energy sector is not merely an individual issue but also reflects structural problems within the strategic sector's governance system.

Several high-profile cases involving officials at PT Pertamina (Persero) and other energy projects demonstrate the potential for significant state losses resulting from corruption in this sector. These losses are not only related to the direct loss of state funds but also encompass broader economic losses resulting from distorted energy policies and inefficient management of national resources. From the perspective of distributive justice theory, corruption in the energy sector can lead to unfair distribution of natural resource benefits that should be used to the greatest benefit of the people.[8] Therefore, addressing corruption in the energy sector must be prioritized in national resource governance reform efforts. This approach is crucial to ensuring that energy management truly delivers optimal benefits for the public interest.

Normatively, the Indonesian legal system has provided various legal instruments to combat criminal acts of corruption, particularly through Law Number 31 of 1999, which was later amended by Law Number 20 of 2001. Both regulations expressly stipulate that anyone who abuses authority, opportunity, or means due to their position or position that can harm state finances can be held criminally accountable. This provision reflects the application of the principle of nullum crimen sine lege, namely that an act can only be punished if it has been clearly regulated in legislation. With this regulation, the state seeks to provide a strong legal basis for law enforcement officials in eradicating corruption. However, the effectiveness of these norms remains highly dependent on the clarity of interpretation and consistency in their application.

In addition to regulations concerning criminal acts of corruption, the status and management of state-owned enterprises (SOEs) are also regulated by Law Number 19 of 2003, which emphasizes that SOEs, as business entities, must adhere to the principles of good corporate governance. These principles encompass transparency, accountability, responsibility, independence, and fairness in company management. From a corporate governance perspective, the application of these principles is intended to prevent conflicts of interest and minimize the risk of abuse of authority by company managers.[9] However, in practice, the implementation of these governance principles often faces

[7] Nasution, R. P., & Calvin, C. (2025). Keterlibatan Sektor Swasta dalam Praktik Korupsi Pengadaan Barang dan Jasa Pemerintah Daerah: Tinjauan Hukum dan Etika Bisnis. *JPeHI (Jurnal Penelitian Hukum Indonesia)*, *6*(01), 1-15. https://doi.org/10.61689/jpehi.v6i01.739

[8] Merdiani, W., & Ruslina, E. (2025). Peran Hukum dalam Peningkatan Kesejahteraan melalui Ekonomi Berbasis Keadilan: Role of Law in Enhancing Welfare through a Justice-Based Economy. *Res Nullius Law Journal*, *7*(1), 63-72. https://doi.org/10.34010/rnlj.v7i1.15524

[9] Wahyuni, P., Harahap, A. H., Batubara, R. L., & Zein, A. W. (2026). Kajian Kualitatif Teori-Teori Good Corporate Governance Dalam Tata Kelola Perusahaan. *Jurnal Ilmiah Ekonomi Dan Manajemen*, *4*(1), 622-627. https://doi.org/10.61722/jiem.v4i1.8259

various obstacles, particularly when business interests intersect with political interests or public policy. This situation can create a gray area that opens up opportunities for irregularities in the management of SOEs.

Another issue that arises in law enforcement practice concerns the boundary between legitimate business policies and acts of abuse of authority that can be classified as corruption. In corporate law theory, the concept of the business judgment rule is recognized, a principle that provides protection to directors in making business decisions as long as they are made in good faith, with due care, and in the best interests of the company.[10] This principle is essentially intended to encourage management to boldly make strategic decisions without fear of disproportionate legal risks. However, in the context of criminal law on corruption, the application of this principle often sparks debate about the boundary between reasonable business risks and actions that unlawfully exceed authority. This debate highlights the tension between the need to protect business decision-makers and the demands of eradicating corruption.

This situation ultimately raises the issue of normative ambiguity in determining the parameters of abuse of authority in the context of state-owned enterprise management, particularly in the energy sector. This normative ambiguity has the potential to create legal uncertainty, as law enforcement officials may have differing interpretations of the elements of corruption. From the perspective of the legal certainty theory put forward by legal experts such as Gustav Radbruch, a legal norm must be clear in order to provide definitive guidance for both the public and law enforcement officials.[11] If legal norms are vague or ambiguous, their application has the potential to lead to injustice and inconsistency in law enforcement. Therefore, clarifying the boundaries between business policy and abuse of authority is a crucial issue in the study of criminal law regarding corruption.

This issue is further complicated by the unique position of SOEs as entities situated between public and private legal regimes. On the one hand, SOEs perform commercial functions that demand efficiency and flexibility in business decision-making, similar to private companies. However, on the other hand, SOEs remain connected to state finances and perform strategic public service functions. This dual character often gives rise to debate over whether any losses suffered by SOEs can automatically be classified as state losses under the context of criminal corruption law. This debate demonstrates that determining criminal liability in energy sector corruption cases cannot be separated from a comprehensive analysis of the legal character of SOEs themselves.

Based on these various issues, a more in-depth legal analysis is needed regarding the construction of criminal liability for abuse of authority in energy sector corruption scandals involving state-owned enterprises (SOEs). This analysis is crucial for critically examining the normative boundaries regarding the element of abuse of authority and the relationship between state losses and business decisions taken by SOE managers. This approach is expected to provide clarity regarding the legal parameters for determining when an action can be classified as a criminal act of corruption. Clarity of these parameters is crucial for ensuring legal certainty while maintaining a balance between

[10] Priyono, E., Surono, A., & Sadino, S. (2022). Doktrin business judgment rule dalam memberikan perlindungan hukum kepada direksi bumn (studi kasuS PT. PLN). *Jurnal Magister Ilmu Hukum: Hukum dan Kesejahteraan*, *7*(2), 29-43. http://dx.doi.org/10.36722/jmih.v7i2.1264

[11] Azzahra, S. N., Saragih, Y. M., Yusuf, M., & Pasaribu, U. R. (2025). Analisis yuridis tindak pidana korupsi suap berdasarkan teori kepastian hukum. *Jurnal Multidisiplin Dehasen (MUDE)*, *4*(3), 593-598. https://doi.org/10.37676/mude.v4i3.8533

efforts to eradicate corruption and the need for flexibility in energy sector management. Thus, the study of criminal liability in energy sector corruption scandals is relevant for strengthening the legal system in overseeing the governance of the country's strategic resources in an accountable and equitable manner.

METHODOLOGY

The research method used in this article is normative legal research, which positions law as a norm enshrined in legislation and as legal principles developed in judicial doctrine and practice. This approach is used to examine the construction of criminal liability for abuse of authority in the energy sector corruption scandal at State-Owned Enterprises (BUMN). According to Peter Mahmud Marzuki, normative legal research is the process of discovering legal rules, legal principles, and legal doctrines to address the legal issues at hand.[12] This research focuses on analyzing the legal norms governing corruption and the management of state-owned enterprises (SOEs), particularly those related to abuse of authority and state financial losses. Therefore, this research examines not only the text of the legislation but also the construction of legal thought as it develops in academic literature and law enforcement practice.

The approaches used in this research include a statutory approach and a conceptual approach to analyze legal regulations related to criminal liability in corruption cases in the energy sector. The statutory approach is used to examine the provisions of Law Number 31 of 1999 as amended by Law Number 20 of 2001 and Law Number 19 of 2003 which regulate the status and management of State-Owned Enterprises. Meanwhile, the conceptual approach is used to understand the concepts of abuse of authority, criminal liability, and the principles of corporate governance from a legal theory perspective. As stated by Soerjono Soekanto, normative legal research is conducted by examining library materials or secondary data that include primary legal materials, secondary legal materials, and tertiary legal materials as the basis for systematic legal analysis.[13]Analysis of all legal materials was carried out qualitatively with the aim of obtaining a comprehensive understanding of the legal parameters in determining criminal liability for abuse of authority in the energy sector corruption scandal at BUMN.

RESULTS AND DISCUSSION

Legal Construction of Abuse of Authority in Criminal Acts of Corruption in the Management of State-Owned Enterprises in the Energy Sector

In the perspective of state administrative law, the concept of abuse of authority or detournement de pouvoir is one of the fundamental doctrines used to assess whether an action by a government official is still within the corridor of legitimate authority or has deviated from the purpose of granting that authority. The term detournement de pouvoir, which originates from the French legal tradition, conceptually refers to the action of an official who uses his authority not for the purposes stipulated by statutory regulations, but

[12] Arifuddin, Q., Riswan, R., HR, M. A., Bulkis, B., Latif, A., Salma, S., ... & Indah, N. (2025). *Metodologi penelitian hukum*. PT. Sonpedia Publishing Indonesia.

[13] Sukmawan, YA, & Damayanti, D. (2025). Normative and Empirical Legal Research Methods as a Strategy for Strengthening the Perspective of Legal Studies. Notary Law Journal, 4(3), 114-128. https://doi.org/10.32801/nolaj.v4i3.116

for other personal, group, or specific interests that are contrary to the public interest.[14] Within the framework of modern administrative law theory, public authority is basically granted by law with specific objectives that must be carried out proportionally and responsibly.[15] If the authority is used for a purpose other than the purpose for which it was granted, the action is legally classified as a violation of power. The legal consequence of such an action in administrative law is the annulment of the official's decision or administrative action, as it is deemed legally invalid. Therefore, the concept of abuse of authority essentially serves as a control instrument against the use of state power to prevent its misuse by public officials.

In administrative law doctrine, abuse of authority has different characteristics from formal violations of authority.[16] In practice, an official may act within the limits of the authority formally granted by law, but the purpose of using that authority deviates from the intent established by legal norms. This situation indicates that abuse of authority is not always related to an explicit excess of authority, but rather related to a deviation from the purpose of using that authority. From the perspective of the principle of legality in administrative law, every action of a state official must be based on legitimate authority and carried out in accordance with the objectives established by statutory regulations.[17] Deviations from these objectives indicate a violation of the principles of good governance and good governance. Therefore, abuse of authority is essentially a deviation from the purpose of granting authority, which should be used for the public interest. If such actions result in state losses or provide illegitimate benefits to certain parties, they not only have administrative consequences but can also develop into criminal law issues.

Conceptually, abuse of authority needs to be distinguished from procedural deviations and abuse of office because the three have different legal characteristics. Abuse of authority (détournement de pouvoir) focuses on the deviation from the intended use of authority, namely when formally legitimate authority is used for purposes inconsistent with the public interest. Conversely, procedural deviations relate to violations of the procedures or stages established by laws and regulations in the administrative decision-making process. Meanwhile, abuse of office places more emphasis on the actor aspect, namely the actions of officials who exploit their position or power to obtain illegitimate personal or group benefits. This conceptual distinction is important because each form of deviation has different legal consequences in the Indonesian legal system. In administrative law, procedural deviations and abuse of authority can lead to the annulment of administrative decisions, while in criminal law such actions can be classified as criminal offenses if they meet certain elements.[18] Therefore, the distinction between these three concepts has important implications in determining whether an action

[14] Audia, S. (2025). Makna penyalahgunaan kewenangan dalam perkara tindak pidana korupsi. *Journal of Anti-Corruption*, 36-51. https://doi.org/10.30872/action.v1i1.1665

[15] Muklis, M. (2026). Kewenangan Pemerintahan Dalam Perspektif Hukum Administrasi Negara. *Iuris Studia: Jurnal Kajian Hukum*, *7*(1), 1-6. https://doi.org/10.55357/is.v7i1.1153

[16] Darmawan, D., & Pattiasina, L. P. (2023). Konstruksi/Karakter Hukum Penyalahgunaan Wewenang dan Menyalahgunakan Kewenangan Dalam Tindak Pidana Korupsi. *MATAKAO Corruption Law Review*, *1*(1), 46-64. https://doi.org/10.47268/sasi.v27i4.679

[17] Luthfi, M. K. (2024). Pertanggungjawaban Atas Penggunaan Diskresi Oleh Pejabat Pemerintah Dari Sudut Pandang Hukum Administrasi Negara. *JURNAL ILMIAH NUSANTARA*, *1*(4), 299-311. https://doi.org/10.61722/jinu.v1i4.1755

[18] Rizkyta, A. P., & Ningsih, B. R. (2022). Penyalahgunaan wewenang berdasarkan pengadilan tata usaha negara dan pengadilan tindak pidana korupsi. *Esensi Hukum*, *4*(2), 131-138. https://doi.org/10.35586/esensihukum.v4i2.161

is still within the realm of administrative violations or has developed into a criminal act of corruption.

The relationship between the concept of abuse of authority in administrative law and the crime of corruption in criminal law demonstrates a close connection between the two legal regimes. From an administrative law perspective, abuse of authority is essentially a violation of the principles of good governance and can lead to the annulment of an invalid administrative decision.[19] However, when the abuse of authority results in state financial losses or provides illegitimate benefits to certain parties, the act can be classified as a criminal act of corruption from a criminal law perspective. This demonstrates that criminal law functions as an ultimum remedium, used when administrative violations have resulted in more serious impacts on state interests. In other words, abuse of authority can be a gateway to criminal liability if it fulfills the elements of an unlawful act and results in losses to state finances. This relationship demonstrates that the analysis of abuse of authority cannot be separated from the interaction between administrative law and criminal law within the national legal system.

Normatively, the regulation regarding abuse of authority in criminal acts of corruption in Indonesia is explicitly regulated in Law Number 31 of 1999 as amended by Law Number 20 of 2001. One provision that specifically regulates abuse of authority is Article 3, which states that anyone who, with the intention of benefiting themselves, another person, or a corporation, abuses the authority, opportunity, or means available to them due to their position or position that could harm state finances can be punished. This provision shows that criminal law on corruption pays special attention to the misuse of authority by public officials. The element "due to position or position" emphasizes that the crime can only be committed by someone who has certain authority derived from the position they hold. Thus, public office is a major factor that allows for abuse of authority in criminal acts of corruption. This norm also shows that criminal law on corruption seeks to protect the integrity of public office from abuse of power.

The element of "abusing authority, opportunity, or means due to position" in the provision indicates that abuse of authority can occur in various forms of actions related to the use of power inherent in a particular position. Authority can be abused when an official acts beyond the limits of his authority, mixes the authority he holds, or uses that authority arbitrarily for illegitimate purposes. Opportunity can be abused when someone takes advantage of their strategic position to gain illegitimate advantage in a decision-making process. Meanwhile, means relate to the use of state facilities or official facilities for personal or group interests. In the crime of corruption, the abuse of authority must have a causal relationship with the occurrence of losses to state finances or the state economy.[20] This causal relationship is an important element that differentiates between ordinary administrative violations and criminal acts of corruption which have criminal law consequences.

The characteristics of the authority of state-owned enterprise (SOE) officials in managing the energy sector are complex because they lie at the intersection of public and

[19] Anggoro, F. N. (2024). Hukum Administrasi Negara Sebagai Primum Remidium: Ratio Legis Pengaturan Disiplin Pns Atas Penyalahgunaan Wewenang Yang Menimbulkan Kerugian Keuangan Negara. *Konferensi Nasional Asosiasi Pengajar Hukum Tata Negara dan Hukum Administrasi Negara*, *2*(1), 133-166. https://doi.org/10.55292/qmdy6s14

[20] Kasman, M. (2025). Tuduhan pelanggaran wewenang dalam kasus korupsi Tom Lembong: Perspektif hukum. *Locus Journal of Academic Literature Review*, *4*(3), 168-176. https://doi.org/10.56128/ljoalr.v4i3.475

private law. According to Law No. 19 of 2003, a SOE is a business entity whose capital is wholly or substantially owned by the state through direct participation from separated state assets. The board of directors, as the company's primary organ, has the authority to manage the company and make various business decisions related to the SOE's business activities.[21] In the energy sector, which carries significant investment value and high risk, directors have broad authority to determine investment policies, project procurement, and business partnerships with various parties. This authority is fundamentally protected by the business judgment rule, which provides legal protection for business decisions made professionally, in good faith, and based on the principle of prudence. However, this authority must be exercised within the framework of good corporate governance and must not be used for personal or group interests.

In the practice of energy project management, the potential for abuse of authority often arises at various stages of decision-making involving very large investment values and broad economic interests.[22] The planning and budgeting stages of energy projects are often vulnerable to budget manipulation, project designations that do not align with actual needs, and project arrangements for the benefit of certain parties. The procurement process for goods and services is also highly susceptible to corruption through bid rigging, conflicts of interest, and the granting of illegitimate benefits to certain companies. Furthermore, the investment and cooperation stages of energy projects often involve negotiating contracts of enormous value, opening up opportunities for collusion between decision-makers and the private sector. Abuses of authority at these stages can include engineering technical specifications, inflating project values, or using investment funds for illegitimate purposes. Therefore, the potential for abuse of authority in energy project management demonstrates that this sector is highly vulnerable to corruption, which can result in significant losses to state finances.

One of the fundamental problems in enforcing corruption laws related to the management of state-owned enterprises (SOEs) is the lack of clarity in interpreting the element of abuse of authority. This ambiguity is particularly evident in determining the boundary between legitimate managerial discretion and acts of abuse of authority that have criminal consequences. In corporate management practices, particularly in the energy sector, which carries a high level of investment risk, SOE directors and officials are often required to make strategic business decisions that involve economic uncertainty.[23] These decisions are, in principle, protected by the business judgment rule doctrine, which allows decision-makers to act professionally as long as they act in good faith, exercise prudence, and are free from conflicts of interest. However, in the context of law enforcement for corruption crimes, the line between business discretion and abuse of authority often becomes blurred because assessments of business decisions tend to be made ex post facto after losses have occurred. This situation has the potential to create legal uncertainty, as actions that were initially legitimate business decisions can be interpreted as abuse of authority if they result in state financial losses.

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[21] Afrilia, D., & Bondowoso, S. B. (2025). Pertanggungjawaban Direksi BUMN Terhadap Kerugian Negara Berdasarkan Regulasi Pemerintahan Sektor Perusahaan Dan Pidana. *Lex Stricta: Jurnal Ilmu Hukum*, *4*(1), 13-22. https://doi.org/10.46839/lexstricta.v4i1.1400

[22] Mardiyanto, J., & Satory, A. (2025). Etika, Kepatuhan, dan Tata Kelola di Sektor Energi: Pelajaran Dari Kasus Korupsi Pertamina. *Jurnal Sosial dan Sains (SOSAINS)*, *5*(7). DOI: 10.59188/jurnalsosains.v5i7.32337

[23] Herwibowo, B. H., Maryano, M., & Mau, H. A. (2025). Kepastian Hukum Kewenangan Diskresi Direksi BUMN dalam Perspektif Prinsip Good Corporate Governance. *CENDEKIA: Jurnal Penelitian dan Pengkajian Ilmiah*, *2*(8), 1491-1503. https://doi.org/10.62335/cendekia.v2i8.1662

The ambiguity of norms in interpreting the elements of abuse of authority also leads to inconsistent application of the law in various corruption cases involving state-owned enterprise officials. According to the theory of legal certainty, as proposed by Gustav Radbruch, the law must have clear norms to provide definitive guidance for the public and law enforcement officials.[24] When legal norms are ambiguous or lack clear boundaries, their application relies heavily on subjective interpretations by law enforcement officials. In corruption, the unclear boundary between managerial misconduct and abuse of authority can create the risk of criminalization of business decisions actually made in carrying out a company's managerial functions. This not only impacts legal certainty for state-owned enterprise officials but can also hamper the strategic decision-making process necessary for managing the energy sector. Therefore, clear parameters regarding abuse of authority are crucial to maintaining a balance between efforts to eradicate corruption and protecting legitimate business decisions.

Another issue related to the ambiguity of norms is determining whether any losses experienced by a state-owned enterprise can automatically be classified as state losses in the context of corruption. Based on the legal framework stipulated in Law Number 19 of 2003, state-owned enterprise assets are essentially state assets that have been separated from the state budget and managed independently by the company. This concept of asset separation emphasizes that state-owned enterprise financial management, in principle, follows commercial corporate law. Therefore, losses arising from state-owned enterprise business activities cannot always be classified as state losses because they can essentially be part of the business risks inherent in the company's activities. From a corporate law perspective, the risk of loss is a natural consequence of business activities conducted in a competitive business environment.[25] Thus, the assessment of losses of BUMN must be carried out carefully to avoid simplifications that consider every company loss as a state loss in the context of criminal law.

The relationship between state-owned enterprise business decisions and criminal liability must also be analyzed legally, taking into account the element of fault in criminal law. The theory of criminal liability recognizes the principle that a person can only be punished if there is an element of fault inherent in their actions, whether in the form of intent (dolus) or negligence (culpa).[26] Therefore, losses arising from business decisions made in good faith, based on professional considerations, and without any conflict of interest cannot automatically be classified as corruption. Criminal liability can only be imposed if there is evidence that the decision was made with the intention of unlawfully benefiting oneself, another person, or a corporation. In this case, the element of abuse of authority must be concretely proven through a connection between the perpetrator's actions and the goal that deviates from the interests of the company or the public interest. Therefore, an analysis of SOE business decisions must comprehensively consider the aspects of intent, the decision-making process, and the impact on state finances.

In law enforcement practice, it is important to clearly distinguish between

[24] Azzahra, S. N., Saragih, Y. M., Yusuf, M., & Pasaribu, U. R. (2025). Analisis yuridis tindak pidana korupsi suap berdasarkan teori kepastian hukum. *Jurnal Multidisiplin Dehasen (MUDE)*, *4*(3), 593-598. https://doi.org/10.37676/mude.v4i3.8533

[25] Burhanuddin, S. F. (2024). Penerapan Hukum Persaingan Usaha Untuk Mencegah Praktik Monopoli Di Lingkungan Bisnis Perusahaan. *Journal of Interdisciplinary Legal Perspectives*, *1*(1), 80-97. https://doi.org/10.70837/qhmerm64

[26] Kurniawan, K. D., & Hapsari, D. R. I. (2022). Pertanggungjawaban pidana korporasi menurut vicarious liability theory. *Jurnal Hukum Ius Quia Iustum*, *29*(2), 324-346. https://doi.org/10.20885/iustum.vol29.iss2.art5

administrative errors, corporate governance violations, and corruption, as these three violations have distinct legal characteristics. Administrative errors generally involve violations of procedures or procedures stipulated in laws and regulations, the consequences of which are more administrative in nature, such as the revocation of decisions or the imposition of disciplinary sanctions. Corporate governance violations involve failure to adhere to the principles of transparency, accountability, responsibility, independence, and fairness in company management. Corruption, on the other hand, carries a more serious legal character because it involves elements of unlawful acts committed with the aim of obtaining illegitimate profits and causing state financial losses. Therefore, not every administrative violation or corporate governance violation can be directly classified as corruption. Determining the boundaries between these three categories of violations requires careful analysis of the elements of the act, the perpetrator's intent, and the impact on state interests.

To avoid ambiguity in law enforcement, clear legal parameters are needed to determine whether there has been abuse of authority in the management of state-owned enterprises in the energy sector. These parameters must include an analysis of the actus reus element, as the act committed by the perpetrator, and the mens rea element, as the intention or mental attitude behind the act. Abuse of authority can be identified when there is an action that clearly deviates from the purpose of the authority granted and is carried out with the intention of obtaining personal gain or providing benefits to certain parties. Furthermore, there must be a causal relationship between the act of abuse of authority and the resulting financial or economic losses to the state. With these parameters, law enforcement can be carried out more objectively and proportionally without ignoring the principle of legal certainty. This approach is also important to ensure that corruption eradication efforts do not hinder legitimate business decision-making in the management of the energy sector, which has a high level of risk and complexity.

Criminal Liability of State-Owned Enterprise Officials in the Energy Sector Corruption Scandal from the Perspective of Criminal Law and Corporate Governance

The concept of criminal responsibility in criminal law is essentially a normative construct that determines whether a person can be held accountable for an unlawful act. Criminal responsibility is not only based on the existence of an act prohibited by law but also requires inherent fault on the part of the perpetrator. This principle is rooted in the principle of "geen straf zonder schuld," which asserts that there is no crime without fault. In criminal law doctrine, criminal responsibility requires the fulfillment of two main elements: actus reus, the unlawful act, and mens rea, the mental attitude indicating fault.[27] Without this element of fault, a person cannot be punished even if they have actually committed an act that resulted in a detrimental consequence. Therefore, the concept of criminal responsibility serves as a normative mechanism that ensures that criminal sanctions are imposed only on those legally culpable for their actions.

Within the framework of criminal law doctrine, the element of fault (schuld) is a fundamental factor in determining whether or not a person can be held criminally responsible. Fault is essentially a mental state indicating that the perpetrator knew or should have known the consequences of their actions, making them morally and legally

[27] Laia, S. W. (2026). PERTANGGUNGJAWABAN PIDANA TERHADAP PENYALAHGUNAAN HAK DALAM PENGUASAAN OBJEK SENGKETA PERDATA. *Judge: Jurnal Hukum*, *6*(07), 2240-2248. https://doi.org/10.54209/judge.v6i07.2173

culpable.[28] The form of error can be intentional (dolus) or negligence (culpa), each of which has different consequences in assessing the level of criminal responsibility.[29] In addition to the element of fault, criminal law also requires the capacity to be responsible (toerekeningsvatbaarheid), which is a condition in which the perpetrator has sufficient mental capacity to understand the meaning and consequences of their actions. A person who lacks the capacity to be responsible, for example due to a serious mental disorder, cannot, in principle, be held criminally responsible. Furthermore, there must be a clear causal relationship between the perpetrator's actions and the resulting consequences, so that it can be proven that the losses or impacts incurred are a direct consequence of the perpetrator's actions.

In law enforcement against corruption in the management of state-owned enterprises (SOEs) in the energy sector, the concept of criminal liability is relevant in determining the status of SOE officials or directors as subjects of criminal law. Although SOEs are legal entities with their own assets, the capital used in company operations comes from separated state assets. This condition has the legal consequence that SOE management remains related to state financial interests, so that deviations in management can have criminal implications. SOE directors and officials, as company organs, have the authority to make strategic decisions in company management, including in the energy sector, which has high economic value and significant business complexity.[30] However, this authority is not absolute and must be exercised in accordance with the principles of prudence, transparency, and the interests of the company. If this authority is misused for personal or group interests, resulting in state financial losses, then the BUMN official in question can be held criminally liable under the provisions of Law Number 31 of 1999, as amended by Law Number 20 of 2001.

Individual criminal liability in energy sector corruption cases involving state-owned enterprises generally relates to unlawful enrichment of oneself, others, or corporations, as well as abuse of authority that results in state financial losses. In practice, the energy sector is a strategic sector with a high risk of corruption due to the large investments involved, long-term projects, and collaborative relationships with various parties.[31] This situation opens up opportunities for abuse of authority by state-owned enterprise officials, for example in project procurement processes, business partner selection, or company investment management. Individual criminal liability arises when it can be proven that state-owned enterprise officials or directors knowingly used their authority to obtain illegitimate benefits. Furthermore, in a collective board structure, responsibility for company decisions can be joint and several if the decisions are made jointly. Therefore, determining criminal liability must carefully consider the role of each individual in the decision-making process that results in state losses.

From a corporate law perspective, there is a business judgment rule doctrine that provides legal protection to directors against lawsuits regarding business decisions taken

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[28] Hidayat, M. R. (2025). Pertanggungjawaban Aparat atas Kesalahan Prosedural dalam Kasus Salah Tangkap Ditinjau dari Filsafat Hukum. *Media Hukum Indonesia (MHI)*, *3*(4). https://doi.org/10.5281/zenodo.17798937

[29] Husna, S. U., Darmawijaya, E., & Fithria, N. (2025). Analisis Penetapan Hukuman Pidana Menurut Teori Pertanggungjawaban Pidana:(Studi Terhadap Putusan Nomor 234/Pid. Sus/2023/Pt Bna). *Parhesia*, *3*(1), 67-79. https://journal.unram.ac.id/index.php/Parhesia/en/article/view/7256

[30] Dahana, T. N. (2024). *Tanggung Jawab Organ Perseroan Terbatas pada Perusahaan Grup (Holding) Badan Usaha Milik Negara*. Penerbit Nem.

[31] Zahwa, B. A. A., & Sari, P. I. (2025). Analisis Politik Ekonomi Dalam Pembangunan Infrastruktur Di Indonesia. *Jurnal Media Akademik (JMA)*, *3*(11). https://doi.org/10.62281/1t6kxj58

in carrying out the company's managerial functions.[32] This doctrine essentially recognizes that corporate management always involves unavoidable economic risks, so that corporate losses cannot necessarily be used as a basis for assessing legal wrongdoing. This principle asserts that directors cannot be held accountable if their decisions are made in good faith, based on adequate information, and without any conflict of interest. This protection aims to provide directors with the space to make rational business decisions without fear of criminalization. In the context of state-owned enterprises (SOEs), the application of this principle is also important because state-owned enterprises are often involved in national strategic projects that carry a high level of economic risk. Thus, the business judgment rule functions as a legal mechanism that distinguishes between reasonable business risks and actions that can be classified as unlawful.

The relationship between the business judgment rule principle and criminal liability is important in assessing whether a business decision that is detrimental to the company can be qualified as a criminal act of corruption.[33] Essentially, this doctrine limits law enforcement officials from immediately considering corporate losses as the result of criminal acts. Within this framework, business decisions made based on rational considerations and proper governance procedures should not be criminalized simply because they result in economic loss. This principle also emphasizes that corporate governance should be assessed based on the decision-making process, not solely on the final outcome. Therefore, an analysis of the criminal liability of SOE directors must consider whether the decisions taken comply with the principles of prudence, transparency, and the best interests of the company. This approach is crucial to maintaining a balance between law enforcement against corruption and protecting legitimate business activities.

Although the business judgment rule provides legal protection to directors, the doctrine is not absolute and has clear limitations in its application. This protection cannot be granted if the business decision is made in bad faith, contains a conflict of interest, or is made without adequate information. In such situations, the decision can no longer be considered part of a normal business risk, but rather a form of abuse of authority that can have legal consequences. Furthermore, the protection of this doctrine also does not apply if the decision taken clearly violates statutory provisions or exceeds the authority granted to directors. These conditions demonstrate that the line between a legitimate business decision and an unlawful act is largely determined by the integrity and decision-making process of company officials. Therefore, the application of the business judgment rule doctrine must be carefully analyzed to avoid being used as a justification for actions that actually constitute abuse of authority.

Business decisions can also lose the protection of the business judgment rule if they are proven to exceed the authority held by the company's directors or officers. This excess of authority can occur when decisions are made without following internal company procedures, such as without obtaining approval from the board of commissioners or a general meeting of shareholders for large-value transactions.

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[32] Afrilia, D., & Bondowoso, S. B. (2025). Pertanggungjawaban Direksi BUMN Terhadap Kerugian Negara Berdasarkan Regulasi Pemerintahan Sektor Perusahaan Dan Pidana. *Lex Stricta: Jurnal Ilmu Hukum*, *4*(1), 13-22. https://doi.org/10.46839/lexstricta.v4i1.1400

[33] Purnawan, K. W. (2026). BUSINESS JUDGMENT RULE DAN PERTANGGUNGJAWABAN PIDANA DIREKSI BADAN USAHA MILIK NEGARA PASCA BERLAKUNYA KITAB UNDANG-UNDANG HUKUM PIDANA 2023. *Jurnal Media Akademik (JMA)*, *4*(2). https://doi.org/10.62281/qz5t5a76

Furthermore, decisions can also be considered to exceed authority if they are used for personal or group interests that are inconsistent with the company's founding purposes. From a corporate law perspective, such actions constitute a violation of the fiduciary duty, which requires directors to act in the best interests of the company.[34] If the violation also involves unlawful enrichment of oneself or another person and results in state financial loss, the act can be classified as a criminal act of corruption. Therefore, determining the boundary between legitimate business risks and abuse of authority is crucial in ensuring that criminal liability is applied fairly and proportionally in the management of state-owned enterprises in the energy sector.

The principles of good corporate governance play a strategic role in preventing corruption in the management of state-owned enterprises (SOEs), particularly in the energy sector, which is characterized by high investment value and complex decision-making. The implementation of good corporate governance requires the integration of the principles of transparency, accountability, responsibility, independence, and fairness in every aspect of company management.[35] Transparency is a crucial element because it ensures that every strategic policy, particularly those related to project procurement, investment, and business partnerships, is implemented openly and can be monitored by stakeholders. Accountability demands clarity in the functions, structure, and accountability of company organs so that every decision taken can be legally and administratively accounted for. Meanwhile, integrity emphasizes the importance of professionalism and moral commitment from SOE officials in exercising their authority honestly and not abusing their positions for personal gain. Thus, the principles of good corporate governance serve as a preventative mechanism that can minimize the opportunity for abuse of authority in the management of SOEs in the energy sector.

The implementation of the principles of transparency, accountability, and integrity in strategic decision-making is crucial in ensuring that company policies do not deviate from the objectives for which SOEs were established. In practice, strategic decisions related to energy projects often involve significant investment and collaboration with various parties, both domestic and international. This situation demands a decision-making process based on comprehensive risk assessments, objective feasibility analyses, and effective internal oversight mechanisms. The application of transparency principles allows for the oversight of the entire process by the board of commissioners, internal auditors, and shareholders, thus detecting potential irregularities early. Furthermore, accountability within the company's organizational structure ensures that each official has clear boundaries of authority in making business decisions. Consistent implementation of these principles will not only enhance the professionalism of SOE management but also reduce the potential for corruption in the energy sector.

Although good corporate governance principles have become standard practice in modern corporate governance, violations of these principles still frequently occur and, under certain circumstances, can escalate into criminal acts of corruption. Corporate governance violations do not always have criminal consequences, as most are

[34] Luwinanda, A. M. (2024). Penerapan Asas Fiduciary Duty terhadap direksi dalam perusahaan pailit. *Jurnal Ilmiah Research Student*, *1*(3), 663-670. https://doi.org/10.61722/jirs.v1i3.732

[35] Zein, A. W., Hasibuan, A. M., Nur, L. M., & Yusliani, Y. (2026). Penerapan Prinsip Good Corporate Governance Pada Bank Syariah Indonesia. *Current Research on Practice Economics and Sharia Finance (CAPITAL)*, *3*(4), 32-39. https://malaqbipublisher.com/index.php/CAPITAL/article/view/905

administrative violations or violations of internal company policies.[36] However, such violations can become criminal offenses if they involve elements of abuse of authority, unlawful acts, or financial losses to the state. In the management of state-owned enterprises in the energy sector, governance violations often occur in the form of procurement process manipulation, engineered investment decisions, and non-transparent appointments of business partners. When these actions are carried out with the aim of benefiting oneself or a particular party, they are no longer simply violations of corporate governance but have entered the realm of corruption. Therefore, a comprehensive analysis of the relationship between governance violations and corruption must be conducted, taking into account the elements of error and the impact on state interests.

Failure to implement good corporate governance can create an organizational environment vulnerable to corruption. When internal oversight mechanisms are ineffective, the opportunity for company officials to abuse their authority increases. This situation can be exacerbated by weak internal control systems, conflicts of interest in decision-making, and a lack of transparency in the management of strategic projects. In the energy sector, governance failures often relate to procurement processes, investment management, and commercial policymaking, which have a significant impact on a company's finances.[37] If the governance system fails to prevent such irregularities, the resulting losses will not only impact the company but also the state's finances. Therefore, the application of good corporate governance principles serves not only as a managerial tool but also as a legal mechanism to prevent corruption in the management of state-owned enterprises.

Determining the form of criminal liability in energy sector corruption cases involving state-owned enterprises (BUMN) can essentially be directed at individual company officials or at corporations as legal entities. Individual criminal liability arises when there is evidence that BUMN officials directly committed or participated in acts of abuse of authority that resulted in state financial losses. In this case, the officials involved can be held criminally liable under the provisions of Law Number 31 of 1999, as amended by Law Number 20 of 2001. In addition to individual liability, modern criminal law also recognizes the concept of corporate criminal liability, which allows companies as legal entities to be held accountable for criminal acts committed by their managers. This approach is important to ensure that crimes committed within the framework of corporate activities are not only charged to specific individuals, but also to corporations that benefit from such actions. Thus, law enforcement against energy sector corruption must be able to accurately identify the parties responsible for the unlawful acts.

To create legal certainty in the management of state-owned enterprises in the energy sector, it is necessary to construct a criminal liability model that provides a clear demarcation between legitimate business risks and criminal abuse of authority. This model must be based on clear legal parameters regarding the elements of unlawful acts, the perpetrator's culpability, and the causal relationship between the act and state financial losses. Clarifying these parameters is crucial to prevent law enforcement officials from

[36] Ramadhan, A. W., Rahmawati, R. A., Anggraini, A. D., Kusumaningtias, R., & Kusumaningsih, A. (2025). Efektivitas Penerapan Good Corporate Governance Dalam Pencegahan Tindak Pidana Korupsi Pada Kasus Dugaan Penyalahgunaan Izin Pertambangan Di PT Timah, TBK. *Jurnal Ilmiah Wahana Pendidikan*, *11*(11. C), 131-139.

[37] Firdauzi, A., Wijayanto, A., & Ngatno, N. (2024). Pengaruh Mekanisme Good Corporate Governance Dan Corporate Social Responsibility Terhadap Nilai Perusahaan Dengan Profitabilitas Sebagai Mediator Pada Perusahaan Sektor Energi Di Indonesia. *Jurnal Ekonomi Pembangunan STIE Muhammadiyah Palopo*, *10*(2), 495-511. http://dx.doi.org/10.35906/jep.v10i2.2246

automatically classifying every corporate loss as a criminal act of corruption. Furthermore, the criminal liability model must also ensure that any form of abuse of authority that harms state finances can be firmly prosecuted in accordance with the principles of justice and legal certainty. Striking a balance between eradicating corruption and protecting legitimate business decisions is crucial for maintaining the professional management of state-owned enterprises. Therefore, a clear criminal liability framework not only supports effective law enforcement but also provides legal certainty for state-owned enterprise officials in carrying out their managerial functions.

CONCLUSION

Criminal liability in corruption scandals in the energy sector involving state-owned enterprises (SOEs) is essentially determined not only by the existence of state financial losses, but primarily by the fulfillment of the element of abuse of authority by officials or directors in managing the company. Juridical analysis shows that SOE directors and officials can still be held criminally liable as long as there is an unlawful act accompanied by error, a causal relationship, and abuse of authority that exceeds the limits of the mandate of their position. The business judgment rule principle does provide legal protection for business decisions made in good faith, based on adequate information, and without conflict of interest, but this protection does not apply if the business decision contains elements of manipulation, conflict of interest, or violations of the principles of good corporate governance. The failure to implement the principles of good corporate governance, particularly transparency, accountability, and integrity, has proven to be a structural factor that opens up space for corrupt practices in the management of the strategic and high-risk energy sector. This condition confirms that violations of corporate governance can transform into criminal acts of corruption when the abuse of authority is carried out consciously and results in state losses. Legal certainty in the management of state-owned enterprises in the energy sector requires the construction of a criminal liability model that is able to clearly distinguish between legitimate business risks and acts of abuse of authority, so that efforts to eradicate corruption continue to run effectively without hindering the freedom of directors in making rational and responsible business decisions.

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