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Criminalization of Corporate Business Policy as a Corruption Crime: Study of ASDP Case Ira Puspawati (Decision No. 68/Pid.Sus-TPK/2025/PN Jkt.Pst)

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Abstract: This study analyzes the criminalization of corporate business policy in the corruption case involving Ira Puspawati, President Director of PT ASDP Indonesia Ferry, as adjudicated in Decision No. 68/Pid.Sus-TPK/2025/PN Jkt.Pst. Employing a normative juridical method with conceptual and case approaches, the research examines the tension between formal legal certainty and substantive justice in the application of Articles 2 and 3 of the Indonesian Anti-Corruption Law. The findings reveal that the court predominantly relied on a formalistic interpretation emphasizing the fulfillment of statutory elements, particularly unlawful conduct and state financial loss, despite the absence of proven mens rea or personal enrichment. The dissenting opinion invoked the Business Judgment Rule, highlighting the necessity of distinguishing managerial risk from criminal misconduct. The study concludes that excessive formalism risks overcriminalizing corporate discretion and underscores the need for a proportional, context-sensitive enforcement paradigm.

Keyword: Abuse Of Authority, Anti-Corruption Law, Business Judgment Rule, Corporate Criminal Liability, Legal Certainty

INTRODUCTION

The enforcement of anti-corruption law in Indonesia conceptually operates within a persistent tension between the demands of legal certainty and the pursuit of substantive justice, two foundational principles that frequently collide in criminal adjudication. Within the framework of a constitutional state governed by the rule of law (*rechtsstaat*), Indonesia places strong emphasis on the consistent, firm, and non-discriminatory application of legal norms as a primary safeguard for state finances and public accountability. This orientation seeks to preserve the integrity of public administration and prevent abuses of authority by both public officials and corporate actors. The rigidity of corruption law, grounded in the principle of legality, reflects a commitment to formal normative compliance as the principal benchmark in investigations, prosecutions, and sentencing. Consequently, the fulfillment of statutory elements of an offense often becomes the central axis of judicial reasoning (Haugh, 2016).

Anti-corruption criminal law is designed not merely as a repressive mechanism to punish offenders but also as a preventive instrument intended to deter potential misconduct and enhance legal compliance. Through strict enforcement, the law aspires to cultivate equality before the law and reinforce public trust in the integrity and independence of legal institutions. A normatively formalistic approach is therefore perceived as essential to sustaining predictability and institutional credibility (Groshev, 2018). However, the predominance of formal legal certainty may generate significant challenges when detached from contextual considerations. The exclusive focus on statutory elements can overshadow the factual matrix, policy objectives, and rational foundations underlying particular decisions. In such circumstances, the friction between formal legality and substantive justice becomes increasingly visible in judicial practice.

This tension becomes particularly acute in cases involving the alleged criminalization of corporate policy decisions, especially within state-owned enterprises operating in complex economic environments. The evolving nature of modern corruption cases demonstrates increasing structural and transactional sophistication. When corruption law is applied to strategic business decisions, the conceptual boundary between administrative discretion, managerial judgment, and criminal conduct grows indistinct. Corporate policies are typically the product of multidimensional considerations, encompassing financial feasibility, market projections, regulatory constraints, and risk assessment. Such decisions are inherently embedded within uncertainty and commercial volatility (Khanna, 2004).

Business decisions, by their very nature, involve calculated risk-taking, and the possibility of financial loss is an intrinsic aspect of legitimate commercial activity. Even decisions undertaken prudently and professionally may yield unfavorable outcomes due to market fluctuations or unforeseen contingencies. Consequently, adverse financial consequences cannot automatically be equated with unlawful intent or criminal wrongdoing. A purely outcome-oriented assessment risks conflating economic miscalculation with criminal liability. In this regard, the evaluation of corporate conduct demands careful differentiation between business risk and culpable misconduct. Failure to maintain this distinction may inadvertently suppress legitimate managerial discretion (Tomasic, 1992).

Academic discourse increasingly emphasizes that business decisions should not be assessed solely through a binary lens of legality versus illegality based exclusively on their outcomes. Financial loss does not inherently establish the presence of *mens rea* or an intention to unlawfully enrich oneself or others. Criminal culpability requires proof of wrongful intent, abuse of authority, or deliberate deviation from lawful standards. When judicial evaluation centers exclusively on the existence of state financial loss, it risks disregarding the decision-making process and the good faith of corporate executives. Such reductionism may oversimplify the complexity of corporate governance. In turn, this approach may weaken the strategic role of directors in managing corporate affairs.

An enforcement paradigm overly anchored in formal legal certainty may blur the conceptual boundary between criminal fault and business judgment error. This blurring often arises when courts interpret statutory provisions textually without adequately examining bad faith, rational justification, and causal nexus between the decision and the alleged loss. In such instances, criminal law risks being deployed as a corrective instrument for corporate policy failure rather than as an *ultimum remedium* reserved for genuinely blameworthy conduct. The transformation of policy misjudgment into criminal liability may generate chilling effects within corporate governance. Directors may become excessively risk-averse, thereby undermining innovation and strategic initiative. Ultimately, this dynamic may distort the intended function of anti-corruption law (Wibowo, 2018).

A significant research gap persists in the literature, as many studies on corruption law remain predominantly focused on the textual fulfillment of statutory elements. Insufficient

attention has been devoted to the theoretical conflicts that implicitly shape judicial reasoning in cases involving corporate directors. Legal certainty theory, substantive justice theory, and functional approaches to economic criminal law each offer divergent perspectives on liability. Yet these competing paradigms are rarely examined in an integrated analytical framework. The dominance of formal legality as the principal evaluative yardstick often marginalizes broader theoretical considerations. As a result, doctrinal analysis may fail to capture the deeper jurisprudential tensions influencing judicial outcomes (Diamantis et al., 2019).

This theoretical dilemma is vividly illustrated in the case concerning Ira Puspawati, President Director of PT ASDP Indonesia Ferry, in relation to the acquisition of shares in PT Jembatan Nusantara, which was tried in case number 68/Pid.Sus-TPK/2025/PN Jkt.Pst. Despite the absence of conclusive evidence demonstrating personal enrichment or explicit malicious intent, the court rendered a guilty verdict based primarily on the formal fulfillment of statutory corruption elements. The judgment has sparked significant academic debate regarding the scope of directors' criminal responsibility. It raises fundamental questions about the limits of business discretion and the evidentiary threshold for establishing *mens rea*. Furthermore, it invites scrutiny of the legitimacy of employing criminal law as an evaluative mechanism for corporate policy decisions undertaken in good faith. The case thus serves as a critical lens through which broader structural tensions in Indonesian anti-corruption enforcement can be examined.

Normatively valid judicial decisions may nonetheless be problematic from the standpoint of substantive justice and economic rationality. When courts do not explicitly acknowledge the theoretical conflicts underlying their reasoning, their decisions may overlook the contextual and purposive dimensions of corporate action. Criminal law may consequently function as an instrument of retrospective evaluation rather than as a safeguard against deliberate corruption. Such an approach risks eroding proportionality in law enforcement. It may also diminish confidence among corporate leaders in exercising legitimate discretion. The broader systemic implications extend beyond the individual case, affecting governance within state-owned enterprises (El Bashir et al., 2025).

Against this backdrop, the present study seeks to critically analyze the inter-theoretical conflicts reflected in the judicial reasoning of the ASDP Ira Puspawati case. It examines how the predominance of formal legal certainty shaped the assessment of criminal liability for a corporate policy that resulted in alleged state financial loss. The research further explores whether the application of anti-corruption law in this context adequately accounted for business judgment principles and good faith considerations. By situating the case within a broader jurisprudential framework, this study aims to contribute to the theoretical development of corruption law scholarship. It proposes a more balanced analytical model that integrates legal certainty with substantive justice and economic rationality. Ultimately, the study aspires to enrich discourse on the legitimate boundaries of criminal law in evaluating corporate policy decisions and to promote a more proportionate and equitable approach to anti-corruption enforcement.

METHOD

This study employs a normative juridical research method, integrating both a conceptual approach and a case approach. The selection of this methodology is grounded in the nature of the issue under examination, namely the conflict of legal theories reflected in the judicial reasoning of Decision Number 68/Pid.Sus-TPK/2025/PN Jkt.Pst concerning Ira Puspawati in the ASDP case. The central problem addressed is fundamentally normative and theoretical, as it concerns the interpretation and application of anti-corruption law to corporate business policy decisions. Accordingly, this research does not rely on empirical data collection but instead focuses on the systematic analysis of statutory norms, legal doctrines, and judicial

reasoning structures. The case approach is utilized to scrutinize the *ratio decidendi* and the patterns of legal reasoning adopted by the panel of judges, including how the elements of corruption were constructed, how culpability was assessed, and how corporate policy decisions were situated within the framework of criminal liability. Particular attention is devoted to identifying potential divergences between majority reasoning and any dissenting opinions, thereby illuminating the tension between formal legal certainty and substantive justice within judicial practice (Marune, 2022).

Complementing the case analysis, the conceptual approach is applied to examine the theoretical foundations underlying the principles of legal certainty and substantive justice in assessing the criminal responsibility of corporate directors. This approach enables a critical exploration of key concepts in anti-corruption law, economic criminal law, and corporate governance, including managerial discretion and the business judgment rule as analytical benchmarks for evaluating rationality and proportionality in criminal enforcement (Marune, 2023). By juxtaposing doctrinal constructions with judicial reasoning in Decision Number 68/Pid.Sus-TPK/2025/PN Jkt.Pst, the study seeks to reveal the extent to which theoretical paradigms influence adjudicative outcomes. The combined use of case and conceptual approaches facilitates a comprehensive understanding of how legal theory operates within concrete judicial determinations. Furthermore, this methodological framework allows for a structured evaluation of whether the application of criminal law in the ASDP case aligns with its intended function as an *ultimum remedium*. Ultimately, the research design aims to provide a nuanced and theoretically grounded assessment of the criminalization of corporate business policy within Indonesia's anti-corruption enforcement regime.

RESULTS AND DISCUSSION

Results

The findings of this research indicate that the acquisition of shares in PT Jembatan Nusantara by PT ASDP Indonesia Ferry constituted a strategic corporate policy aimed at strengthening ASDP's structural position as the principal provider of national ferry transportation services. Conceptually, the acquisition was designed as part of a long-term expansion and network integration strategy to enhance fleet capacity, broaden operational routes, and consolidate control over economically and strategically significant maritime corridors. From the standpoint of corporate planning, the policy reflected ASDP's dual function as a state-owned enterprise (*Badan Usaha Milik Negara*) entrusted with both commercial objectives and public service obligations. Juridically, the decision was formally adopted through corporate mechanisms consistent with the Company's Articles of Association and the statutory framework governing limited liability companies, particularly Law No. 40 of 2007 on Limited Liability Companies (Company Law). Article 92 paragraph (1) of the Company Law affirms that the Board of Directors manages the company in good faith and with full responsibility for the company's interests, thereby situating the acquisition within the scope of managerial authority. In addition, Law No. 19 of 2003 on State-Owned Enterprises grants directors operational discretion in pursuing corporate development strategies, provided such discretion adheres to principles of prudence and good corporate governance (Jatna et al., 2025).

Nevertheless, the research reveals substantial factual deficiencies in both the planning and execution stages of the acquisition process. These deficiencies primarily concern the inadequate implementation of due diligence procedures, valuation assessments, and verification of the technical and economic conditions of the acquired vessels. The determination of fair market value and the evaluation of asset specifications were not conducted with the depth and objectivity required under established corporate governance standards. Such weaknesses reflect potential deviations from the prudential principle embedded in Article 97

paragraph (2) of the Company Law, which requires directors to perform their duties with due care and responsibility (Gunawan & Gunadi, 2023). Moreover, the failure to conduct comprehensive risk assessment may be interpreted as inconsistent with the fiduciary duties of loyalty and care that underpin corporate governance doctrine. These shortcomings subsequently formed the basis for allegations of potential state financial loss within the meaning of Article 2 paragraph (1) and Article 3 of Law No. 31 of 1999 as amended by Law No. 20 of 2001 on the Eradication of Corruption Crimes (Anti-Corruption Law). Consequently, managerial weaknesses were juridically reframed as elements capable of fulfilling corruption offenses (Santiago, 2024).

Based on these findings, the Corruption Eradication Commission (KPK) initiated investigative and prosecutorial measures against several ASDP officials, including its President Director, Ira Puspawati. The prosecutorial construction did not primarily rely on evidence of personal enrichment or illicit financial flows. Instead, it centered on alleged unlawful conduct (*perbuatan melawan hukum*) or abuse of authority in corporate decision-making. Article 3 of the Anti-Corruption Law criminalizes acts of abusing authority, opportunity, or means due to a position that cause state financial loss. The indictment emphasized procedural and substantive irregularities as manifestations of such abuse. This approach reflects a doctrinal expansion of the concept of “unlawfulness,” encompassing not only violations of explicit statutory prohibitions but also deviations from administrative propriety and governance standards. Thus, procedural defects in business judgment were elevated to the level of criminal culpability (Kasma & Andersen, 2024).

During trial proceedings, it was established that no conclusive evidence demonstrated the existence of *mens rea* in the form of malicious intent or personal enrichment. The acquisition policy was undertaken within the formal scope of the directors’ authority and followed established corporate approval mechanisms. However, the panel of judges concluded that the deficiencies in prudence and risk assessment constituted serious negligence amounting to unlawful conduct under Articles 2 and 3 of the Anti-Corruption Law. The absence of personal gain was not deemed sufficient to negate criminal liability, as the court adopted an interpretation that emphasizes the occurrence or potential occurrence of state financial loss as a decisive element. This reasoning aligns with a formalistic interpretation of legality, wherein the fulfillment of statutory elements prevails over subjective considerations of intent. In effect, managerial imprudence was judicially equated with criminal fault (Dharsana et al., 2023).

The research further identifies a pronounced divergence in judicial reasoning within the panel’s deliberations. The majority opinion adhered to a normative-textual approach, focusing predominantly on the formal satisfaction of the elements of “unlawful act” and “state financial loss.” This interpretive model reflects a positivistic conception of legal certainty, grounded in the principle of legality (*nullum crimen sine lege*) as enshrined in Article 1 paragraph (1) of the Indonesian Criminal Code (KUHP). Under this framework, once the statutory elements are objectively satisfied, criminal responsibility follows irrespective of broader economic or managerial contexts. The majority’s reasoning illustrates the dominance of legal certainty theory, which prioritizes predictability and uniform application of written norms. Substantive considerations regarding business rationality were afforded limited analytical weight (Irawan et al., 2022).

In contrast, the dissenting opinion articulated by Judge Sunoto adopted a more contextual and functional interpretive stance. The dissent emphasized that corporate policy decisions should be evaluated through the lens of the Business Judgment Rule (BJR), a doctrine recognized in comparative corporate law and implicitly reflected in Article 97 paragraph (5) of the Company Law (Habibie et al., 2025). The BJR shields directors from liability where decisions are made in good faith, without conflict of interest, and on an informed basis. From this perspective, the absence of bad faith and personal benefit should significantly influence

the assessment of criminal culpability. The dissent underscores a substantive justice approach, which balances legal certainty with fairness and economic rationality. It thereby challenges the conflation of corporate risk-taking with criminal misconduct (Wibisana, 2022).

The coexistence of these divergent opinions reveals an underlying theoretical conflict between positivistic legal certainty and substantive justice paradigms. Legal certainty theory, influenced by Hans Kelsen's normative positivism, demands strict adherence to codified norms as the exclusive basis of liability. Conversely, substantive justice theory, informed by Gustav Radbruch's post-war formula, acknowledges that rigid legality may produce unjust outcomes when detached from moral and social context. In the ASDP case, the predominance of formal legality resulted in a judgment that was normatively valid yet contested from the standpoint of proportionality. The court's reasoning demonstrates how anti-corruption law may expand into domains traditionally governed by corporate and administrative law. This expansion raises concerns regarding overcriminalization of business policy (Purnawan, 2026).

Furthermore, the findings indicate that the judicial construction of "state financial loss" was central to establishing liability. Under Constitutional Court jurisprudence, particularly Decision No. 25/PUU-XIV/2016, the interpretation of state loss requires demonstrable and actual loss rather than merely potential loss. However, in practice, courts often rely on audit findings to substantiate the element of loss. In the present case, alleged valuation discrepancies and inefficiencies were treated as sufficient indicators of loss. This approach illustrates the elasticity of the concept within anti-corruption adjudication. It also demonstrates the potential for economic miscalculation to be reframed as criminal harm (Wicaksana et al., 2025).

Collectively, these findings demonstrate that the ASDP acquisition case represents more than an isolated instance of alleged procedural negligence. It embodies a structural tension in Indonesian anti-corruption enforcement concerning the limits of criminal law intervention in corporate governance. The transformation of business policy errors into criminal offenses reflects an expansive interpretation of Articles 2 and 3 of the Anti-Corruption Law. While such interpretation may reinforce accountability, it simultaneously risks undermining legitimate corporate discretion. The absence of demonstrable *mens rea* challenges traditional principles of culpability in criminal law. Therefore, the case serves as a pivotal reference point in debates over the criminalization of business policy decisions (Darmawangsa, 2023).

Recalibrating the balance is necessary between legal certainty and substantive justice in corruption cases involving corporate actors. A doctrinal synthesis that integrates the principle of legality, fiduciary duty standards, and the Business Judgment Rule is essential to prevent disproportionate criminalization. Criminal law should function as an *ultimum remedium*, intervening only where bad faith, abuse of authority, or intentional enrichment is clearly established. The ASDP case, registered under Decision Number 68/Pid.Sus-TPK/2025/PN Jkt.Pst, illustrates the consequences of privileging formal statutory fulfillment over contextual evaluation. It underscores the urgent need for a more proportionate interpretive framework in adjudicating corruption cases rooted in corporate policy. Such recalibration would enhance both doctrinal coherence and substantive justice within Indonesia's legal system.

Discussion

The findings demonstrate that the enforcement of anti-corruption law in the ASDP case was predominantly anchored in a formal legal certainty paradigm, wherein the fulfillment of statutory elements under Articles 2 paragraph (1) and 3 of Law No. 31 of 1999 as amended by Law No. 20 of 2001 constituted the principal foundation of criminal liability. Within this framework, the court's reasoning emphasized the textual satisfaction of "unlawful act" (*perbuatan melawan hukum*) and "state financial loss" (*kerugian keuangan negara*) as determinative elements. This approach reflects a positivistic orientation consistent with Article 1 paragraph (1) of the Indonesian Criminal Code (KUHP), which enshrines the principle of

legality (*nullum crimen sine lege*). The dominance of statutory interpretation in isolation from contextual economic realities illustrates the influence of Hans Kelsen's Pure Theory of Law, which conceptualizes law as a hierarchical system of norms detached from moral or sociological considerations. Consequently, the absence of demonstrable *mens rea* or personal enrichment was not accorded decisive weight in evaluating culpability. Such reasoning underscores the prevalence of formal normativism in Indonesian corruption adjudication (Simbolon & Pramarta, 2023).

From a doctrinal standpoint, this interpretation broadens the scope of "unlawfulness" beyond explicit statutory violations to include procedural deficiencies and governance lapses. The Constitutional Court has, in several decisions, affirmed that state financial loss must be actual and quantifiable; nevertheless, lower courts often interpret the element expansively through audit findings or projected inefficiencies. This elasticity creates interpretive space whereby managerial imprudence may satisfy the material element of corruption. Furthermore, Article 3 of the Anti-Corruption Law criminalizes abuse of authority due to position, yet the concept of "abuse" remains open to judicial construction. In the ASDP case, the alleged failure to conduct comprehensive due diligence was construed as an abuse of authority, thereby equating negligence with intentional misuse of power. This conflation raises doctrinal tension with classical criminal law principles requiring culpability (*schuld*) as a foundation for punishment. It challenges the traditional maxim *actus non facit reum nisi mens sit rea*, which posits that liability requires a guilty mind (Januarsyah et al., 2022).

In contrast, the dissenting opinion articulated by Judge Sunoto introduces a substantive justice paradigm that resonates with Gustav Radbruch's post-positivist thesis. Radbruch's formula contends that extreme adherence to legal certainty may yield injustice when detached from moral evaluation. The dissent underscores that corporate decision-making, particularly within state-owned enterprises, must be assessed through the Business Judgment Rule (BJR). Although not explicitly codified in Indonesian statutes, the BJR finds implicit recognition in Article 97 paragraph (5) of Law No. 40 of 2007, which exempts directors from liability if they can demonstrate good faith, prudence, absence of conflict of interest, and efforts to prevent loss. By invoking this doctrine, the dissent situates the case within a broader corporate governance framework rather than a purely criminal paradigm. It thereby distinguishes between business risk and criminal misconduct.

The theoretical divergence between the majority and dissenting opinions illustrates a fundamental conflict between legal positivism and functionalist approaches to economic criminal law. Legal positivism prioritizes predictability and uniform enforcement, whereas functionalism evaluates law in light of its social and economic consequences. In the context of state-owned enterprises, directors operate under dual mandates: commercial profitability and public service obligations, as stipulated in Law No. 19 of 2003 on State-Owned Enterprises. The criminalization of strategic corporate policy decisions risks undermining this dual function. When business discretion is subjected to retrospective criminal scrutiny absent clear evidence of bad faith, the boundary between administrative error and criminal wrongdoing becomes indistinct. This blurring may erode the normative coherence of criminal law as an instrument of *ultimum remedium* (Zahara, 2022).

Moreover, the judicial marginalization of *mens rea* raises significant concerns within the theory of criminal responsibility. Classical doctrines of culpability require intentionality (*dolus*) or at least conscious negligence (*culpa*) of a grave nature. However, the court's reasoning appears to approximate a quasi-strict liability model, where objective loss suffices to establish liability. Such an approach sits uneasily with Article 183 of the Indonesian Criminal Procedure Code (KUHAP), which requires judges to base convictions on at least two valid pieces of evidence and a conviction grounded in belief regarding the defendant's guilt. If subjective intent is not rigorously examined, the evidentiary threshold risks becoming

formalistic rather than substantive. This shift may inadvertently dilute the moral blameworthiness requirement inherent in criminal punishment (Lumentut & Palullungan, 2023).

The systemic implications of this interpretive model are considerable. The expansion of corruption law into domains of corporate risk-taking may generate a chilling effect, fostering excessive risk aversion among directors of state-owned enterprises. Economic theory suggests that innovation and strategic growth depend upon calculated risk, yet criminal exposure for unsuccessful decisions may incentivize defensive governance. Such outcomes conflict with the constitutional mandate under Article 33 of the 1945 Constitution, which envisions state enterprises as instruments for promoting national economic welfare. If directors prioritize personal legal safety over institutional advancement, the broader public interest may suffer. Thus, the intersection of criminal law and economic governance requires careful calibration.

From a proportionality perspective, the imposition of criminal sanctions for managerial negligence may contravene the principle of fairness embedded in modern penal theory. Theories of retributive justice emphasize moral culpability as the justification for punishment, while utilitarian theories stress deterrence and social benefit (Syaflizar, 2023). In the ASDP case, the absence of personal gain weakens the retributive rationale. Simultaneously, the deterrent effect may extend beyond corrupt conduct to legitimate business risk, thereby producing unintended social costs. This outcome challenges the balance between deterrence and economic vitality. Criminal law should intervene only where there is demonstrable abuse of power or corrupt intent.

The debate also engages broader jurisprudential discourse concerning the limits of state penal power. The principle of subsidiarity in criminal law dictates that penal sanctions should be employed only when other regulatory mechanisms prove inadequate. Administrative sanctions, civil liability, or corporate governance reforms may offer more proportionate responses to procedural lapses. Elevating governance deficiencies to criminal offenses risks over-penalization and normative inflation. Comparative legal systems often reserve corruption charges for clear instances of bribery, embezzlement, or fraudulent enrichment. The Indonesian experience, as reflected in Decision No. 68/Pid.Sus-TPK/2025/PN Jkt.Pst, illustrates a more expansive trajectory.

Ultimately, the ASDP case encapsulates a paradigmatic struggle over the function of anti-corruption law in a modern economic state. Whether corruption law serves primarily as a guardian of formal statutory compliance or as an instrument for realizing substantive justice remains contested. The judicial preference for formal certainty secures doctrinal clarity but may compromise contextual fairness. Conversely, an overly flexible substantive approach may risk inconsistency. The challenge lies in harmonizing Article 2 and Article 3 of the Anti-Corruption Law with corporate law principles, fiduciary duties, and constitutional economic mandates. A recalibrated interpretive framework that rigorously distinguishes between bad faith corruption and good faith business error is essential to preserve both legal certainty and substantive justice.

CONCLUSION

This research concludes that Decision No. 68/Pid.Sus-TPK/2025/PN Jkt.Pst reflects a dominant reliance on formal legal certainty in interpreting Articles 2 and 3 of the Anti-Corruption Law, prioritizing the textual fulfillment of statutory elements over contextual evaluation of corporate decision-making. While the judgment satisfies the principle of legality under Article 1 paragraph (1) of the Criminal Code, it raises substantial concerns regarding proportionality, culpability, and the marginalization of mens rea as a foundational element of criminal responsibility. The dissenting reliance on the Business Judgment Rule illustrates an alternative paradigm rooted in substantive justice and corporate governance principles under

Law No. 40 of 2007. Ultimately, the case underscores the urgent need to recalibrate anti-corruption enforcement to prevent the overcriminalization of good faith managerial discretion while preserving accountability for genuine abuses of authority.

Future anti-corruption enforcement must adopt a more proportionate and context-sensitive interpretive framework, particularly in cases involving strategic corporate decisions within state-owned enterprises. Clear doctrinal guidelines should be developed to distinguish bad faith abuse of authority from good faith business judgment errors, including a more explicit integration of the Business Judgment Rule within judicial reasoning. Legislators and courts should reaffirm that criminal law functions as an *ultimum remedium*, ensuring that the absence of mens rea and personal enrichment receives substantial evidentiary weight in determining liability. Without such recalibration, there is a genuine risk that capable and principled professionals, the nation's best talents, may become reluctant to serve in BUMN leadership positions due to fears of criminalization of legitimate business policy decisions. The legal system must avoid creating conditions in which public servants become "victims of loyalty," exposed to prosecution and the confiscation of lawfully acquired assets despite acting in good faith for institutional interests. A balanced enforcement paradigm is essential to safeguard both accountability and the sustainability of national corporate governance.

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