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Fiduciary Duties of Directors in the Management of State-Owned Enterprises (Case Study of PT Timah Tbk)

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Abstract: *Law Number 16 of 2025 introduces a new governance framework for State-Owned Enterprises (SOEs) in Indonesia by strengthening the Business Judgment Rule (BJR) doctrine and establishing BPI Danantara as a state-owned legal entity with significant authority over national investments. This study aims to construct the concepts of fiduciary duty and the Business Judgment Rule within the context of Law No. 16 of 2025, focusing on how these regulations can prevent the abuse of authority, as seen in the case of PT Timah. The research method employed is descriptive-analytical, which serves to outline the development of regulations and their implications for improving SOE governance practices within the Indonesian legal system. The findings indicate that Law No. 16 of 2025 establishes a new governance paradigm for State-Owned Enterprises, mainly through the codification of the Business Judgment Rule (BJR) and the creation of BPI Danantara as a state investment superholding with strategic authority. Additionally, this law provides legal protection for decision-makers, provided their actions are conducted in good faith, with prudence, free from conflicts of interest, and in the best interests of the company. Nevertheless, this research highlights that the expansion of legal immunity should be strictly interpreted within the context of fiduciary duty, as SOEs manage public assets and are not solely focused on profit generation.*

INTRODUCTION

State-Owned Enterprises (SOEs) in Indonesia operate under a dual constitutional mandate. On one hand, they act as development agents managing critical production sectors, as outlined in Article 33 of the 1945 Constitution (Pinangkaan, 2015). On the other hand, they function as corporate entities, expected to generate profits similar to private companies. SOEs play a vital role in Indonesia's national economic development by providing essential goods and services, promoting key sectors, and supporting public welfare. In addition to their profit-making goals, SOEs have social responsibilities and often lead initiatives in areas that the private sector has yet to explore. However, these enterprises face significant challenges, including poor financial performance in some cases and various governance issues. This tension between their public duties and profit orientation continues to create governance challenges, especially as the state reevaluates the role of SOEs within the national economic framework (Nuswandari, 2025).

Law Number 16 of 2025 concerning the Fourth Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises shifts the paradigm in a significant transformation of state corporate governance. This regulation does not merely make normative adjustments, but rather re-engineers the institutional model through the establishment of the Daya Anagata Nusantara Investment Management Agency (BPI Danantara), an investment superholding projected to manage state capital of up to IDR 1,000 trillion (Solihin, 2025). BPI Danantara is designed with a centralized approach aimed at consolidating state assets, which is expected to enhance national economic growth and increase the strategic value of state-owned enterprises (Defilania & Silalahi, 2025). However, this ambitious goal comes with risks if not supported by an adequate oversight system. Law Number 16 of 2025 explicitly introduces provisions regarding the Business Judgment Rule (BJR) within the legal framework of state-owned enterprises, specifically through Articles 3Y and 9F. This is intended to provide legal protection for directors when making risky business decisions.

The implementation of the Business Judgment Rule (BJR) in state-owned enterprises (SOEs) aims to promote progressive policies without the constant fear of criminalizing every business decision (Jatna et al., 2025). However, the BJR can only function effectively if directors consistently uphold their fiduciary duties. Without fiduciary integrity, the BJR risks becoming a mechanism for impunity, which could undermine public accountability (Gunawan & Gunadi, 2023). This highlights the urgent need to reorient governance standards in SOEs. SOE governance refers to the management principles applied by these enterprises to ensure that operations are conducted professionally, efficiently, and transparently, in accordance with Good Corporate Governance (GCG) principles. These principles include transparency, accountability, responsibility, independence, and fairness in all operational aspects, and they are governed by relevant laws and regulations.

Empirical evidence indicates that the integrity of directors in state-owned enterprises (SOEs) is a critical issue. The corruption case involving the tin trade at PT Timah Tbk, uncovered in 2024, highlights a significant failure in the oversight of state-owned corporations. The state suffered losses amounting to approximately Rp300 trillion (Pudiyanti et al., 2025), representing not only a substantial economic deficit but also a breakdown in public trust and severe ecological degradation caused by illegal mining practices enabled through SOE structures. The involvement of directors in this scandal signifies a betrayal of their fiduciary responsibilities, which requires them to act in the best interest of the state. Instead of safeguarding public assets, these directors were found to be engaged in collusion and conflicts of interest, violating the Duty of Loyalty. This incident emphasizes that governance issues are not merely the result of unforeseen business risks but rather stem from deliberate corporate wrongdoing (bad faith) (Irianto, 2022).

In the context of corporate law theory, directors hold a strategic position in determining the success or failure of a company (Fikriya, 2020). Law Number 40 of 2007 concerning Limited Liability Companies stipulates that directors have managerial and representative functions, and are required to act in good faith, with prudence, free from conflicts of interest, and loyal to the interests of the company. The provisions of Article 97 paragraph (5) and Article 104 paragraph (4) of Law Number 40 of 2007 expressly regulate the limits and conditions for the release of directors' liability in cases of company losses or bankruptcy. The provisions regarding fiduciary duty in the State-Owned Enterprises Law are not regulated in more detail as regulated in Law Number 40 of 2007. This is because State-Owned Enterprises have different characteristics from private companies, as the assets they manage originate from state finances and concern the public's livelihood. Therefore, there are no clear legal norms to regulate the fiduciary duty of directors in State-Owned Enterprises. This lack of norms creates a large loophole for abuse of authority, especially in the investment and management of strategic resources with very large asset values. In this regard, the direct establishment of the Daya Anagata Nusantara Investment Management Agency (BPI Danantara) through law provides this entity with a strong legal standing and greater corporate flexibility than conventional state-owned enterprises. With the authority to raise investments outside the state budget and undertake various corporate actions, BPI Danantara has a significant mandate and significant risks in managing state assets (Asnawi et al., 2025).

The principles of transparency, accountability, and protection of public interests should be the foundation of BPI Danantara's governance. Without stringent fiduciary duty standards and effective legal oversight, the concentration of authority within a single entity can lead to a higher risk of abuse by directors. This situation could have significant negative impacts on both the economy and the environment (Asnawi et al., 2025).

This analysis serves as the foundation for conducting important research aimed at addressing the problem formulation: "How can we construct fiduciary duty and the Business Judgment Rule within the framework of Law No. 16 of 2025 to prevent the recurrence of abuse of authority, as seen in the case of PT Timah, and to ensure that similar cases do not happen again" To provide a more comprehensive perspective, this study also explores the progressive interpretation of fiduciary duty. This interpretation extends beyond mere administrative compliance to include substantive integrity and ecological considerations. The goal is to ensure that State-Owned Enterprises (SOEs) genuinely act as stewards of public assets and promote sustainable development.

RESEARCH METHOD

This research is a normative legal study (also known as doctrinal legal research) (Hutchinson & Duncan, 2012) that employs a qualitative analysis method. Its primary focus is to address public needs by ensuring accountability and protecting public interests in the governance of State-Owned Enterprises (SOEs). The research is descriptive-analytical in nature, aiming to describe the development of regulations and their implications for improving SOE governance practices within the Indonesian legal system. A statute approach is utilized to analyze the relationship and harmonization between Law No. 16 of 2025 and Law No. 40 of 2007. The study specifically examines regulations related to BPI Danantara, prudential standards for directors, and the limits of immunity for business decisions in managing state assets derived from public resources.

The case study focuses on a juridical analysis of the PT Timah Tbk case, which involves abuse of authority leading to corruption. This analysis includes the ratio decidendi of the DKI Jakarta High Court's decision regarding Harvey Moeis and the directors of PT Timah in 2024–2025 (Putra et al., 2024). The case illustrates how violations of fiduciary duty not only result in financial losses for the state but also inflict social damage: specifically, the decline in the welfare of the local economic community and the erosion of public trust in institutions. Furthermore, the conceptual approach combines the fiduciary duty doctrine with the Business Judgment Rule as an ethical and normative framework. This integration is essential for differentiating between directors' actions that represent normal business risks and those that constitute deviations harmful to the state. Consequently, the legal prescriptions developed from this analysis maintain a balance between managerial discretion and the protection of public interests, recognizing the latter as the ultimate beneficiary. The research draws on primary legal materials, including laws, regulations, and court decisions, as well as secondary sources such as literature and reputable journals.

RESULTS AND DISCUSION

New Paradigm in Law No. 16 of 2025

Law Number 16 of 2025, concerning the Fourth Amendment to Law Number 19 of 2003 on State-Owned Enterprises (SOEs), introduces a significant transformation in the governance framework for SOEs in Indonesia (Aggistri, 2024). This change reflects the state's recognition of the urgent need for more adaptive, transparent, and equitable management of public assets. In the context of national development, SOEs are not merely business entities; they serve as essential instruments for public service that aim to balance profitability with the advancement of public welfare. Given their critical role in meeting community needs, SOEs also contribute to economic stabilization, the management of natural resources for public benefit, and the support of infrastructure development. The enactment of Law Number 1 of 2025 regarding SOEs, as amended by Law Number 16 of 2025, marks a new chapter in the legal framework governing SOEs in Indonesia. This recent regulation enhances the operational independence of SOEs while reiterating their public service obligations in the form of Public Service Obligations (PSOs). However, this raises new questions about whether increasing the independence of SOEs genuinely reduces state intervention or instead complicates their dual obligations. Additionally, the existence of specific monopoly rights associated with the implementation of PSOs may lead to market distortions that hinder efficiency and competitiveness (de Vries & Damayanti, 2025).

Institutional strengthening is evident in Article 3E, which establishes BPI Danantara as a state-owned legal entity based on law. This grants it a lex specialis status and strong legitimacy to operate flexibly like a private corporation. This legal model illustrates the state's efforts to adapt to the complexities of the global economy, enabling faster, more responsive, and innovative investment decisions. Beneath the sophistication of this institutional framework lies an implicit moral mandate: to ensure that every activity of Danantara adds value to the community, which is the rightful owner of state assets. BPI Danantara is tasked with managing state assets and state-owned enterprises (BUMN) to optimize national investment. This institution's goals include improving the efficiency of BUMNs, attracting global investment, collaborating to enhance global competitiveness, and acting as a superholding for BUMNs (Harris & Ngui, 2025). Law No. 16 of 2025 further emphasizes the limitations and protections for policymakers. Articles 3Y and 9F state that ministers, agencies, and their employees cannot be held legally accountable as long as they can demonstrate four fundamental principles: (1) the loss was not caused by error or negligence; (2) the action was carried out in good faith and with caution; (3) there was no conflict of interest; and (4) adequate preventive measures were taken. This provision serves as a safeguard, ensuring that the willingness to take rational risks is not hindered by the fear of criminalization.

The Business Judgment Rule (BJR) doctrine, which was previously implied in Article 97, paragraph (5) of the PT Law, has now been more explicitly codified. From a humanitarian perspective, this clarification is important because it protects managers acting in the public interest from stigma and disproportionate legal risks (Akram & Fanaro, 2019). In the business world, strategic decisions are inherently uncertain, and failures that arise from honest efforts are part of the dynamic landscape that must be respected, as long as the public interest remains the primary focus. However, this progressive regulation is not without ethical consequences and challenges. Articles 3H, paragraph (2) and 4B emphasize that profits or losses belong to the Agency, which has sparked academic debate. This formulation raises concerns because it could separate losses from the finances of state-owned companies, despite being a key basis for enforcing laws against corruption in their management. Critics worry that this separation may be misused as a justification to protect irregularities by categorizing losses as business risks (Rahadiyan, 2013).

At this point, the human dimension becomes a crucial factor to consider. Financial losses in state-owned enterprises are not just numbers on a balance sheet; they represent a burden that society must bear. These losses can lead to a loss of access to public services, layoffs in industrial areas, and decreased contributions to the state budget—serious issues that have real impacts on people’s lives. Any investment policy that fails ethically also undermines public trust, as citizens are the ultimate owners of state assets. Therefore, while it’s important to strengthen legal protections for these enterprises, it must be done alongside clear, participatory, and socially sensitive accountability mechanisms. State-owned enterprise losses can stem from various issues, including inefficiencies in management, inadequate project planning, weak internal governance, and corruption or collusion that jeopardize state finances. Additionally, if these losses occur due to errors or negligence by the directors and commissioners, they can escalate into broader state financial losses (Dahoklory, 2020).

Legal Facts in the Case of Limited Liability Company (PT) Timah Tbk

The issue at hand involves the corruption case at PT Timah Tbk, which highlights how weaknesses in the corporate governance of state-owned enterprises can be exploited for personal gain through complex transaction structures. As a public company with majority shares owned by the state, the directors of PT Timah Tbk are expected to adhere to principles of prudence (duty of care) and loyalty to corporate interests (duty of loyalty). However, in practice, both principles have been violated through strategic decision-making that lacks adequate feasibility studies and by disregarding the legal and financial risks associated with partnerships with private entities in smelter management (Irianto, 2022). The directors of PT Timah demonstrated abuse of discretion through commercial strategies that ultimately harm the company's interests. For instance, the buyback scheme for tin ore sourced from PT Timah Tbk's Mining Business Permit (IUP) area represents a clear violation of the principle of corporate asset protection. In this instance, state assets were used to facilitate illegal mining, which then benefited select parties. This indicates that the directors acted not only with gross negligence but also actively participated in manipulating financial flows that diverge from the company’s best interests. From the perspective of corporate accountability, this case establishes an important precedent for applying corporate criminal liability to entities affiliated with the state. The court emphasized that the directors' actions could not be justified under the business judgment rule since their decisions involved conflicts of interest and violations of legal norms (Kuswandi et al., 2022). This principle is vital in dismantling defenses employed by the directors that seek to portray their actions as risk-taking behavior within the competitive landscape of the mining industry.

The ecological aspect of losses has expanded the concept of state losses in Indonesian corruption law. The court's endorsement of the Financial and Development Supervisory Agency's (BPKP) calculations, which included environmental damage as part of state losses, represents a significant shift in the economic valuation of natural resources (Budi, 2024). This approach reinforces the state's sovereignty over natural resources and ensures that ecological damage is no longer regarded as an immeasurable externality in cases of corruption related to natural resources. Corruption in this context has led to substantial state losses, which were audited by BPKP. They confirmed that the total losses amounted to Rp300.003 trillion. This total includes Rp29 trillion in losses from smelter rentals and illegal tin ore payments, alongside Rp271 trillion in ecological and environmental losses (Putra et al., 2024). Furthermore, the Jakarta High Court's appeal decision against the main actors in this case illustrates the judiciary's commitment to expanding the scope of legal accountability for state-owned enterprises (SOEs). Stricter penalties for key individuals, both within the corporation and among its private partners, serve as a strong correction to the management practices of state assets that are vulnerable to criminal infiltration. This highlights the urgent need for governance reform in SOEs based on Environmental, Social, and Governance (ESG) standards to prevent similar cases from occurring in other strategic sectors.

Deconstruction of Fiduciary Duty Violations in the PT Timah Tbk Case

The fiduciary duty doctrine requires directors to act solely in the best interests of the company. In the case of PT Timah Tbk, there were systematic violations of two core elements of this doctrine:

1. Violation of Duty of Loyalty

The Duty of Loyalty is a fundamental principle of corporate fiduciary responsibility that requires every member of a company's board of directors to act solely in the best interests of the company. This principle prohibits any personal gain from their position or any potential conflicts of interest. It encompasses two key rules: the no-profit rule, which bars board members from profiting through their roles, and the no-conflict rule, which obliges them to avoid situations where the interests of others may take precedence over the interests of the company. In the context of state-owned enterprises (SOEs), this fiduciary standard is particularly significant because it directly pertains to the management of state assets and the fulfillment of constitutional interests, as outlined in Article 33 of the 1945 Constitution.

In a corruption case, PT Timah Tbk confirmed a serious violation of corporate governance principles. The trial revealed that the Board of Directors, including Mochtar Riza Pahlevi, held informal meetings with a private individual, Harvey Moeis, outside the legitimate corporate decision-making process. They conspired to agree on a smelter rental scheme at an economically unreasonable price. The choice of a closed setting, such as a hotel or restaurant, indicates a deliberate intention to evade corporate transparency and conceal inappropriate transactional relationships. This model of transaction exhibits a hidden self-dealing nature that undermines the principles of good corporate governance (Arifin & Sodikin, 2025).

The Board of Directors has the authority and legal tools to regulate illegal mining activities within the area covered by the company's Mining Business Permit (IUP) through enforcement measures and operational control. However, they have opted to implement a cooperation scheme that effectively legitimizes unlicensed mining operations. This approach has serious implications, particularly regarding the large-scale confiscation of state-owned tin reserves. Such actions may constitute a violation of Article 97, paragraph (5), letter c of the Limited Liability Company Law (UUPT), which outlines the responsibilities of the Board of Directors for any company losses that arise from mismanagement or breaches of fiduciary duty.

Conceptually and legally, the Board of Directors' actions in this case reflect a failure to fulfill their fiduciary role toward the state, as the primary shareholder. Instead of protecting corporate interests, they acted as facilitators for the interests of a rent-seeking coalition operating outside the legal framework. This violation of the Duty of Loyalty not only has ethical and corporate dimensions, but also resulted in significant state loss and institutional distrust in the governance of SOEs as instruments of national development.

2. Violation of Duty of Care

The Board of Directors, as a governing body, has a legal obligation to make business decisions based on sufficient information and informed judgment. However, in approving the smelter lease scheme at PT Timah Tbk, the Board failed to conduct adequate due diligence regarding the financial and operational aspects of the collaboration. The principle of cost efficiency was overlooked, and strategic decisions were made without a thorough risk analysis. This disregard for prudent decision-making violates the duty of care in corporate governance. Such actions reflect a serious misjudgment that cannot be justified by law or sound corporate governance practices (Arifin & Sodikin, 2025).

The negligence becomes even more apparent when the Board of Directors consciously ignores the ecological consequences of allowing illegal mining activities which are then legitimized through this cooperation. Massive environmental damage in the Mining Business License area was not only a predictable risk, but also a direct result of policies adopted without responsible consideration. Therefore, the court qualified the Board of Directors' actions as gross negligence, no longer protected by the Business Judgment Rule (Akram & Fanaro, 2019). Therefore, the Board of Directors continues to bear full legal responsibility for the company's losses and the state's losses arising from this erroneous decision.

The Collapse of the Business Judgment Rule (BJR) Defense

One of the most significant legal findings in the Tin case ruling was the court's strong rejection of the Business Judgment Rule (BJR) defense. The defendants argued that the decision to lease the smelter was a discretionary business measure aimed at increasing production amid rampant and uncontrolled illegal mining. However, the Panel of Judges, during its deliberations, emphasized that the Business Judgment Rule (BJR) is not absolute. The BJR's protective stance was rebutted for the following reasons:

1. Bad Faith: The decision was made with malicious intent, seeking to enrich another party through the manipulation of cooperation documents.
2. Fraud/Illegality: The transaction violated both the Mineral and Coal Mining Law and the Corruption Eradication Law by legalizing illegal tin ore.
3. Conflict of Interest: There was a transactional relationship between the decision-maker and the private sector.

The court decision demonstrates the strength of the claim that labeling a corporate decision or action as a corporation cannot absolve a criminal offence if mens rea (malicious intent) is proven. Article 9F of Law No. 1 of 2025, while granting immunity, still requires good faith and the absence of a conflict of interest as cumulative requirements. Therefore, the narrative that SOE directors are immune from the law under the new law is false if the elements of fraud are met.

BPI Danantara Moral Hazard Risk

The establishment of the Danantara Investment Management Agency (BPI Danantara) introduced a new governance configuration within the state-owned enterprise (SOE) landscape. With its employee status, not that of a state official, as stipulated in Article 3X, and the affirmation that investment losses are classified as corporate losses (Article 3H), there appears to be a legislative orientation to free Danantara from the state financial regime, which has been deemed rigid and restrictive of business flexibility. Theoretically, this design could strengthen the competitiveness of state investments through speed of execution and market responsiveness. However, this institutional architecture also creates a gray area of accountability that poses new challenges to the integrity of public sector governance.

Learning from the governance deviation in the case of PT Timah Tbk, regulatory relaxation that is not balanced with adequate checks and balances has the potential to trigger governance failures on a broader scale. The risks that have emerged include: (a) the emergence of zombie investments or politically motivated projects without commercial viability, which then hide behind the legitimacy of Article 9F concerning business judgment protection; (b) increased information asymmetry in cross-jurisdictional investments that makes it difficult to detect conflicts of interest and self-dealing practices, compared to domestic cases where oversight is more accessible; and (c) the formation of structural impunity due to the potential for the Corruption Eradication Law instruments to be invalidated when losses are viewed solely as corporate losses, so that law enforcement will depend on a progressive interpretation that state capital participation remains part of public wealth. Thus, Danantara's success will not only be determined by financial performance, but also by the ability to ensure public accountability in an increasingly corporate-oriented legal design.

The PT Timah Tbk case marks a significant development in corporate law and state finance, as it recognized ecological losses of Rp271 trillion as part of the state's losses (Riyanto et al., 2024). This decision expands the interpretation of fiduciary duty in state-owned enterprises and reaffirms that nature and the environment are integral components of national wealth that must be safeguarded. Ecological losses can no longer be seen as acceptable externalities; instead, they are considered a direct infringement on public wealth that is passed down through generations. As a result, the fiduciary responsibilities of directors in state-owned enterprises now extend beyond the state as the formal shareholder to include the public, who are the real beneficiaries of state assets. A damaged environment not only disrupts financial stability but also undermines the living spaces, livelihoods, and dignity of communities that rely on the sustainability of natural resources. Therefore, the duties of care and loyalty must not be interpreted solely within the context of profitability; they must also encompass the protection of human life and the sustainability of socio-ecological systems.

In the context of Law Number 16 of 2025 regarding BPI Danantara, the negative example set by PT Timah serves as a strong warning that the state's investment strategy must not focus solely on short-term profits. Investments that disregard ecological sustainability risk leaving future generations to bear the consequences of irreversible damage and social conflict (Sumule, 2024). Therefore, Danantara's fiduciary responsibility should include environmental protection as a fundamental principle in every investment feasibility assessment. In accordance with Article 3N, the Supervisory Board, led by the Minister of BUMN, must ensure that ESG (Environmental, Social, and Governance) indicators serve as the primary tool for measuring director accountability, rather than merely as superficial corporate rhetoric (Dwianto et al., 2023). Humanist governance requires that financial gains should not come at the expense of the rights of current and future generations to a healthy environment. By adopting this approach, Danantara can serve not only as a driver of economic growth but also as a protector of sustainability and ecological justice for all Indonesians.

CONCLUSION

This research concludes that the regulations outlined in Law No. 16 of 2025 introduce a new paradigm for the governance of state-owned enterprises (BUMN). This is particularly evident through the codification of the Business Judgment Rule (BJR) and the establishment of BPI Danantara as a state investment superholding with strategic authority. Articles 3Y and 9F provide legal protection for decision-makers, provided that their actions are conducted in good faith, with prudence, free from conflicts of interest, and in the best interests of the company. However, this research emphasizes that the expansion of legal immunity must be interpreted strictly within the context of fiduciary duty, as BUMNs manage public assets and are not solely profit-driven entities. Therefore, public accountability remains a fundamental principle that cannot be compromised by the flexibility afforded to modern corporations.

The PT Timah Tbk corruption case study reveals that violations of the duty of loyalty and duty of care resulted in state losses amounting to hundreds of trillions of rupiah. These losses encompass both financial and significant ecological damages. This situation highlights that the consequences of fiduciary violations in state-owned enterprises extend beyond just economic impacts; they also affect social and environmental aspects. The court's decision to reject BJR's arguments emphasized that corporate decisions plagued by conflicts of interest and legal violations cannot be shielded by the doctrine of business protection. As a result, the precedent set by PT Timah broadens the interpretation of fiduciary duty to include fiduciary responsibility towards the state, society, and the environment as the ultimate beneficiaries.

As a recommendation for the future, it is essential to strengthen the fiduciary duty norms in the BUMN Law by explicitly incorporating Environmental, Social, and Governance (ESG) aspects as criteria for the accountability of directors. This is particularly important in the era of BPI Danantara, which centralizes state investment power in a single strategic entity. The government must ensure the effectiveness of both external and internal oversight through enhanced transparency, independent audit mechanisms, early warning systems for conflicts of interest, and stringent law enforcement against any deviations in business discretion. By doing so, the transformation of BUMN will not only enhance national economic competitiveness but also uphold ecological sustainability, social justice, and public trust, which are fundamental pillars of BUMN's legitimacy in managing state wealth.

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