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The Implementation of the Business Judgment Rule under Indonesian Company Law: Legal Protection for Directors

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Abstract

The increasing complexity of corporate activities in Indonesia places directors in a position that requires strategic business decision-making while simultaneously exposing them to potential legal liability for corporate losses. Although the business judgment rule serves as a legal protection mechanism under *Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas* (Company Law), its implementation remains uncertain due to the absence of explicit legal standards for interpreting good faith and due care. This study analyzes the implementation of the business judgment rule within the Indonesian Company Law framework and examines its role in balancing legal protection for directors with the principle of corporate accountability. This normative juridical research employs statute, conceptual, and case approaches. It uses primary, secondary, and tertiary legal materials collected through library research, which are analyzed qualitatively using legal interpretation to examine the implementation of the business judgment rule. The study finds that the business judgment rule protects directors from personal liability for business decisions made in good faith, with due care, within their authority, and in the company's best interests. Nevertheless, the lack of explicit standards concerning the interpretation of good faith and due care in corporate management has resulted in inconsistent legal interpretation and weakened legal certainty in its implementation. This study concludes that the business judgment rule is essential for supporting sound corporate governance while maintaining directors' accountability. Therefore, clearer legal standards and

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more consistent judicial interpretation are necessary to strengthen legal certainty in the implementation of the business judgment rule in Indonesia.

Keywords: Accountability; Business Judgment Rule; Corporate Governance; Directors; Legal Protection.

INTRODUCTION

The Board of Directors' responsibility for the Company's losses is inextricably linked to the inherent risk and uncertainty of business decision-making. In practice, the ever-evolving dynamics of the business world require the Board of Directors to make decisions quickly and strategically, and in many circumstances, to act on imperfect information. This creates a tension between the need to act progressively in the face of business opportunities and the obligation to remain cautious in avoiding potential losses. Within this framework, the business judgment rule doctrine exists as a legal mechanism that balances the need for protection for the Board of Directors in carrying out their management functions with the demand for accountability for every decision taken in managing the Company.

Under Article 92 paragraph (1) in conjunction with Article 1 number 5 of Law Number 40 of 2007 concerning Limited Liability Companies, as amended by Law Number 6 of 2023 (hereinafter referred to as the "Company Law"), the Board of Directors is the authorized and fully responsible organ of the Company for the Company's interests, in accordance with the Company's purposes and objectives. The explanation of Article 92 paragraph (1) and paragraph (2) of the Company Law emphasizes that the Board of Directors is tasked with managing the Company, including the day-to-day operations of the Company, and is authorized to carry out management in accordance with policies deemed appropriate. This provision demonstrates that the law grants the Board of Directors considerable discretion in making business decisions, provided that such decisions are made within the limits of propriety, rationality, and professionalism.

However, in the uncertain business reality, not all decisions made by the Board of Directors result in profits for the Company. Risk is an inherent element of every business decision (Anshari et al., 2025). Losses cannot always be attributed to errors or negligence on the part of the Board of Directors. In many circumstances, decisions are made after careful and rational consideration, but due to external factors such as market fluctuations, regulatory changes, or macroeconomic conditions, these decisions can result in losses for the Company.

In practice, it is not uncommon for Directors, in carrying out their management functions, to face legal challenges arising from their business decisions. This demonstrates that every decision of the Board of Directors carries significant legal consequences, both for the Company and for the Directors personally. When a decision results in corporate losses, Directors are often exposed to civil liability or even criminal proceedings where there are allegations of legal violations. Such circumstances may encourage overly cautious decision-making, potentially discouraging Directors from taking legitimate business risks that are necessary for the Company's development (Graciella & Gunadi, 2025).

In business practice, no party rationally intends to incur losses. Every decision is fundamentally aimed at achieving profit or at least maintaining the continuity of the company's business. However, the complexity and dynamics of the business world frequently cause decisions that initially appear commercially sound to produce unfavorable outcomes. Therefore, it is crucial to clearly distinguish between losses arising from ordinary business risks and from those resulting from errors, negligence, abuse of authority, breach of fiduciary duties, or even bad faith on the part of the Board of Directors (Hertiawan, 2024).

In this context, a fundamental issue arises regarding the limits of the Board of Directors' liability, namely whether any losses arising from a business decision should automatically be

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charged to the Directors' personal liability (Hertiawan, 2024(Akram & Fanaro, 2019). Normatively, business decisions made based on rational considerations, supported by adequate information, and based on good faith and the principle of prudence should not give rise to personal liability. Conversely, if there is an abuse of authority, violation of the principle of prudence, or conflict of interest, the Board of Directors can be held accountable in accordance with applicable law (Intihani, 2023). Nevertheless, the Company Law does not expressly define the legal standards for determining whether a Director has acted in good faith, exercised due care, relied on adequate information, or acted free from conflicts of interest. Consequently, uncertainty remains regarding the distinction between legitimate business decisions protected by law and managerial conduct that constitutes a breach of legal duties.

In response to this dilemma, the business judgment rule doctrine emerged as a key principle in corporate law, providing protection to directors for their business decisions. This doctrine essentially asserts that courts will not interfere with the substance of business decisions as long as they are made in good faith, based on adequate information, free from conflicts of interest, and within the scope of legitimate authority (Wardhana, 2019). Thus, the business judgment rule serves as a legal protection mechanism for directors against claims based solely on adverse outcomes (Hertiawan, 2024).

Although the business judgment rule has been recognized both in corporate law doctrine and in Article 97 paragraph (5) of the Indonesian Company Law, its practical implementation in Indonesia remains uncertain. The absence of explicit statutory standards regarding the interpretation of good faith, due care, adequate information, and conflicts of interest has resulted in inconsistent interpretations of the scope of legal protection afforded to Directors. This legal uncertainty is particularly significant given the increasing complexity of corporate activities

and the growing expectation that Directors make prompt and strategic business decisions while remaining accountable under the law. This uncertainty is reflected in several decisions of the Indonesian Supreme Court, including Decision Number 121 K/Pid.Sus/2020 involving Karen Agustiawan, the former President Director of PT Pertamina (Persero), concerning the acquisition of a participating interest in the Basker Manta Gummy (BMG) Block, as well as Decision Number 417 K/Pid.Sus/2014 involving Hotasi D.P. Nababan, the former President Director of PT Merpati Nusantara Airlines (MNA), concerning the company's aircraft leasing policy. These cases illustrate the continuing challenges in distinguishing legitimate business decisions protected under the business judgment rule from corporate decisions that may give rise to civil or criminal liability.

Previous studies generally conclude that the business judgment rule functions as a legal mechanism to protect Directors from personal liability arising from bona fide business decisions. However, these studies primarily discuss the doctrine from a conceptual or comparative perspective and provide limited analysis of the normative ambiguity surrounding the interpretation of its essential elements under Indonesian Company Law. Consequently, there remains a need for further research that specifically examines the implementation of the business judgment rule within the Indonesian legal framework and evaluates how Indonesian courts have applied the doctrine in resolving disputes concerning directors' liability.

Unlike previous studies, this research focuses on identifying the legal uncertainty arising from the absence of explicit standards governing the implementation of the business judgment rule under Indonesian Company Law. By examining statutory provisions, legal doctrines, and relevant court decisions, this research seeks to provide a more comprehensive analysis of the application of the business judgment rule and to

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contribute to the development of clearer legal standards concerning directors' liability. The findings of this research are expected to contribute both theoretically to the development of Indonesian corporate law and practically by providing guidance for Directors, shareholders, legal practitioners, and courts in distinguishing legitimate business decisions from conduct that gives rise to personal liability.

This research is limited to a normative juridical analysis of the implementation of the business judgment rule under Indonesian Company Law. The discussion is confined to statutory regulations, legal doctrines, and relevant court decisions concerning directors' liability, without examining empirical corporate practices. This limitation enables the research to focus on the normative legal framework governing the application of the business judgment rule in Indonesia.Based on the foregoing discussion, a fundamental legal issue arises regarding the implementation of the business judgment rule under Indonesian Company Law. Although the doctrine has been recognized as a mechanism to protect directors from personal liability for bona fide business decisions, the Company Law does not provide explicit legal standards for interpreting essential elements such as good faith, due care, adequate information, and the absence of conflicts of interest. This normative ambiguity creates legal uncertainty in determining whether directors should be held personally liable when a business decision results in corporate losses.

Based on this background, the problem examined in this research is how the business judgment rule principle is applied within the framework of the Company Law. This research also analyzes its practical application through a review of relevant court decisions. Thus, it is hoped that this research will provide a more comprehensive understanding of the position and role of the business judgment rule in the Indonesian corporate legal system.

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RESEARCH METHOD

This research employs a normative juridical method, as it examines law as a system of norms through the analysis of statutory regulations, legal doctrines, and judicial decisions (Soekanto & Mamudji, 2001). This method is selected because the research focuses on analysing the implementation of the business judgment rule under Indonesian Company Law and identifying the normative legal standards governing directors' liability. The research adopts a statute approach and a conceptual approach to examine the relevant legislation, legal principles, and Indonesian court decisions concerning the business judgment rule (Disemadi, 2022).

The research relies exclusively on secondary data consisting of primary, secondary, and tertiary legal materials. Primary legal materials include statutory regulations and relevant court decisions, while secondary legal materials comprise books, journal articles, and other scholarly publications (Antony, 2026). Tertiary legal materials, such as legal dictionaries are used to support the interpretation of legal concepts. These legal materials are collected through library research and analysed qualitatively using legal interpretation and systematic legal reasoning to evaluate the implementation of the business judgment rule and its application in Indonesian judicial practice.

RESULT AND DISCUSSION

Duties and Authorities of the Board of Directors

Referring to Article 1 number 5 of the Company Law, the Board of Directors (BOD) as a company organ has two duties and authorities. First, the Board of Directors is the authorized and fully responsible body for managing the company for the benefit of the company, in accordance with the company's purposes and objectives. Second, the Board of Directors is authorized and responsible for representing the company both inside and

outside the court, in accordance with the provisions of the articles of association.

The Board of Directors' authority and responsibility for managing the company make it the strategic policy-making body that determines the direction of the company's sustainability. From a good corporate governance perspective, the Board of Directors not only performs administrative or operational functions but also plays a role in formulating the vision, determining strategy, and establishing business steps that are fundamental to the company's sustainability (Anshari et al., 2025). The Board of Directors' decisions have direct implications for the company's performance and existence amidst the competitive business world.

In addition to managing the company, another duty and authority of the Board of Directors is to represent the company both inside and outside the court (Article 98 paragraph (1) of the Company Law). This representative authority positions the Board of Directors as the company's legal representative in all legal relations with third parties. Therefore, any legal action taken by the Board of Directors in their capacity as the company's representative is in principle binding on the company, as long as such action is carried out within the limits of their authority.

The Board of Directors' position as the organ with full authority over the management of the Company carries significant legal consequences. On the one hand, the Board of Directors is granted broad authority to make business decisions deemed most appropriate for the Company's interests. However, on the other hand, this authority is balanced by significant legal responsibilities, both in the form of civil liability and potential criminal liability (Intihani, 2023). Therefore, the relationship between the authority and responsibility of the Board of Directors is an inseparable whole within the legal framework of companies.

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In line with these duties and authorities, the Board of Directors is required to carry out its duties and authorities in good faith, with full responsibility, and with prudence, as reflected in the fiduciary duty principle stipulated in the Company Law. The term fiduciary duty is derived from two words. First, the word "fiduciary," derived from the Latin "fiduciarus," meaning "fiducia," meaning trust, or fidere, meaning to trust. Second, the word "duty," meaning "duty" (Isfardiyana, 2015). Fiduciary duty refers to the duty of carrying out a trust for the benefit of another party.

The Company is a created legal entity (an artificial person). The authority and responsibility of the board of directors are based on the basis of trust (fiduciary) to manage the company for the benefit of the company. This is expressly regulated in the provisions of Article 97 paragraph (2) in conjunction with Article 97 paragraph (1) in conjunction with Article 92 paragraph (1) of the Company Law. Based on these provisions, the board of directors has the duty (responsibility) to manage the company, where the management in question must be carried out by each member of the board of directors in good faith and with full responsibility for the benefit of the company and in accordance with the aims and objectives of the company. The board of directors must avoid all forms of abuse of authority. Within this framework, the board of directors can be held personally liable if it is proven that there is an error or negligence in carrying out their duties.

The Company Law explicitly limits who can be appointed as members of the Board of Directors. Article 93 paragraph (1) of the Company Law stipulates that only individuals competent to perform legal acts can be appointed as members of the Board of Directors. Furthermore, there are additional negative requirements: within the five years prior to their appointment, the individual must have never been declared bankrupt, never been a member of the Board of Directors or the Board of

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Commissioners found guilty of causing a company to go bankrupt, and never been convicted of a crime that caused financial losses to the state and/or related to the financial sector. This provision reflects the efforts of the lawmakers to ensure that members of the Board of Directors possess integrity, a good reputation, and a good track record before undertaking the company's management functions.

The Company Law only recognizes (uses) the term "Board of Directors" as a collegial organ. It does not specifically recognize the terms "President Director" or "Director." Interestingly, the term "director" is used in Law No. 8 of 1995 concerning Capital Markets, as amended by Law No. 4 of 2023.

In practice, the terms "president director" and "director" are commonly used in a company's organizational structure. However, legally, all members of the Board of Directors hold equal status. If the Board of Directors consists of more than one person, the division of duties and authority among them is regulated in the articles of association or determined through a resolution of the General Meeting of Shareholders (GMS) (Article 92 paragraph (3) of the Company Law). If the GMS does not stipulate such division, the Board of Directors has the authority to determine it through an internal resolution (Article 92 paragraph (6) of the Company Law).

This regulation demonstrates that the law provides flexibility for companies to regulate the division of duties within the Board of Directors according to the needs and complexity of their business activities. However, this flexibility must remain within the principles of collegiality and shared responsibility. This means that, despite the internal division of duties, the legal responsibility of the Board of Directors remains collectively vested in all members of the Board of Directors.

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complexity of its business activities. However, this flexibility must remain within the principles of collegiality and shared responsibility. This means that, despite the internal division of duties, the legal responsibility of the Board of Directors remains collectively vested in all members of the Board of Directors.

The duties and responsibilities of the Board of Directors, as stipulated in the Company Law, encompass various aspects related to the management of the Company. First, the Board of Directors is obligated to manage the Company in good faith and with full responsibility in accordance with the Company's purposes and objectives (Article 92 paragraph (1) and Article 97 paragraphs (1) and (2) of the Company Law). This obligation reflects the fundamental principle of fiduciary duty, which requires the Board of Directors to act in the best interests of the Company, rather than in the interests of themselves or others.

Second, the Board of Directors is required to comply with the limitations of authority stipulated in the articles of association or resolutions of the General Meeting of Shareholders (Article 92 paragraph (2) of the Company Law). This provision demonstrates that the Board of Directors' authority is not absolute but is limited by the Company's internal provisions. Violation of these limitations may result in legal liability for the Board of Directors, particularly if such actions result in losses to the Company.

Third, the Board of Directors has administrative obligations, namely, to create and maintain a shareholder register, a special register, minutes of the General Meeting of Shareholders, and minutes of Board of Directors meetings. In addition, the Board of Directors is also required to prepare annual reports, including the Company's financial statements, and to properly maintain all Company documents (Article 100 paragraph (1) of the Company Law). This obligation is part of the principles of transparency and accountability in the Company's management.

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Fourth, the Board of Directors is personally liable for the Company's losses if proven guilty or negligent in carrying out its management duties (Article 97 paragraph (3) of the Company Law). If the Board of Directors consists of more than one person, this liability is joint and several (Article 97 paragraph (4) of the Company Law). This means that each member of the Board of Directors can be held liable for the Company's losses unless they can prove that they are not guilty or negligent in the matter. Pursuant to Article 97 paragraph (1) in conjunction with Article 97 paragraph (4) of the Indonesian Company Law, the Board of Directors bears collective and collegial responsibility. Accordingly, each director is legally presumed to have agreed with management decisions adopted at a board meeting, unless the director has expressly recorded or declared his or her dissent.

Furthermore, the Company Law also specifically regulates the liability of the Board of Directors in the event of company bankruptcy. If bankruptcy occurs due to the fault or negligence of the Board of Directors and the bankruptcy assets are insufficient to cover all of the Company's obligations, each member of the Board of Directors is jointly and severally liable for the unpaid obligations (Article 104 paragraph (2) of the Company Law). This liability even applies to members of the Board of Directors who served in the five years prior to the declaration of bankruptcy (Article 104 paragraph (3) of the Company Law).

However, the Company Law provides an opportunity for Directors to relieve themselves of this liability, provided they can prove that the bankruptcy was not caused by their fault or negligence, that they have managed the company in good faith and with due care, that they have no conflict of interest, and that they have taken measures to prevent bankruptcy. This provision is fundamentally in line with the business judgment rule principle, which provides protection for Directors who have acted professionally and responsibly.

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In addition to these obligations, the Company Law also stipulates that members of the Board of Directors are required to report to the Company any shares owned by themselves and/or their families in the Company or other companies (Article 101 paragraph (1) of the Company Law). This information is then recorded in a special register. This obligation aims to prevent conflicts of interest and ensure transparency in share ownership by the Board of Directors. If this obligation is not fulfilled and results in losses to the Company, the relevant member of the Board of Directors is personally liable for those losses.

In addition to management duties, the Company Law explicitly regulates the authority of the Board of Directors to represent the Company. A member of the Board of Directors is not authorized to act as a representative of the Company if there is a court case between the Company and the relevant member of the Board of Directors, or if the relevant member has a conflict of interest with the Company (Article 99 paragraph (1) of the Company Law). In such circumstances, the representation authority is transferred to another member of the Board of Directors who does not have a conflict of interest. If all members of the Board of Directors are in a conflict of interest, this authority is exercised by the Board of Commissioners. If neither the Board of Directors nor the Board of Commissioners is able to represent the Company, the GMS has the authority to appoint another party to act on behalf of the Company (Article 99 paragraph (2) of the Company Law). This provision emphasizes the importance of the principles of independence and objectivity in the management of the Company. Directors are not permitted to act in situations where their personal interests could potentially conflict with the interests of the Company. This violates the principle of fiduciary duty.

Upon closer examination, there are differences in the personal liability imposed by the Company Law on members of the Board of Directors in relation to the implementation of

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management functions and representation functions. Article 97 paragraph (3) of the Company Law imposes full personal liability on the members of the Board of Directors for the Company's losses. Personal liability as regulated in Article 97 paragraph (3) of the UUPT is expressly referred to the management function as referred to in the provisions of Article 97 paragraph (2) of the UUPT. Meanwhile, the provisions of Article 98 of the UUPT which regulates the representative function do not impose personal liability on members of the Board of Directors. If a member of the board of directors does not have such authority, the agreement signed by the member of the board of directors does not bind the Company, but binds the member of the board of directors concerned personally.

The Board of Directors is fully responsible for the management of the Company. If a member of the Board of Directors commits or is involved in an act that meets the elements of a criminal offense, they may be held personally liable. Mistakes or negligence by the Board of Directors under the Company Law do not diminish the validity of criminal law provisions. Referring to Article 155 of the Company Law, the provisions regarding the liability of the Board of Directors and/or the Board of Commissioners for their mistakes and negligence as stipulated in this law do not diminish the provisions stipulated in the Criminal Law. Therefore, the Board of Directors must always exercise caution in carrying out their duties, not only from the perspective of compliance with company law but also with other applicable legal provisions.

Therefore, it can be concluded that the duties and authorities of the Board of Directors under the Company Law are comprehensively regulated, balancing the granting of broad authority with the imposition of strict legal responsibilities. This regulation reflects an effort to ensure that the Board of Directors can carry out their management functions effectively while remaining within the law and the principles of good corporate

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governance. In this context, a proper understanding of the duties, authorities, and responsibilities of the Board of Directors is crucial, particularly in relation to the application of the business judgment rule doctrine as a legal protection mechanism for the Board of Directors in carrying out their management functions.

Business Judgment Rule Doctrine

The business judgment rule doctrine first developed in common law systems, particularly in the United States, through court jurisprudence that gradually formulated principles of protection for directors in carrying out their managerial functions (Sanyoto & Lie, 2025). Courts recognized that business activities inherently involve risk, making it inappropriate for every loss arising from a business decision to be automatically borne by the directors. Based on these considerations, a doctrine was established that provides protection as long as the directors act reasonably in the decision-making process. This doctrine was later adopted and adapted by various countries, including those with civil law systems, as part of the development of modern corporate law.

In essence, the business judgment rule provides discretion to directors to make strategic decisions as long as the decisions are based on good faith, prudence, adequate information, free from conflicts of interest, and are intended to serve the interests of the company. Therefore, any subsequent losses arising from such decisions do not automatically constitute a basis for imposing personal liability on directors, either civil or criminal, as long as these standards have been met (Graciella & Gunadi, 2025).

Over time, the business judgment rule has evolved, not only as a judicial doctrine but also as a general principle of good corporate governance. Its existence reflects the recognition that the Board of Directors, as the Company's managers, requires

discretion in making business decisions without excessive intervention from external parties, including the courts. This is crucial given the dynamic and competitive nature of the business world, which often demands rapid decision-making under conditions of uncertainty (Mulyana, 2018).

Under the business judgment rule, the court will not, in principle, assess the substance or outcome of a business decision made by the Board of Directors, but rather will only assess whether the decision-making process was carried out properly and in accordance with appropriate standards. Thus, the focus of the assessment lies not in whether the decision resulted in a profit or loss, but rather in whether the Board of Directors acted rationally, based on adequate information, and free from conflicts of interest (Anshari et al., 2025). As long as these elements are met, the court will generally respect and not interfere with the business decisions made by the Board of Directors.

This approach also aims to prevent judicial hindsight bias, the tendency to judge a decision based on its final outcome rather than the conditions and information available at the time the decision was made . In practice, hindsight bias can lead to injustice, as a decision that was initially based on rational considerations and sufficient information can be deemed erroneous simply because the final outcome does not align with expectations. Therefore, the business judgment rule serves as a mechanism to ensure that the assessment of the Board of Directors' actions is conducted objectively and contextually.

Conceptually, the business judgment rule is a principle stating that Directors cannot be held legally responsible for their business decisions, even if those decisions ultimately result in losses for the Company, as long as the decisions were made in good faith, for a proper purpose, based on a rational basis, and with due regard for the principle of prudence (Hertiawan, 2024). In other words, this doctrine does not grant absolute immunity

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to Directors, but rather provides conditional protection contingent on meeting certain standards of conduct in the decision-making process.

In practice, this doctrine is often used as a basis for defense for Directors in facing lawsuits or claims. Directors can demonstrate that their decisions have met the required standards, so that any resulting losses cannot be attributed to their personal liability (Intihani, 2023). Therefore, this doctrine plays a crucial role in providing legal certainty and creating a conducive environment for Directors to optimally carry out their management functions.

The application of the business judgment rule principle also plays a significant role in striking a balance between legal protection for Directors and accountability in the management of the Company. On the one hand, Directors need the space to act independently without fear of legal action. On the other hand, an oversight mechanism is still necessary to prevent Directors from abusing their authority. Without adequate protection, Directors can potentially become defensive, which can ultimately hinder the Company's innovation, growth, and competitiveness, and have broader impacts on economic dynamics (Graciella & Gunadi, 2025).

The business judgment rule doctrine is closely related to the fiduciary duty principle, specifically the duty of care and the duty of loyalty. The duty of care requires Directors to act with a reasonable degree of care as a competent professional would in similar circumstances, including in gathering and evaluating information before making decisions. Meanwhile, the duty of loyalty requires the Board of Directors to act solely in the best interests of the Company and to avoid any conflict of interest that could affect their objectivity. If the Board of Directors has properly fulfilled these two obligations, then errors arising from business decisions do not necessarily give rise to personal liability.

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In this context, the business judgment rule can be viewed as a logical consequence of the application of the fiduciary duty principle. As long as the Board of Directors has met the fiduciary duty standard, the law provides protection for the results of their decisions, even if those decisions do not produce the desired results (Graciella & Gunadi, 2025). Conversely, if the Board of Directors is proven to have violated the fiduciary duty principle, for example by acting without adequate care or with a conflict of interest, the protection of the business judgment rule cannot be granted, and the Board of Directors may be held personally liable.

In this context, the business judgment rule can be viewed as a logical consequence of the application of the fiduciary duty principle. As long as the Board of Directors meets the fiduciary duty standard, the law provides protection for the results of their decisions, even if those decisions do not produce the desired results. Conversely, if the Board of Directors is proven to have violated the fiduciary duty principle, for example by acting without adequate care or in the presence of a conflict of interest, the protection of the business judgment rule cannot be granted, and the Board of Directors may be held personally liable.

In addition to providing legal protection, the business judgment rule also serves a normative function as a guideline for the Board of Directors in carrying out their duties and authorities (Hertiawan, 2024). This doctrine establishes standards of conduct that must be met in every business decision-making process: acting in good faith, based on adequate information, and with rational consideration (Graciella & Gunadi, 2025; Hertiawan, 2024). Thus, the business judgment rule functions not only reactively in the context of legal defense but also proactively in shaping the behavior of the Board of Directors to align with the principles of good corporate governance.

The application of the business judgment rule is crucial in creating a balance between legal protection for the Board of

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Directors and accountability in the management of the Company. On the one hand, the Board of Directors requires protection to effectively carry out its managerial functions without fear of excessive legal action. On the other hand, a mechanism is still needed to ensure that the Board of Directors does not abuse its authority and remains accountable for all its actions. The business judgment rule serves as a meeting point between these two interests, providing limited and conditional protection.

This doctrine also has broader implications for the business climate. With adequate protection, the Board of Directors will be more willing to make innovative and risky strategic decisions, which can ultimately drive the Company's growth and development. Conversely, without such protection, the Board of Directors tends to be defensive and avoid making risky decisions, even if such decisions have the potential to significantly benefit the Company. In the long term, this defensive attitude can hinder the Company's competitiveness and slow down the dynamics of overall economic growth.

Reformulation Regulation of the Business Judgement Rule in the Limited Liability Company Law

The Board of Directors is one of the corporate organs of a limited liability company. Article 1 point 2 of the Indonesian Company Law provides that the corporate organs consist of the General Meeting of Shareholders (GMS), the Board of Directors, and the Board of Commissioners. Pursuant to Article 1 point 5 of the Indonesian Company Law, the Board of Directors is the corporate organ vested with full authority and responsibility for managing the Company in accordance with its purposes and objectives, as well as representing the Company both within and outside the courts in accordance with the articles of association. Such management encompasses both the Company's day-to-day operations and strategic corporate actions.

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Under Article 92 paragraph (1) of the Indonesian Company Law, the Board of Directors is required to manage the Company for its benefit and in accordance with its purposes and objectives. Article 92 paragraph (2) further authorizes the Board of Directors to exercise such management based on policies it considers appropriate within the limits prescribed by the Indonesian Company Law and/or the articles of association. The elucidation of Article 92 paragraph (2) explains that an "appropriate policy" is one formulated on the basis of the directors' expertise, available business opportunities, and generally accepted practices in the relevant industry. Nevertheless, Article 97 paragraph (3) of the Indonesian Company Law provides that each member of the Board of Directors is personally liable for losses suffered by the Company where such losses result from the director's fault or negligence in performing his or her duties. Accordingly, not every corporate loss automatically gives rise to the personal liability of the directors; liability arises only where fault or negligence can be established.

Within the framework of Indonesian positive law, the doctrine of the business judgment rule is not explicitly formulated as a stand-alone concept as is known in the common law legal system. However, if examined substantively, the principles contained in this doctrine have been implicitly adopted in the provisions of Article 97 paragraph (5) of the UUPT. This norm essentially provides room for exemption from responsibility for members of the Board of Directors for losses to the Company, as long as the Directors concerned are able to prove that they have fulfilled a number of requirements that are limitedly determined by law (Graciella & Gunadi, 2025).

Pursuant to Article 97 paragraph (5) of the Indonesian Company Law, the Board of Directors is afforded legal protection in that its members cannot be held personally liable for losses suffered by the Company, provided that:

a. The loss was not caused by the director's fault or negligence

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The analysis of this requirement is conducted in several stages. First, it must be established that the Company has suffered a loss, as reflected in its financial statements, particularly the statement of profit or loss. Second, it must be determined whether the director committed any fault or negligence, namely by violating the Indonesian Company Law, the Company's articles of association, and/or other applicable laws and regulations in the process of making a management decision. Third, where no causal relationship exists between the loss suffered by the Company and the director's fault or negligence, the director cannot be held personally liable.

b. The director has managed the Company in good faith and with due care for the benefit of the Company and in accordance with its purposes and objectives

The fulfilment of the requirements of good faith and due care is assessed based on the following parameters:

1. Good faith

Good faith in the management of the Company may be understood from two perspectives, namely: (a) Subjective perspective, there must be *honesty in fact* on the part of the director that the management decision-making process was carried out for the benefit of the Company and in accordance with its purposes and objectives. (b) Objective perspective, based on a *reasonable judgment*, the management decision-making process undertaken by the director must be founded upon honesty in fact for the benefit of the Company and in accordance with its purposes and objectives.

2. Due care

The assessment of whether the requirement of due care has been satisfied is divided into the following: (a) Where laws and regulations require that a particular procedure (Standard Operating Procedure/SOP), method, or mechanism be followed in the management decision-making process, a material

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violation of such procedure, method, or mechanism legally constitutes evidence that the director failed to exercise due care. (b) Where no laws or regulations require compliance with a particular SOP, method, or mechanism in the management decision-making process, the assessment of due care is based on a reasonable judgment as to whether the director exercised the level of care expected of an ordinary prudent person engaged in the same line of business. The assessment of due care under both circumstances requires the opinion of a business expert in the relevant industry. (c) The director did not have, either directly or indirectly, a conflict of interest in relation to the management action that resulted in the loss. In performing the duty to manage the Company, each director is required to act solely in the interests of the Company and to set aside personal interests or the interests of other parties that may affect the independence of the decision-making process. Accordingly, in making management decisions, directors must be free from any form of conflict of interest, whether direct or indirect. (e) The director has taken measures to prevent the occurrence or continuation of the loss

This fourth requirement concerns the director's responsibility after the management decision has been made. The director's responsibility is continuous in nature. Pursuant to Article 97 paragraph (5) letter d of the Indonesian Company Law, loss constitutes a risk that may inherently arise from any business decision made by the Board of Directors. In the context of this requirement, the director is responsible for taking reasonable and proportionate measures to prevent the occurrence or continuation of the loss, taking into account the characteristics of the Company's business activities.

Thus, in the context of corporate law in Indonesia, the business judgment rule serves as a defense mechanism that can be invoked by Directors when facing claims for liability for company losses. However, this principle is not intended to

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completely eliminate the Directors' responsibility, but rather to provide protection for business decisions made legally, rationally, and in good faith within the framework of proper business management.

It is important to emphasize that the protection afforded by the business judgment rule is not absolute. This doctrine cannot be used as a shield to justify Directors' actions that involve elements of fraud, conflict of interest, illegality, or gross negligence. In such situations, Directors can still be held personally liable, both in civil and criminal proceedings. Therefore, the primary essence of the business judgment rule lies in the assessment of the decision-making process (process-oriented assessment), not solely the final outcome of the decision (Graciella & Gunadi, 2025).

A similar normative construction can also be found in the provisions of Article 104 paragraph (4) of the UUPT which regulates the responsibility of the Board of Directors in the event of a company's bankruptcy. This provision emphasizes that the Board of Directors can be released from personal responsibility if they can prove that the bankruptcy was not caused by their fault or negligence. This demonstrates the consistency of the legislative approach in providing protection to the Board of Directors as long as they act in accordance with the principles of prudence and good faith.

Furthermore, a similar principle is reflected in Financial Services Authority Regulation Number 33/POJK.04/2014 concerning the Board of Directors and Board of Commissioners of Issuers or Public Companies, which substantially adopts the norms of Article 97 paragraph (5) of the Company Law. This confirms that the business judgment rule has become an integral part of good corporate governance practices in Indonesia in the management of public companies.

In relation to the fiduciary duty principle, the application of the business judgment rule is closely correlated with the three

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main obligations of the Board of Directors: the duty of care, the duty of skill, and the duty of loyalty. These three principles are normative parameters used to assess whether the Board of Directors has acted in accordance with the standards required to obtain legal protection. The duty of care requires the Board of Directors to act with a reasonable degree of caution, the duty of skill requires the Board of Directors to optimally utilize their competencies and expertise, while the duty of loyalty requires the Board of Directors to prioritize the interests of the Company over personal interests (Graciella & Gunadi, 2025).

Upon further analysis, the four requirements in Article 97 paragraph (5) of the Company Law essentially reflect a standard of legal conduct that must be met by the Board of Directors in carrying out their corporate management functions. The first requirement, namely that the loss is not due to the fault or negligence of the Board of Directors, emphasizes the importance of the fault element as a basis for legal liability. In this context, a clear distinction must be made between losses arising as a consequence of inherent business risks and losses resulting from legal negligence or error. Not every loss experienced by the Company automatically gives rise to the Board of Directors' liability, as long as the loss is part of the normal course of business and has been rationally considered when the decision was made (Anshari et al., 2025). However, the Company Law does not clearly define the limits of the Board of Directors' fault or negligence in managing the company.

The second requirement, namely good faith and due care, is a concrete manifestation of the duty of care. Like the first requirement, the Company Law does not clearly define the limits of the Board of Directors' duty of good faith and due care in managing the company. In practice, the Board of Directors is required to demonstrate that its decisions are based on adequate information (informed decisions), through a rational analysis process, and are intended to serve the best interests of the

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Company (Sanyoto & Lie, 2025). Proof of this element is generally provided through adequate documentation, such as a feasibility study report, expert opinions or professional consultants, minutes of board meetings, and a track record of the decision-making process. The absence of such documentation often weakens the board's position in proving that it acted prudently.

The third requirement, namely the absence of conflicts of interest, reflects the principle of duty of loyalty. The Board of Directors must ensure that every decision made is free from the influence of personal interests or affiliated parties that could compromise objectivity and independence. If a conflict of interest is proven, the protection of the business judgment rule cannot be applied, because the resulting decision no longer reflects the best interests of the Company (Graciella & Gunadi, 2025). Referring to the provisions of Article 97 paragraph (5) of the Company Law, conflicts of interest are not limited to direct relationships but also include indirect relationships. If a member of the Board of Directors has personal interests or those of affiliated parties that conflict or have the potential to conflict with the interests of the company in a particular management policy or transaction, a conflict of interest can be deemed to have occurred. If a director obtains personal financial gain or personal benefit, either directly or indirectly, from a management policy or transaction conducted by the company, a conflict of interest is deemed to have occurred.

The fourth requirement, namely the obligation to take action to prevent the occurrence or continuation of losses, demonstrates the continuing responsibility of the Board of Directors. The Board of Directors is assessed not only at the time of decision-making, but also on the steps taken after the decision is implemented. Risk mitigation measures, oversight of decision implementation, and response to evolving situations are integral to the Board of Directors' responsibilities. Failure to take these

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steps can result in the loss of legal protection that should be afforded (Qur'ani, 2018).

Taken together, these four requirements form a process-based defense framework, where the primary focus is on the quality of the decision-making process, rather than the final outcome. This approach aligns with the primary objective of the business judgment rule, which is to avoid hindsight bias, where a decision is judged solely on its final outcome without considering the conditions and information available at the time the decision was made.

However, in practice in Indonesia, the application of the business judgment rule still faces several significant challenges. One major issue is the lack of clear and measurable normative parameters regarding the meaning of "error," "negligence," "good faith," "prudence," and "conflict of interest." These concepts are abstract and open to various interpretations, so their assessment is highly dependent on the judge's perspective in each case. As a result, differences in interpretation between decisions are not uncommon, which can ultimately lead to legal uncertainty (Sanyoto & Lie, 2025).

Furthermore, the lack of explicit provisions regarding the business judgment rule in the Company Law is also a factor affecting the consistency of its application. Although this principle is substantially reflected in Article 97 paragraph (5) of the Company Law, the lack of clear terminology often results in this doctrine not being explicitly identified in the legal reasoning of court decisions. This has implications for the limited development of jurisprudence specifically addressing and strengthening the application of the business judgment rule in Indonesia.

Another equally important issue is the limited practical understanding among Directors and business actors regarding the standards that must be met to obtain protection under this doctrine. In practice, it is still common to find that business

decisions are made without the support of a well-documented process, without adequate analysis, or without involving relevant professional considerations. This situation certainly makes it difficult for Directors to prove that they have met the required elements of the business judgment rule if a dispute or lawsuit arises later.

Therefore, more systematic efforts are needed to strengthen the application of the business judgment rule in the Indonesian company legal system. These efforts can be achieved through, among other things, the consistent and progressive development of jurisprudence, increasing the capacity and understanding of judges and legal practitioners, and potentially introducing more explicit regulations into legislation. Furthermore, from a corporate practice perspective, Directors need to be encouraged to implement good corporate governance, including documenting decision-making processes and implementing effective risk management.

Thus, it is understandable that the business judgment rule is not merely a defense instrument for Directors, but also an integral part of the corporate legal system, aimed at creating a balance between freedom in business decision-making and legal accountability for every action taken. The successful implementation of this principle depends heavily on consistent interpretation by law enforcement officials and the Directors' commitment to always act in accordance with the standards of prudence, good faith, and loyalty required in managing the Company.

Implementation of the Business Judgment Rule Doctrine

In Indonesia, there is no uniform understanding among law enforcement agencies regarding the application of the business judgment rule doctrine. Although Article 97 paragraph (5) of the Company Law defines elements such as good faith, prudence,

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absence of conflict of interest, and prudent measures, this provision does not provide clear benchmarks for the parameters for their fulfillment. Consequently, the assessment of whether these elements are fulfilled depends heavily on the facts revealed in court (Hertiawan, 2024). In practice, the application of the business judgment rule remains case-by-case and has not yet established a consistent jurisprudential pattern. In some cases, the courts tend to place more emphasis on the final outcome of a business decision than on the decision-making process (Sanyoto & Lie, 2025).

According to Surya Jaya, Chief Justice of the Criminal Chamber of the Supreme Court of the Republic of Indonesia, Article 97 paragraph (5) of the Company Law is essentially used as a parameter for assessing the decision-making process of Directors or Commissioners, and not as a basis for automatically overriding the liability of Company managers. Therefore, the fulfillment of these elements must first be tested through a court hearing to determine the existence of error or negligence. Thus, the business judgment rule cannot be simply used as a basis for exemption from liability without a proven process (Huzaini, 2020). In other words, Article 97 paragraph (5) is used to measure and test the decision-making process. If the provisions of Article 97 paragraph (5) of the Company Law are proven to have been met, the Company's Board of Directors is not responsible for the Company's losses resulting from its management.

This approach differs from the concept of the business judgment rule in the common law system. In the common law system, the business judgment rule is understood as the doctrine of judicial restraint, which is the basis for judges to refrain from evaluating the substance of the Board of Directors' business decisions as long as their decision-making process meets the specified standards. Consequently, the burden of proof shifts to the party suing to demonstrate that the Board of Directors has not met these standards. Therefore, the business judgment rule

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doctrine essentially serves as a reason for judges to reject claims if the criteria are met.

In Supreme Court Decision Number 121 K/Pid.Sus/2020, a former president director was acquitted of all charges at the cassation level. The Supreme Court concluded that the decisions taken were part of the company's development efforts and did not contain elements of fraud, conflict of interest, or intentional error. Conversely, in Supreme Court Decision Number 417 K/Pid.Sus/2014 regarding the lease of a Boeing 737 aircraft, although the Board of Directors' actions were deemed to be in accordance with the principles of good corporate governance, the court still found the defendant guilty of corruption (Hertiawan, 2024). The difference in these decisions demonstrates an inconsistency in the application of the business judgment rule in Indonesia, which ultimately creates legal uncertainty for the Board of Directors in carrying out their corporate management functions.

CONCLUSION

Based on the overall discussion, it can be concluded that the application of the business judgment rule in Law Number 40 of 2007 concerning Limited Liability Companies (UUPT) has essentially been implicitly accommodated, particularly through the provisions of Article 97 paragraph (5) and Article 104 paragraph (4). These provisions provide legal protection to Directors from claims of liability for company losses as long as the Directors can prove that the losses were not due to their error or negligence, that decisions were made in good faith and with due care for the benefit of the company, that there was no conflict of interest, and that efforts had been made to prevent the occurrence or continuation of losses. In this context, the Directors play a key role in determining the direction and success of the company, and therefore are required to be bold in making risky business decisions. Therefore, the existence of the business

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judgment rule is crucial as a legal protection instrument, emphasizing that the assessment of the Directors' responsibility must be based on the decision-making process, not solely on the final outcome.

Although normatively, the principle of the business judgment rule has been implicitly adopted in the UUPT, its implementation in practice in Indonesia is still less than optimal. This is due to the lack of clear and measurable parameters regarding the meaning of "error," "negligence," "good faith," "prudence," and "conflict of interest." Consequently, the application of the business judgment rule often relies on the interpretation of judges, which has the potential to create inconsistencies and legal uncertainty. Therefore, strengthening both regulatory aspects and consistent jurisprudence is needed. This way, the business judgment rule can function optimally in creating a balance between legal protection for Directors and accountability in Company management, while simultaneously encouraging the creation of a healthy and competitive business climate.

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DECLARATION OF GENERATIVE AI USE

The authors declare that no generative artificial intelligence tools were used in the preparation of this manuscript.

COMPETING INTERESTS

The authors have declared that no competing interests exist.