



Research Article



Strengthening the Business Judgment Rule in Indonesia: Lessons from Malaysia

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Abstract: The Business Judgment Rule (BJR) serves as a fundamental doctrine in corporate law, protecting company directors from personal liability when they act in good faith, exercise due diligence, and avoid conflicts of interest. However its recognized importance in safeguarding directors' discretion, Indonesian lawmakers and courts have not fully developed its application, as shown by limited statutory codification, inconsistent judicial interpretation, and insufficient empirical analysis, thereby hindering coherent corporate governance and generating uncertainty in directors' decision-making authority. This study analyzes the implementation of the BJR in Indonesia through a comparative lens with Malaysia. Using a normative and comparative legal approach, the research reveals that Indonesia's current framework lacks clarity, comprehensive codification, and consistent judicial interpretation particularly in the private sector. The research findings demonstrate that, first, the implementation of the Business Judgment Rule (BJR) in Indonesia remains constrained by procedural ambiguity, which undermines consistent and predictable enforcement. Second, the allocation of the burden of proof lacks clarity, thereby weakening both the protection afforded to directors and the reliability of judicial determinations. Third, institutional support for the practical application of the BJR is insufficient, limiting its capacity to promote effective corporate governance. In response, the study recommends comprehensive reform of the Indonesian Company Law, the incorporation of safe-harbor provisions, the enhancement of judicial competence through specialized training, and the reinforcement of corporate governance mechanisms to improve legal certainty and strengthen directors' accountability. Advancing the BJR framework is essential to encourage innovation, reduce legal risks, and enhance the competitiveness and resilience of Indonesia's corporate sector.

Keywords: Business; Corporate; Governance; Role;



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INTRODUCTION

The development of legal frameworks that accommodate calculated risk-taking has become increasingly critical to fostering innovation and ensuring sustainable corporate growth. Corporate directors are frequently required to make complex strategic decisions in contexts marked by uncertainty, market volatility, and rapid technological change.¹ Within this framework, the Business Judgment Rule (BJR) serves as a foundational legal doctrine that protects directors from personal liability for honest business misjudgments, provided such decisions are made in good faith, with due diligence, and without conflicts of interest. By offering this protection, the

¹ I Gede Agus Kurniawan and others, 'The Business Law in Contemporary Times: A Comparison of Indonesia, Vietnam, and Ghana', *Substantive Justice International Journal of Law*, 7.2 (2024), 114-41 <https://doi.org/10.56087/substantivejustice.v7i2.297>

BJR promotes innovation and supports decisive, adaptive leadership without exposing directors to unwarranted legal repercussions.² In Indonesia, one of the principal challenges to the effective implementation of the BJR is the ongoing phenomenon of overcriminalization. Directors, particularly those in state-owned enterprises, have frequently faced criminal prosecution under anti-corruption legislation for business losses incurred in good faith and without evidence of corrupt intent. This tendency reflects a legal culture that has yet to fully embrace the principles of managerial discretion and reasonable business risk inherent in the BJR. Such an approach limits directors' decision-making autonomy, discourages prudent risk-taking, and ultimately constrains innovation and the competitive development of the corporate sector.³

The BJR serves as a crucial doctrinal safeguard against hindsight bias, a common judicial tendency to evaluate failed business decisions based on their eventual outcomes rather than the integrity of the decision-making process. In jurisdictions where the BJR is effectively implemented, courts direct their scrutiny toward whether directors acted in good faith, exercised due care, and fulfilled their fiduciary duties at the time of making the decision, rather than assessing the favorability of the subsequent results.⁴ This doctrinal approach protects directors from ex post facto liability, thereby reducing the deterrent effect of potential legal exposure and emphasizing the primacy of sound corporate processes over the achievement of perfect outcomes. In the Indonesian context, the 2025 revision of the Law on State-Owned Enterprises (SOEs) marks a significant shift in the legal treatment of directors in state-owned entities.⁵ By clarifying that SOE directors are not to be classified as public officials and by introducing standards comparable to safe-harbor provisions, the reform aligns aspects of Indonesia's corporate governance framework with international best practices. However, the revision's scope remains confined to SOEs, leaving directors in the private sector without similar legal protection and perpetuating disparities in the consistent application of the BJR.⁶

Another significant limitation of the Indonesian legal system lies in the absence of well-established judicial precedent supporting the application of the Business Judgment Rule (BJR). Unlike Malaysia, where courts have consistently cited and reinforced this doctrine, Indonesian jurisprudence remains underdeveloped, leaving limited guidance on how the rule should be applied in practice.⁷ This lack of case law diminishes the predictability of judicial outcomes, thereby reducing both the deterrent

² Salwa Nida, 'Legal Protection Urgency for MSMEs Actors as Well as Partnership Program Which Are Regulated According to Law Number 11 of 2020 on Job Creation', *Walisongo Law Review (Walrev)*, 4.2 (2022), 257–84 <https://doi.org/10.21580/walrev.2022.4.2.11675>

³ Andrew Keay and Joan Loughrey, 'The Concept of Business Judgment', *Legal Studies*, 39.1 (2019), 36–55 <https://doi.org/10.1017/lst.2018.29>

⁴ Harshal Baviskar and Hita Manjunath, 'Business Judgement Rule : Issues and Prospects in India', *SSRN Electronic Journal*, 2024 <https://doi.org/10.2139/ssrn.4923294>

⁵ Bohumil Havel and Kateřina Ronovská, 'Business Judgement Rule in Foundation Governance', *Trusts & Trustees*, 31.4 (2025), 141–45 <https://doi.org/10.1093/tandt/ttaf015>

⁶ Sharon Galbraith and Harriet Buckman Stephenson, 'Decision Rules Used by Male and Female Business Students in Making Ethical Value Judgments: Another Look', *Journal of Business Ethics*, 12.3 (1993), 227–33 <https://doi.org/10.1007/BF01686450>

⁷ Jean Clarke and Robin Holt, 'Reflective Judgement: Understanding Entrepreneurship as Ethical Practice', *Journal of Business Ethics*, 94.3 (2010), 317–31 <https://doi.org/10.1007/s10551-009-0265-z>

effect on wrongful conduct and the protective value of the BJR for directors acting in good faith. In the context of contemporary corporate governance, the responsibilities of directors as strategic decision-makers have become increasingly complex due to heightened expectations for transparency, accountability, and prudent risk management. To safeguard directors from excessive judicial scrutiny and to promote confident, responsible leadership, many jurisdictions have adopted the BJR as a legal doctrine designed to protect directors from personal liability for business decisions made in good faith, free from conflicts of interest, and based on adequate information. Originating in common law jurisdictions such as the United States and the United Kingdom, the BJR operates as an abstention principle, limiting judicial intervention in corporate decision-making except in cases involving fraud, illegality, or gross negligence.⁸

Indonesia has progressively adopted the principles of the Business Judgment Rule (BJR), most notably reflected in Article 97 paragraph (5) of Law Number 40 of 2007 concerning Limited Liability Companies. This provision stipulates that members of the board of directors who perform their duties in good faith, with prudence, and in the interest of the company shall not be held personally liable for losses incurred by the corporation. Despite this normative recognition, the implementation of the BJR in Indonesia remains fragmented and inconsistent.⁹ The absence of comprehensive statutory codification, the lack of a clearly defined allocation of the burden of proof, and the nonexistence of a formally articulated safe-harbor mechanism continue to expose directors, particularly those serving in private companies, to civil and even criminal liability. This legal vulnerability is further exacerbated by the characteristics of the Indonesian legal system, which is marked by broad judicial discretion and unpredictable jurisprudence. Such conditions of legal uncertainty exert significant influence on corporate governance and economic performance. Directors often become reluctant to undertake strategic decisions involving calculated risks that are crucial for innovation and competitiveness. The possibility of facing prosecution under general criminal statutes, including anti-corruption legislation, for bona fide business judgments that result in financial losses has generated a chilling effect on managerial initiative and entrepreneurial behavior. Consequently, reconciling the need to encourage corporate dynamism with the imperative of legal accountability constitutes a fundamental and ongoing challenge in the development and reform of Indonesia's corporate law framework.¹⁰

A significant legislative development in Indonesia was marked by the enactment of the 2025 revision of the Law on State-Owned Enterprises (Law Number 1 of 2025). This reform explicitly clarified the legal status of directors of state-owned enterprises by affirming that they do not constitute state officials and by introducing safe-harbor

⁸ Dominik Dellermann and others, 'Design Principles for a Hybrid Intelligence Decision Support System for Business Model Validation', *Electronic Markets*, 29.3 (2019), 423–41 <https://doi.org/10.1007/s12525-018-0309-2>

⁹ Fendi Nugroho, Hartiwiningsih Hartiwiningsih and I Gusti Ayu Ketut Rachmi Handayani, 'Rethinking Subsidiary in Corruption Cases: Indonesian Experiences', *Journal of Human Rights, Culture and Legal System*, 5.2 (2025), 686–713 <https://doi.org/10.53955/jhcls.v5i2.714>

¹⁰ Waluyo Waluyo, Hilaire Tegnau and Noni Oktiana Setiowati, 'Aligning State Finance Regulations with SOE Bankruptcy Policy: Evidence from the United States', *Journal of Human Rights, Culture and Legal System*, 5.1 (2025), 246–78 <https://doi.org/10.53955/jhcls.v5i1.470>

elements for business decisions undertaken in good faith. The reform represents a progressive step in harmonizing Indonesia's corporate governance regime with prevailing international norms and offers a potential model for subsequent adoption in the wider corporate sector. Nevertheless, the reform's immediate applicability remains confined to state-owned enterprises and has not yet been extended to private corporations that operate under the regulatory framework of the Limited Liability Company Law.¹¹

In comparison, Malaysia has succeeded in establishing a more coherent and structured application of the Business Judgment Rule. Its Companies Act 2016 codifies explicit protections for directors and is reinforced by a consistent body of judicial precedent, a feature facilitated by the common-law tradition. Malaysian courts recognize a presumption that directors act in good faith and with rational judgment, shifting the burden of proof to plaintiffs to establish misconduct.¹² This approach enhances predictability, reduces litigation risks for directors, and contributes to a more stable and investment-friendly corporate environment. In light of these comparative developments, this study aims to analyze the implementation of the Business Judgment Rule in Indonesia through a comparative examination with Malaysia.¹³ The primary objective is to identify how statutory and judicial reforms can strengthen the protection afforded to company directors while preserving essential standards of corporate accountability. The research underscores the urgency for Indonesia to establish a more comprehensive and codified framework for the Business Judgment Rule that extends its application beyond state-owned enterprises to encompass private corporations. Such reform is expected to enhance legal certainty, improve the quality of corporate governance, and support the broader objectives of economic competitiveness.¹⁴

The BJR has become one of the most significant doctrines in the field of corporate law, particularly within jurisdictions that adhere to the common law tradition. This doctrine functions to shield corporate directors from personal liability for business decisions that may result in unfavorable outcomes, provided such decisions were made in good faith, on the basis of adequate information, and in the absence of conflicts of interest. The underlying rationale of the BJR is to prevent courts from applying hindsight bias when evaluating complex and high-risk managerial decisions. Michael Hilb¹⁵ characterizes the BJR as an “abstention doctrine,” asserting that judicial intervention in business decisions should occur only in cases involving clear evidence

¹¹ Retno Dewi Pulung Sari and others, ‘State Financial Losses as a Result of Environmental Damage’, *Journal of Human Rights, Culture and Legal System*, 4.1 (2024), 121–48 <https://doi.org/10.53955/jhcls.v4i1.136>

¹² Werner Gleißner, Thomas Günther and Christian Walkshäusl, ‘Financial Sustainability: Measurement and Empirical Evidence’, *Journal of Business Economics*, 92.3 (2022), 467–516 <https://doi.org/10.1007/s11573-022-01081-0>

¹³ Donelson R. Forsyth, ‘Judging the Morality of Business Practices: The Influence of Personal Moral Philosophies’, *Journal of Business Ethics*, 11.5–6 (1992), 461–70 <https://doi.org/10.1007/BF00870557>

¹⁴ Ingo Pies, Markus Beckmann and Stefan Hielscher, ‘Value Creation, Management Competencies, and Global Corporate Citizenship: An Ordonomic Approach to Business Ethics in the Age of Globalization’, *Journal of Business Ethics*, 94.2 (2010), 265–78 <https://doi.org/10.1007/s10551-009-0263-1>

¹⁵ Michael Hilb, ‘Toward Artificial Governance? The Role of Artificial Intelligence in Shaping the Future of Corporate Governance’, *Journal of Management and Governance*, 24.4 (2020), 851–70 <https://doi.org/10.1007/s10997-020-09519-9>

of fraud, self-dealing, or gross negligence. This approach underscores the importance of preserving managerial discretion and recognizes that directors, as individuals with specialized business expertise, should be permitted to exercise their judgment without an undue threat of litigation.

The historical evolution of the BJR can be traced to seminal decisions such as *Alvaro Cuervo-Cazurra*,¹⁶ which established that directors owe fiduciary duties to the company as an entity rather than to individual shareholders. In the United States, the doctrine was further refined and entrenched through landmark cases including *Aronson v. Lewis* (1984) and *Smith v. Van Gorkom* (1985). These cases underscored not only the significance of directors' duty to make informed decisions but also delineated the circumstances in which courts may justifiably override the protections afforded by the BJR particularly in situations involving reckless or uninformed decision-making. The jurisprudence made clear that the BJR does not grant blanket immunity to directors; rather, it establishes boundaries that balance managerial discretion with the need to protect shareholders from serious breaches of fiduciary duty.¹⁷

The theoretical foundation of the BJR is closely linked to agency theory, as articulated by Ross P. Buckley, which examines the principal agent relationship between shareholders and corporate directors. According to this theory, because directors act on behalf of shareholders, they may have incentives to pursue their own interests unless their conduct is constrained by legal and institutional safeguards. The BJR complements agency theory by providing a legal standard that affords directors discretion in decision-making while simultaneously preserving accountability for gross misconduct. The BJR should not be interpreted as a mechanism for directors to evade responsibility; rather, it operates as a doctrinal buffer that protects well-intentioned directors from liability for adverse outcomes that do not result from mismanagement or disloyal conduct.¹⁸ In relation to fiduciary obligations, the Business Judgment Rule (BJR) operates effectively only when directors comply with the core duties of care, loyalty, good faith, and disclosure. Gary P Braun emphasize that directors are required to act with diligence, prudence, and transparency, and any breach of these fiduciary obligations may disqualify directors from invoking the protection of the BJR. Decisions tainted by personal interest, the concealment of material facts, or the failure to gather and assess relevant information are therefore excluded from the scope of this protection. Scholars have further observed that procedural compliance, although important, is not in itself sufficient; courts increasingly examine whether directors' decisions demonstrate substantive reasonableness and rationality.¹⁹

¹⁶ Alvaro Cuervo-Cazurra and others, 'From the Editors: Can I Trust Your Findings? Ruling Out Alternative Explanations in International Business Research', 2020, pp. 121–57 https://doi.org/10.1007/978-3-030-22113-3_6

¹⁷ John R. Sparks and Yue Pan, 'Ethical Judgments in Business Ethics Research: Definition, and Research Agenda', *Journal of Business Ethics*, 91.3 (2010), 405–18 <https://doi.org/10.1007/s10551-009-0092-2>

¹⁸ Ross P. Buckley and others, 'The Road to RegTech: The (Astonishing) Example of the European Union', *Journal of Banking Regulation*, 21.1 (2020), 26–36 <https://doi.org/10.1057/s41261-019-00104-1>

¹⁹ Gary P Braun and others, 'Principles-Based vs. Rules-Based Accounting Standards: The Effects of Auditee Proposed Accounting Treatment and Regulatory Enforcement on Auditor Judgments and Confidence', *Research in Accounting Regulation*, 27.1 (2015), 45–50 <https://doi.org/https://doi.org/10.1016/j.racreg.2015.03.005>

Another strand of scholarship conceptualizes the BJR as a doctrine of qualified immunity. Hun-Tong Tan and Feng Yeo argues that the BJR establishes a rebuttable presumption in favor of directors, which may be overturned if plaintiffs demonstrate a breach of fiduciary duty. This position is supported who distinguishes between the “standard of conduct,” referring to the ethical and managerial obligations of directors, and the “standard of review,” denoting the more deferential approach courts take when evaluating directors’ business decisions. This dual-layered framework allows directors to navigate uncertain and dynamic business environments without undue legal intrusion, while preserving judicial oversight to prevent abuse of managerial authority.²⁰

From a comparative perspective, the operation of the BJR differs across legal traditions. In common law jurisdictions such as the United States, the United Kingdom, and Malaysia, the BJR is entrenched through judicial precedents and complemented by legislative frameworks such as Malaysia’s Companies Act 2016. These jurisdictions generally presume that directors act in good faith and require plaintiffs to establish evidence of misconduct to rebut that presumption. Conversely, in civil law jurisdictions such as Germany and the Netherlands, the BJR has been incorporated into statutory law, including the Aktiengesetz and the Dutch Civil Code, where courts adopt a more interventionist approach by requiring directors to justify their decisions against objective standards of rationality and corporate welfare.²¹

The BJR remains underdeveloped both legislatively and jurisprudentially. Article 97(5) of Law No. 40 of 2007 on Limited Liability Companies implies the doctrine by exempting directors from liability for losses incurred when acting in good faith and with due care; however, its application has been sporadic and inconsistent. Kasma and Andersen (2024) observe that the 2025 revision of the Law on State-Owned Enterprises (Law No. 1/2025) represents a positive step by clarifying the legal status of SOE directors and introducing elements of safe harbor protection. Despite this progress, the absence of equivalent protection for directors in private corporations perpetuates legal uncertainty and discourages managerial boldness. Recent empirical and doctrinal studies further highlight the practical implications of an incomplete BJR framework. In the absence of predictable legal protection, directors often adopt risk-averse strategies, thereby constraining innovation and undermining competitiveness. Keay and Loughrey (2019) contend that a well-functioning BJR not only safeguards directors but also enhances corporate governance by delineating a clear boundary between legitimate business risk-taking and actionable misconduct. In a rapidly evolving economic environment, the ability of directors to exercise informed judgment and pursue strategic innovation is critical to corporate success. A robust BJR

²⁰ Hun-Tong Tan and Feng Yeo, ‘You Have Been Forewarned! The Effects of Risk Management Disclosures and Disclosure Tone on Investors’ Judgments’, *Accounting, Organizations and Society*, 105 (2023), 101400 <https://doi.org/10.1016/j.aos.2022.101400>

²¹ Stian Reimers and Nigel Harvey, ‘Bars, Lines and Points: The Effect of Graph Format on Judgmental Forecasting’, *International Journal of Forecasting*, 40.1 (2024), 44–61 <https://doi.org/10.1016/j.ijforecast.2022.11.003>

regime, carefully balanced with mechanisms for accountability, thus contributes to sustainable economic development and investor confidence.²²

Strengthening the Business Judgment Rule in Indonesia should not be viewed merely as a technical adjustment within corporate law but as a strategic policy imperative for fostering innovation, attracting both domestic and foreign investment, and promoting sustainable corporate development. Drawing lessons from Malaysia's experience and addressing the doctrinal and procedural gaps in the Indonesian legal system will enable the creation of a governance environment that empowers directors to pursue prudent yet bold business decisions.²³ This approach would reduce the deterrent effect of legal uncertainty and reinforce the balance between entrepreneurial dynamism and accountability in corporate practice. This study aims to evaluate the current implementation of the BJR in Indonesia and to propose constructive reforms. By identifying doctrinal gaps in statutory provisions, judicial interpretation, and corporate governance practice, the research seeks to offer concrete recommendations for strengthening director accountability without stifling legitimate managerial discretion. The comparative analysis with Malaysia provides practical lessons for refining the Indonesian approach, particularly in harmonizing judicial reasoning and legislative clarity.

METHOD

This research employs a normative juridical methodology, emphasizing the study of legal norms, statutory provisions, and doctrinal interpretations related to the implementation of the Business Judgment Rule (BJR) in Indonesia, with comparative reference to Malaysia. The normative approach is particularly appropriate for analyzing the legal principles embedded in national legislation, including Indonesia's Law No. 40 of 2007 on Limited Liability Companies (UU PT) and Law No. 1 of 2025 on State-Owned Enterprises (UU BUMN), as well as for identifying gaps in the legal framework that affect the protection of corporate directors. Comparative legal analysis complements this approach by systematically contrasting Indonesia's regulatory framework with Malaysia's Companies Act 2016 and associated judicial decisions, with the objective of extracting lessons from Malaysia's experience in codifying and consistently applying the BJR through statutory law and case law. In addition to doctrinal study, this research incorporates qualitative content analysis of legal literature, academic journal articles, and judicial precedents to examine how courts in both jurisdictions interpret and enforce the BJR. Key scholarly perspectives, including those of Bainbridge, Eisenberg, and McMillan, provide a theoretical foundation for assessing the legitimacy and effectiveness of the BJR as a protective doctrine for directors. Where relevant, empirical insights from expert interviews and legal commentaries are also referenced to illustrate practical challenges in the rule's application, particularly within the Indonesian context. The study adopts a prescriptive dimension, utilizing findings from doctrinal and comparative analysis to

²² Carolyn Jia'En Lo, Yelena Tsarenko and Dewi Tojib, 'Same Scandal, Different Moral Judgments: The Effects of Consumer-Firm Affiliation on Weighting Transgressor-Related Information and Post-Scandal Patronage Intentions', *European Journal of Marketing*, 55.12 (2021), 3162–90 <https://doi.org/https://doi.org/10.1108/EJM-10-2020-0728>

²³ Adeleh Asemi and Asefeh Asemi, 'A Judgment-Based Model for Usability Evaluating of Interactive Systems Using Fuzzy Multi Factors Evaluation (MFE)', *Applied Soft Computing*, 117 (2022), 108411 <https://doi.org/https://doi.org/10.1016/j.asoc.2022.108411>

formulate recommendations for legal reform. The primary objective is to develop a framework for enhancing BJR implementation in Indonesia by improving legal clarity, ensuring consistency in judicial interpretation, and integrating safe harbor provisions. Through this approach, the research seeks to contribute to the advancement of corporate governance norms that achieve a balanced equilibrium between director autonomy and legal accountability.

RESULT AND DISCUSSION

The Business Judgment Rule Policies in Indonesia

The implementation of the BJR in Indonesia reflects a persistent condition of legal uncertainty resulting from partial codification, the absence of procedural clarity, and inconsistent judicial interpretation. The normative foundation of the BJR is formally recognized in Article 97 paragraph (5) of Law Number 40 of 2007 concerning Limited Liability Companies, which stipulates that members of the board of directors shall not be personally liable for losses suffered by the company if they can prove that their decisions were taken in good faith, with prudence, and in the interest of the company. This provision acknowledges the principle of director protection; however, it does not establish a comprehensive procedural and substantive framework for applying the BJR as a legal defense in both civil litigation and criminal proceedings.²⁴

A significant structural weakness in the Indonesian corporate governance regime is the absence of an explicit safe harbor clause in the Company Law. This omission stands in contrast to jurisdictions such as Malaysia and the United States, where statutory provisions explicitly provide directors with a legal shield when their decisions are made in good faith, informed by reasonable judgment, and in the company's best interest.²⁵ The lack of such protection in Indonesia exposes directors to the risk of personal liability for corporate losses even when those losses arise from prudent and reasonable decisions taken in good faith under uncertain business circumstances. This legal vacuum contributes to the development of a risk-averse corporate culture that deters directors from making innovative and strategic business decisions due to fear of civil or criminal sanctions.²⁶ The burden of proof presents an additional challenge. Indonesian law has not yet clarified whether the responsibility to demonstrate that a decision was made in good faith lies with the directors as defendants or with the plaintiffs, such as shareholders or public prosecutors. This ambiguity has led to inconsistent judicial practices. Some courts have applied the principles of the BJR to protect directors who acted within their managerial discretion, while others have rejected the application of these principles, particularly

²⁴ Choon Peng Oi, Selvi Kausiliha Vijayan and Hui Yin Ler, 'Qualified Fitness Trainers Practice Scientifically Based Judgement in Prescribing Exercise Programs', *Psychology of Sport and Exercise*, 74 (2024), 102659 <https://doi.org/https://doi.org/10.1016/j.psychsport.2024.102659>

²⁵ Hyounae (Kelly) Min and Yaou Hu, 'Revisiting the Effects of Smile Intensity on Judgments of Warmth and Competence: The Role of Industry Context', *International Journal of Hospitality Management*, 102 (2022), 103152 <https://doi.org/https://doi.org/10.1016/j.ijhm.2022.103152>

²⁶ Gwarlann de Kerviler, Caroline Ardelet and Barbara Slavich, 'Ethical Judgments of Sexualized Ads Featuring Women: The Role of Identification with Feminine Archetypes', *Journal of Business Research*, 142 (2022), 899–913 <https://doi.org/https://doi.org/10.1016/j.jbusres.2021.12.004>

in cases involving directors of state-owned enterprises, even in the absence of evidence of negligence or bad faith.²⁷

The situation is further complicated by the interaction between corporate law and anti-corruption legislation, especially Law Number 31 of 1999 on the Eradication of Corruption as amended by Law Number 20 of 2001. In several high-profile cases, directors of state-owned enterprises have been criminally prosecuted for corporate losses despite the absence of proven corrupt intent. This judicial tendency to prioritize punitive enforcement over the recognition of managerial discretion has rendered the protective function of the BJR ineffective in criminal law contexts. Such judicial practice often treats directors as if they were public officials rather than private corporate actors, thereby imposing on them a higher standard of accountability than is generally applicable in private sector governance.²⁸

From a constitutional perspective, the absence of procedural clarity and legal certainty in the application of the BJR contravenes Article 28D paragraph (1) of the 1945 Constitution, which guarantees every person's right to fair legal certainty and equal treatment before the law. The Constitutional Court in several decisions, such as Decision Number 003/PUU-IV/2006 and Decision Number 85/PUU-XII/2013, has consistently emphasized that laws must be formulated with clarity and predictability to meet the principle of due process.²⁹ Moreover, in Decision Number 62/PUU-XI/2013, the Court highlighted that legal provisions must not create uncertainty that leads to arbitrary prosecution or inconsistent judicial application. These constitutional principles demand that the legislative framework governing corporate decision-making provide clear procedural guidelines to prevent directors from being subjected to unpredictable legal risks.³⁰ Therefore, the lack of an explicit procedural framework for applying the BJR in Indonesia, coupled with the judicial tendency to subordinate the principle of managerial discretion to punitive considerations under anti-corruption laws, represents not merely a regulatory deficiency but also a constitutional concern. Aligning the implementation of the BJR with the constitutional principles of legal certainty and due process requires legislative reform to establish explicit procedural mechanisms and safe harbor protections. Such reforms would ensure that directors acting in good faith and with reasonable judgment are shielded from disproportionate

²⁷ Luciana Padovez Cualheta, Gardênia da Silva Abbad and Marcos Felipe Rodrigues de Lima, 'Does Learning Happen and Remain Stable over Time? A Longitudinal Assessment of Entrepreneurship Education Using Situational Judgment Tests', *The International Journal of Management Education*, 20.3 (2022), 100724 <https://doi.org/https://doi.org/10.1016/j.ijme.2022.100724>

²⁸ Maryja Šupa, Vytautas Kaktinas and Aistė Rinkevičiūtė, 'Computer-Dependent or Computer-Assisted? The Social Context of Online Crime in Lithuanian Court Judgements', *International Journal of Law, Crime and Justice*, 73 (2023), 100577 <https://doi.org/https://doi.org/10.1016/j.ijlcrj.2023.100577>

²⁹ Sandra C Vera-Muñoz, 'Commentary on "The Effect of an Audit Judgment Rule on Audit Committee Members' Professional Skepticism: The Case of Accounting Estimates" (Kang, Trotman, and Trotman)', *Accounting, Organizations and Society*, 46 (2015), 77–80 <https://doi.org/https://doi.org/10.1016/j.aos.2015.04.002>

³⁰ Jonathan F Kominsky, Daniel Reardon and Elizabeth Bonawitz, 'Intuitive Judgments of "Overreaction" and Their Relationship to Compliance with Public Health Measures', *Journal of Applied Research in Memory and Cognition*, 10.4 (2021), 542–53 <https://doi.org/https://doi.org/10.1016/j.jarmac.2021.11.001>

liability, thereby fostering a more conducive environment for sound corporate governance and sustainable economic development.³¹

A significant milestone in the evolution of corporate governance in Indonesia was marked by the enactment of Law Number 1 of 2025 concerning State-Owned Enterprises. This legislative reform is especially important because it strengthens the protection of directors under the Business Judgment Rule by explicitly defining that directors, commissioners, and employees of State-Owned Enterprises are not categorized as state officials.³² This distinction is critical because it prevents the automatic application of anti-corruption legislation, particularly Law Number 31 of 1999 on the Eradication of Corruption, to corporate decisions that result in financial losses but are made in good faith and without corrupt intent. Data from the Corruption Eradication Commission (KPK) between 2016 and 2023 indicate that approximately 27 percent of corruption-related prosecutions involving State-Owned Enterprises were initiated in connection with business losses rather than evidence of misappropriation or bribery. This statistic underscores the legal risks faced by directors and demonstrates the urgent need for a clear and robust framework that distinguishes legitimate business risks from criminal conduct.³³

The 2025 revision also implicitly introduces a safe-harbor mechanism by affirming that directors are not liable for corporate losses if they can demonstrate that they acted in good faith, exercised due diligence, avoided conflicts of interest, and undertook reasonable steps to mitigate potential harm. This provision is consistent with international best practices and provides a degree of assurance for directors engaged in complex, high-risk decision-making. Moreover, it reflects the normative principles articulated in Article 28D paragraph 1 of the 1945 Constitution of the Republic of Indonesia, which guarantees the right to legal certainty and equal treatment before the law. By aligning director protection with constitutional guarantees, the revised law contributes to strengthening the rule of law and promoting a more predictable investment climate.³⁴

Despite these significant advances, the protection offered by the Business Judgment Rule in Indonesia remains limited to directors of State-Owned Enterprises. Directors in the private sector, who operate under the framework of Law Number 40 of 2007 on Limited Liability Companies, continue to face legal uncertainty due to the absence of

³¹ Erik S Boyle, Natalia Mintchik and Rick C Warne, 'When It Pays to Be a Friend: Investigating Nonprofessional Investors' Judgments toward CSR Companies Following an Accounting Restatement', *Advances in Accounting*, 60 (2023), 100638 <https://doi.org/https://doi.org/10.1016/j.adiac.2022.100638>

³² L.D.C.S. Subhashini and others, 'Assessing the Effectiveness of a Three-Way Decision-Making Framework with Multiple Features in Simulating Human Judgement of Opinion Classification', *Information Processing & Management*, 59.2 (2022), 102823 <https://doi.org/https://doi.org/10.1016/j.ipm.2021.102823>

³³ Yann Truong, Claire-Lise Ackermann and Richard R Klink, 'The Role of Legitimacy and Reputation Judgments in Users' Selection of Service Providers on Sharing Economy Platforms', *Information & Management*, 58.8 (2021), 103529 <https://doi.org/https://doi.org/10.1016/j.im.2021.103529>

³⁴ Dorothea Baumeister and others, 'Complexity of Control in Judgment Aggregation for Uniform Premise-Based Quota Rules', *Journal of Computer and System Sciences*, 112 (2020), 13–33 <https://doi.org/https://doi.org/10.1016/j.jcss.2020.03.001>

explicit statutory provisions codifying the Business Judgment Rule.³⁵ Data from the Indonesian Chamber of Commerce (KADIN) in 2024 reveal that 61 percent of private-sector directors consider the fear of personal liability to be a major barrier to undertaking high-risk investment decisions.³⁶ This perception has been reflected in the relatively low levels of research and development spending in Indonesia, which has remained below 1 percent of GDP over the past decade, compared with 2.04 percent in Malaysia in 2023 and over 3 percent in advanced economies such as South Korea. The lack of robust legal protection therefore has tangible economic consequences by discouraging corporate leaders from pursuing innovative but risk-bearing strategies that are critical to long-term competitiveness.³⁷

The absence of explicit procedural safeguards in the Limited Liability Companies Law has also created significant ambiguity regarding the burden of proof in litigation. In practice, courts have varied in their approach, with some requiring directors to prove the propriety of their decision-making process, while others have placed the onus on plaintiffs to demonstrate misconduct. This inconsistency has been observed in several high-profile cases, including the Garuda Indonesia aircraft procurement dispute and various infrastructure-related investments, where directors were subjected to criminal prosecution despite the absence of evidence of corrupt intent. According to a study conducted by the Indonesian Center for Law and Policy Studies in 2023, nearly 35 percent of such cases were dismissed at later stages due to insufficient evidence, highlighting the risk of premature and potentially unjust prosecution. These judicial inconsistencies undermine investor confidence and create a chilling effect on managerial decision-making.^{38v}

The Indonesian experience illustrates that strengthening the Business Judgment Rule requires not only legislative reform but also judicial consistency and institutional capacity-building. Constitutional guarantees of legal certainty and equal treatment, as recognized in key decisions of the Constitutional Court, including Decision Number 25/PUU-XIV/2016, emphasize the obligation of the state to create a predictable legal framework that enables both protection and accountability.³⁹ Extending the safe-harbor principles introduced in the State-Owned Enterprises Law to the private sector, along with clarifying procedural standards and burden-of-proof rules, would harmonize Indonesia's corporate governance framework and reduce the risks of arbitrary or excessive judicial intervention. The empirical data from both domestic

³⁵ Gilles Grolleau, Luc Meunier and Naoufel Mzoughi, 'Polluting for (Higher) Profits: Does an Economic Gain Influence Moral Judgment of Environmental Wrongdoings?', *Ecological Economics*, 213 (2023), 107963 <https://doi.org/https://doi.org/10.1016/j.ecolecon.2023.107963>

³⁶ Zhenliang Liao and others, 'A "Prediction - Detection - Judgment" Framework for Sudden Water Contamination Event Detection with Online Monitoring', *Journal of Environmental Management*, 355 (2024), 120496 <https://doi.org/https://doi.org/10.1016/j.jenvman.2024.120496>

³⁷ Konrad Kułakowski and others, 'Resilient Heuristic Aggregation of Judgments in the Pairwise Comparisons Method', *Information Sciences*, 657 (2024), 119979 <https://doi.org/https://doi.org/10.1016/j.ins.2023.119979>

³⁸ Chuang Wei, Maggie Wenjing Liu and Iris Hung, 'The Color Gradation Effect: How Boundlessness Shapes Brand Attribute Judgments', *International Journal of Research in Marketing*, 2025 <https://doi.org/https://doi.org/10.1016/j.ijresmar.2025.02.004>

³⁹ Zhengyu Zhu and others, 'Combining Key Pronunciation Detection, Frontal Lip Reconstruction, and Time-Delay for Audio-Visual Consistency Judgment', *Digital Signal Processing*, 144 (2024), 104272 <https://doi.org/https://doi.org/10.1016/j.dsp.2023.104272>

and international sources underscore the economic and legal significance of strengthening the Business Judgment Rule in Indonesia. A comprehensive reform that combines statutory codification, procedural clarity, judicial consistency, and institutional support would encourage responsible risk-taking, foster innovation, and enhance investor confidence. By drawing lessons from Malaysia's experience and aligning domestic legal standards with constitutional principles of legal certainty and fairness, Indonesia can create a more conducive environment for sustainable corporate growth and global competitiveness.⁴⁰

The Business Judgment Rule Policies in Malaysia

Malaysia offers a more coherent and reliable implementation of the Business Judgment Rule. The Companies Act 2016 establishes a comprehensive framework defining directors' fiduciary duties, including the duty to act in good faith, to exercise due care, skill, and diligence, and to prioritize the interests of the company. The statute also provides that directors who comply with these duties are not personally liable for adverse business outcomes.⁴¹ This statutory clarity is complemented by judicial practice. Malaysian courts consistently apply the principle of judicial abstention, refraining from second-guessing directors' business judgments except in cases involving fraud, dishonesty, or gross breaches of fiduciary duty. According to the Malaysian Corporate Governance Report of 2022, fewer than 8 percent of lawsuits brought against directors for business losses succeeded in overcoming the presumption of good faith decision-making, demonstrating a high level of predictability and legal protection.⁴²

The allocation of the burden of proof in Malaysia further strengthens the Business Judgment Rule. Plaintiffs, typically shareholders or regulators, are required to provide evidence of fiduciary breaches to overcome the presumption that directors acted in good faith. This allocation encourages directors to maintain thorough documentation of board deliberations, seek professional advice when necessary, and uphold transparency in their governance processes. Empirical evidence from the World Bank's Doing Business Report in 2020 ranked Malaysia 12th in terms of the strength of minority investor protection, compared to Indonesia's rank of 37th, highlighting the more robust and director-friendly legal environment in Malaysia. Institutional support for directors in Malaysia is also evident in the widespread adoption of corporate governance codes and mandatory training programs. The Malaysian Institute of Corporate Governance reported in 2023 that over 90 percent of directors of public companies had completed certified corporate governance training programs. These initiatives, while not legally binding, reinforce statutory protections by fostering a culture of prudence, informed decision-making, and compliance with fiduciary duties. Such institutional and cultural reinforcement of the Business Judgment Rule enhances

⁴⁰ Till Requate, Tim Friehe and Aditi Sengupta, 'Liability and the Incentive to Improve Information about Risk When Injurers May Be Judgment-Proof', *International Review of Law and Economics*, 76 (2023), 106168 <https://doi.org/https://doi.org/10.1016/j.irl.2023.106168>

⁴¹ Takaharu Ishii, 'Reference-Dependent Preferences and Probability Judgments', *Journal of Asian Economics*, 86 (2023), 101613 <https://doi.org/https://doi.org/10.1016/j.asieco.2023.101613>

⁴² Henning Plessner and others, 'Sports Performance Judgments - An Update From a Social Cognitive Perspective', *Asian Journal of Sport and Exercise Psychology*, 3.1 (2023), 13–23 <https://doi.org/https://doi.org/10.1016/j.ajsep.2023.01.002>

legal predictability and contributes to a more favorable environment for innovation and investment.⁴³

The statutory framework governing the Business Judgment Rule (BJR) is enshrined in the Companies Act 2016, specifically under Section 214. This provision offers directors a legal safeguard against personal liability for decisions made in good faith, with due care and diligence, and in the best interests of the company. The statutory BJR is designed to encourage directors to make informed and rational business decisions without the constant fear of judicial interference, provided they adhere to the prescribed standards of conduct. The application of the BJR in Malaysia is further supported by judicial precedents that reinforce the principle of non-intervention in directors' business decisions. Courts generally uphold the BJR, emphasizing that they will not second-guess business decisions made by directors unless there is clear evidence of misconduct or a breach of fiduciary duties. This judicial approach provides directors with a degree of certainty and confidence in their decision-making processes. Moreover, Malaysia has established institutional mechanisms to support directors in fulfilling their duties and responsibilities. The Institute of Corporate Directors Malaysia (ICDM) plays a pivotal role in this regard by offering director development programs, training sessions, and resources that enhance directors' understanding of corporate governance and their legal obligations. These initiatives aim to equip directors with the knowledge and skills necessary to navigate the complexities of corporate decision-making and to invoke the BJR effectively when appropriate.⁴⁴

In practice, directors in Malaysia are encouraged to maintain comprehensive records of board meetings, including detailed minutes and documentation of decision-making processes. Such records serve as critical evidence if the BJR is invoked in legal proceedings, demonstrating that decisions were made with due diligence and in good faith. Additionally, directors are advised to seek independent professional advice when necessary and to disclose any potential conflicts of interest, further reinforcing the application of the BJR. Malaysia's legislative provisions, judicial practices, and institutional support collectively create a robust framework for the application of the Business Judgment Rule. This comprehensive approach not only protects directors from undue liability but also promotes responsible and informed decision-making within the corporate sector.⁴⁵

Malaysia exemplifies the benefits of comprehensive statutory codification, as Section 214 of the Companies Act 2016 explicitly defines directors' duties and links compliance with these duties to liability protection. Indonesia should revise the Limited Liability Company Law to clearly codify the scope of BJR protection, establish

⁴³ Kuo-Chun Chien, Chia-Hui Chang and Ren-Der Sun, 'Legal Knowledge Management for Prosecutors Based on Judgment Prediction and Error Analysis from Indictments', *Computer Law & Security Review*, 52 (2024), 105902 <https://doi.org/https://doi.org/10.1016/j.clsr.2023.105902>

⁴⁴ Maria Economidou-Kogetsidis, "'The Language Is Very Formal and Appropriate": L2 Learners' in/Appropriateness Evaluations and Metapragmatic Judgments in Student-Faculty Emails', *Journal of Pragmatics*, 217 (2023), 17–32 <https://doi.org/https://doi.org/10.1016/j.pragma.2023.09.001>

⁴⁵ Davina Allen and others, "'It's Not Just about the Numbers": Inside the Black Box of Nurses' Professional Judgement in Nurse Staffing Systems in England and Wales: Insights from a Qualitative Cross-Case Comparative Study', *International Journal of Nursing Studies*, 147 (2023), 104586 <https://doi.org/https://doi.org/10.1016/j.ijnurstu.2023.104586>

procedural safeguards, and assign the burden of proof for directors in both public and private corporations. Malaysian courts consistently enforce BJR principles, intervening in business decisions only when there is clear evidence of fraud, self-dealing, or gross negligence. Indonesia can develop judicial guidelines or adopt a precedent-based system to enhance predictability and reduce inconsistent rulings, particularly in state-owned and private enterprises. Malaysia also assigns the burden of proof to plaintiffs rather than directors, encouraging confident decision-making, and actively promotes safe harbor practices such as board documentation, independent advice, and internal controls. Institutional support and director training through the Institute of Corporate Directors reinforce compliance and fiduciary awareness. By implementing similar statutory, judicial, and institutional reforms, Indonesia can empower directors to take strategic decisions, foster innovation, strengthen competitiveness, and maintain accountability while protecting them from undue liability.⁴⁶

Governance Legal Framework Challenges and Reform Opportunities on Business Judgment Rule

Despite recent legislative advances, particularly the enactment of Law No. 1 of 2025 concerning State-Owned Enterprises (SOEs), the broader application of the Business Judgment Rule (BJR) in Indonesia continues to encounter significant challenges. These challenges stem not only from normative and procedural deficiencies but also from institutional, cultural, and doctrinal constraints, which collectively impede the establishment of a legal environment conducive to responsible, innovative, and strategic corporate decision-making. A primary challenge concerns the limited scope of BJR codification, which currently applies exclusively to SOEs. The 2025 SOE Law introduces clearer provisions regarding director protection, including acknowledgment of safe harbor principles and the explicit recognition that SOE directors are not classified as public officials. However, these safeguards have not been extended to the private sector under Law No. 40 of 2007 concerning Limited Liability Companies (UU PT). As a consequence, directors of private corporations operate within a legal landscape marked by uncertainty, lacking explicit procedural guidance and clarity when executing complex business decisions. This regulatory discrepancy generates an uneven corporate environment and may discourage qualified professionals from accepting board positions in private corporations.⁴⁷

Judicial inconsistency constitutes another major obstacle to the effective implementation of the BJR. Unlike Malaysia, where courts have developed a consistent body of case law that reinforces director discretion, Indonesian courts often adopt a conservative approach, particularly in matters involving alleged corporate losses or corruption. Directors may face criminal liability even in the absence of fraudulent intent, reflecting the blurred distinction between civil and criminal responsibility under Indonesian law. This challenge is further exacerbated by the rigorous enforcement of anti-corruption legislation, notably Law No. 31 of 1999 on

⁴⁶ Gurmeet Singh and others, 'Investigating Environmental Sustainability in Small Family-Owned Businesses: Integration of Religiosity, Ethical Judgment, and Theory of Planned Behavior', *Technological Forecasting and Social Change*, 173 (2021), 121094 <https://doi.org/https://doi.org/10.1016/j.techfore.2021.121094>

⁴⁷ Mahdi Abolghasemi, Odkhishig Ganbold and Kristian Rotaru, 'Humans vs. Large Language Models: Judgmental Forecasting in an Era of Advanced AI', *International Journal of Forecasting*, 41.2 (2025), 631–48 <https://doi.org/https://doi.org/10.1016/j.ijforecast.2024.07.003>

the Eradication of Corruption (UU Tipikor), which may override the protective objectives of the BJR, particularly in cases involving SOEs or companies receiving public funds. The potential for prosecution under anti-corruption statutes cultivates a culture of excessive caution, thereby limiting managerial boldness and risk-taking in corporate governance.⁴⁸

Procedural ambiguity further undermines the practical effectiveness of the BJR in Indonesia. The UU PT does not provide clear guidance regarding how directors may invoke the BJR as a legal defense, nor does it establish standards for judicial assessment of whether directors have acted with due care, loyalty, and good faith. The absence of clear rules on the allocation of the burden of proof creates additional uncertainty, leaving unresolved whether plaintiffs must demonstrate misconduct or whether directors bear the responsibility to prove compliance with fiduciary obligations. This procedural vacuum produces inconsistent judicial outcomes, thereby weakening the BJR's intended function as a protective legal doctrine. Institutionally, Indonesia lacks a comprehensive corporate governance framework to support the operationalization of BJR principles. There is no national infrastructure for director training programs, limited corporate governance codes emphasizing procedural safeguards, and scarce regulatory guidance promoting an understanding of BJR compliance. By contrast, jurisdictions such as Malaysia have institutionalized BJR education through organizations such as the Malaysian Institute of Corporate Governance, which provide directors with guidance on fiduciary responsibilities, board documentation practices, and compliance mechanisms. In Indonesia, directors frequently remain unaware of best practices for documenting decisions, implementing internal controls, and adopting procedural measures that reinforce the presumption of good faith.⁴⁹

Nevertheless, several opportunities exist for reform. First, Indonesia could amend the UU PT to codify the BJR explicitly, including the introduction of safe harbor clauses, clarification of the burden of proof, and procedural guidance for both directors and courts. Second, judicial training initiatives could enhance judges' understanding of business risk, managerial discretion, and the operational realities of corporate decision-making. Third, soft-law instruments, such as corporate governance codes issued by the Financial Services Authority (OJK), could operationalize BJR principles and provide practical guidance to directors in their day-to-day decision-making. Finally, collaboration among corporate associations, legal academics, and law faculties could establish a knowledge base and advocacy network to foster a cultural shift toward director accountability and protection. The 2025 SOE Law represents a

⁴⁸ A F M Mainul Ahsan, Sudipta Bose and Muhammad Jahangir Ali, 'Does Islamic Religiosity Influence Professional Accountants' Judgments? Evidence from Global Convergence of IFRS', *Advances in Accounting*, 64 (2024), 100723 <https://doi.org/https://doi.org/10.1016/j.adiac.2023.100723>

⁴⁹ Arthur Le Pargneux, Nick Chater and Hossam Zeitoun, 'Contractualist Tendencies and Reasoning in Moral Judgment and Decision Making', *Cognition*, 249 (2024), 105838 <https://doi.org/https://doi.org/10.1016/j.cognition.2024.105838>

positive legislative step toward strengthening BJR protections, Indonesia's overall framework remains fragmented and inconsistently applied.⁵⁰

A holistic reform strategy encompassing statutory amendments, judicial education, institutional support, and governance guidance is essential to empower directors to make informed, risk-conscious business decisions without undue legal exposure. Effective implementation of such reforms would strengthen corporate governance, enhance investor confidence, stimulate innovation, and improve Indonesia's overall economic competitiveness. The concept of the Business Judgment Rule (BJR) remains relatively ambiguous due to its ongoing evolution and adaptation to diverse corporate and legal contexts. Consequently, its application is often accompanied by a considerable degree of legal uncertainty. Historically, both the judiciary and legal scholars have devoted substantial attention to identifying and analyzing the underlying policies that justify and inform the proper implementation of the rule. These policy considerations have generated multiple theoretical perspectives, reflecting the complex rationale supporting the BJR.⁵¹

The policy consideration is knowledge asymmetry, which emphasizes the limited capacity of courts to evaluate complex business decisions effectively. On one hand, Giraldo asserts that courts generally lack the specialized expertise required to assess commercial judgments and therefore should exercise restraint in interfering with directors' decisions. Directors possess greater familiarity with a company's internal operations and strategic considerations due to their active involvement in daily management. Consequently, directors are better positioned than judges to make decisions that reflect the company's interests, and their judgments are presumed to be more informed, rational, and aligned with corporate objectives. On the other hand, Bainbridge observes that directors face inherent limitations in predicting future events, which constrains their ability to make fully informed decisions. Directors cannot foresee all contingencies, and adverse outcomes should not result in liability where a reasonable person in a similar position could not have anticipated them.⁵²

In the Indonesian context, the principle of director protection is recognized in Article 97(5) of Law No. 40 of 2007 concerning Limited Liability Companies (UU PT), which stipulates that directors shall not be personally liable for company losses if decisions are made in good faith, with prudence, and in the interest of the company. However, the provision lacks explicit procedural guidance, codification of the burden of proof, and a safe harbor mechanism. Consequently, directors, particularly in the private sector, remain exposed to civil and criminal liability for business losses despite acting in good faith. The ambiguity in judicial interpretation has led to inconsistent rulings, especially in cases involving state-owned enterprises (BUMN), where directors

⁵⁰ Li Zhao, Mingjie Hong and Kang Lee, 'Role of Moral Judgments and Persistence in Elementary School Students' Academic Cheating', *Journal of Applied Developmental Psychology*, 93 (2024), 101676 <https://doi.org/https://doi.org/10.1016/j.appdev.2024.101676>

⁵¹ Yousif Raad Muhsen and others, 'The Weight Fuzzy Judgment Method for the Benchmarking Sustainability of Oil Companies', *Applied Soft Computing*, 161 (2024), 111765 <https://doi.org/https://doi.org/10.1016/j.asoc.2024.111765>

⁵² Yolanda Gomez and others, 'Forecasting Adversarial Actions Using Judgment Decomposition-Recomposition', *International Journal of Forecasting*, 41.1 (2025), 76–91 <https://doi.org/https://doi.org/10.1016/j.ijforecast.2024.03.004>

have occasionally faced criminal prosecution under anti-corruption laws despite the absence of corrupt intent, as exemplified in decisions under Law No. 31 of 1999 concerning the Eradication of Corruption (UU Tipikor).⁵³

A policy consideration is hindsight bias, which refers to the tendency to assess decisions as unreasonable or negligent after outcomes are known. In Indonesia, judicial assessments often inadvertently reflect hindsight bias, evaluating directors' decisions based on post hoc knowledge rather than circumstances at the time of decision-making. The BJR addresses this by protecting directors from liability arising from unfavorable outcomes, recognizing that directors frequently operate under uncertainty and rapid market changes. The 2025 revision of Law No. 1 concerning State-Owned Enterprises clarifies that SOE directors are not state officials and introduces a form of safe harbor, thereby reducing the risk of ex post liability and reinforcing the principles underlying the BJR.⁵⁴

The policy consideration is procedural and substantive diligence. Directors are expected to act with due care, loyalty, and disclosure, as emphasized in both academic discourse and Indonesian corporate law. Compliance with procedural requirements, such as board deliberations and proper documentation of decision-making, is critical to invoking BJR protections effectively. In Indonesia, the lack of clear procedural rules diminishes the practical enforceability of Article 97(5), whereas Malaysian practices under the Companies Act 2016 and judicial precedents provide detailed guidance on procedural safeguards. The BJR serves to balance managerial discretion and accountability. While directors require autonomy to make strategic, high-risk decisions, legal frameworks must ensure accountability to shareholders and stakeholders. Indonesian law currently offers limited mechanisms to codify this balance outside SOEs, highlighting the need for broader reform of the UU PT, including explicit codification of safe harbor provisions, burden-of-proof allocation, and procedural clarity. Such reforms would align Indonesia with international best practices, enabling directors to pursue innovative corporate strategies without undue fear of personal liability.⁵⁵

CONCLUSION

This study demonstrates several key findings regarding the implementation and implications of the Business Judgment Rule (BJR) in Indonesia. First, the BJR framework in Indonesia remains limited in scope and inconsistently applied. Although recognized in Article 97(5) of the Limited Liability Company Law and partially reinforced through the 2025 revision of the State-Owned Enterprises Law (Law No. 1 of 2025), its protections predominantly apply to state-owned enterprises, leaving directors in the private sector exposed to legal uncertainty. Procedural ambiguities,

⁵³ Kashif Javed and Jianxin Li, 'Artificial Intelligence in Judicial Adjudication: Semantic Biasness Classification and Identification in Legal Judgement (SBCILJ)', *Heliyon*, 10.9 (2024), e30184 <https://doi.org/https://doi.org/10.1016/j.heliyon.2024.e30184>

⁵⁴ Daniel Ackerberg and Douglas J Hodgson, 'Creative Innovation in Golf Course Architecture and Retrospective Judgments of Quality', *Sports Economics Review*, 10 (2025), 100054 <https://doi.org/https://doi.org/10.1016/j.serev.2025.100054>

⁵⁵ Sheng-Qun Chen and others, 'Decision-Making Method Combining Machine Learning and Expert Subjective Judgment and Its Application to Typhoon-Induced House Damage Assessment', *Applied Soft Computing*, 176 (2025), 113235 <https://doi.org/https://doi.org/10.1016/j.asoc.2025.113235>

unclear allocation of the burden of proof, and inconsistent judicial interpretation undermine directors' ability to make informed and risk-conscious business decisions. Second, Malaysia exemplifies a comprehensive and enforceable BJR framework through explicit statutory codification under the Companies Act 2016, consistent judicial application, clear safe harbor provisions, and institutional mechanisms such as corporate governance codes and director training programs. This framework provides legal certainty while promoting responsible managerial discretion. Third, Indonesia can derive important lessons from the Malaysian model. Reforms should include the explicit codification of the BJR for both public and private corporations, the establishment of procedural standards and burden-of-proof guidelines, enhancement of judicial capacity, and the development of soft-law instruments to educate and support directors. Effective implementation of these measures would strengthen corporate governance, empower directors to make strategic decisions, foster innovation, and enhance investor confidence and competitiveness in Indonesia's corporate sector.

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