

The influence of the Business Judgment Rule on the accountability of the Board of Directors for their errors or negligence based on Eisenberg's theory of Director's Accountability

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Abstract

In the business world, the Business Judgment Rule (BJR) is a legal principle that provides protection to directors when making risky business decisions, as long as those decisions are made in good faith, with sufficient care, and without personal interest. Although BJR is not explicitly regulated in Indonesian law, this principle is reflected in the Limited Liability Company Law and considered in the theory of director liability proposed by Melvin Aron Eisenberg. The purpose of this research is to analyze the application of the Business Judgment Rule principle in Indonesian corporate law to protect directors from liability for their mistakes or negligence, and to evaluate its influence on Eisenberg's theory of director liability. This study uses a normative legal research method that examines legal norms to analyze and interpret legal provisions related to the application of the Business Judgment Rule and director liability in Indonesia, as well as examining the influence of Eisenberg's theory on that doctrine. A conceptual approach is used to study the concept of the Business Judgment Rule and Eisenberg's theory of director liability in depth. The research results show that the Limited Liability Company Law in Indonesia regulates the application of the Business Judgment Rule (BJR), which provides protection to directors from liability for risky business decisions as long as they meet the requirements of good faith, due care, no conflict of interest, and efforts to prevent loss. However, BJR protection is not absolute, and directors can be held accountable if they violate corporate governance principles. Melvin A. Eisenberg's theory of director liability provides clearer boundaries, where directors can lose BJR protection if they violate the duty of care, duty of loyalty, duty of good faith, and duty of candor, making them accountable for their mistakes or negligence in business decision-making.

I. Introduction

In the dynamic and competitive business world, the company's board of directors plays a crucial role in making strategic decisions that can impact the sustainability and success of the company.(Muskibah, 2010) As the organ responsible for managing the company, the board of directors has significant authority and responsibility in making business decisions. However, it is not uncommon for decisions made by the board to potentially cause losses to the company or other parties. In the decision-making process, there is a possibility of errors or omissions that may result in legal consequences for the board. In such situations, the accountability of the board for its mistakes or negligence becomes an important issue in corporate law.(Kusumawardani, 2013) Therefore, the concept of the Business Judgment Rule (BJR) emerged as an effort to provide legal protection for directors in making risky business decisions.

In practice, the legal doctrine known as the "Business Judgment Rule" (BJR) provides protection to directors in making business decisions. The Business Judgment Rule is a legal principle that recognizes that corporate directors have the authority to make business decisions with good faith and sufficient prudence. This principle aims to prevent court intervention in the business decisions made by directors, as long as those decisions are made with reasonable consideration and without conflicts of interest. (Anandya et al., 2023) BJR (Business Judgment Rule) is a standard of testing used by the courts to evaluate the actions of directors in making business decisions. This doctrine states that directors cannot be held accountable for business decisions made in good faith, prudence, and without personal interest, even if those decisions turn out to be detrimental to the company.(Hadi et al., 2021)

In the legal context in Indonesia, the Business Judgment Rule is not explicitly regulated in legislation. However, this principle can be found in several legal provisions related to corporate governance and the responsibilities of directors. Law Number 40 of 2007 concerning Limited Liability Companies (Company Law) is one of the main regulations that govern the authority and responsibilities of directors in managing the company.(Pratiwi et al., 2016)

Article 92 paragraph (1) of the Company Law states that the directors shall manage the Company for the interests of the Company and in accordance with the purposes and objectives of the Company. Then, Article 97 paragraph (2) of the

Company Law regulates that each member of the board of directors shall be personally liable in full for the losses of the Company if they are at fault or negligent in carrying out their duties in accordance with the applicable provisions. Meanwhile, Article 97 paragraph (3) of the Company Law emphasizes that each member of the board of directors shall be personally liable in full for the losses of the company if they are at fault or negligent in carrying out their duties in accordance with the provisions referred to in paragraph (2). (Raffles, 2020)

Article 97 paragraph (5) of the Company Law stipulates that directors cannot be held accountable for losses incurred in carrying out their duties if done in good faith and prudence. In the context of the Business Judgment Rule, Article 97 paragraph (5) of the Company Law provides protection to directors who have made decisions in good faith and in accordance with reasonable prudence. (Wildayanti & Salenda, 2022) This section states that board members cannot be held accountable for losses as referred to in paragraph (3) if they can prove: (Vivy et al., 2013)

- a. The loss was not due to any fault or negligence;
- b. Has conducted management with good faith and prudence for the benefit and in accordance with the purposes and objectives of the company;
- c. Does not have any direct or indirect conflicts of interest regarding management actions that resulted in losses;
- d. Has taken actions to prevent the occurrence or continuation of such losses.

Meanwhile, PERMA No. 13/2022 stipulates that the court must consider the compliance of the board of directors with good corporate governance principles in assessing the accountability of the board of directors. Although the Company Law does not explicitly mention the Business Judgment Rule, these provisions imply legal protection for directors in making risky business decisions, as long as those decisions are made in good faith and with sufficient prudence for the interests of the company. The application of BJR in judicial practice in Indonesia is still not fully clear and consistent. (Panjaitan et al., 2021)

There is a diversity of views among judges and academics regarding the scope and limits of the business judgment rule (BJR), as well as its relationship with the director accountability theory proposed by Melvin Aron Eisenberg. Eisenberg's director accountability theory provides a broader perspective on understanding directors' legal responsibilities. Eisenberg divides director

accountability into three categories: duty of care, duty of loyalty, and duty of good faith.(Fitriani, 2020)

According to Eisenberg, although the Business Judgment Rule provides protection to directors in making business decisions, this protection does not apply if the directors violate any of the four principles. In other words, directors can still be held accountable for errors or negligence if they are found to violate the duties of care, loyalty, good faith, or disclosure in running the company.(Lestari, 2015)

The Eisenberg theory of directorial accountability states that directors can be held accountable for errors or negligence in business decision-making if those decisions do not meet the standards of "rational business purpose" or the "disinterested director" test. This theory provides guidance in assessing directorial accountability by considering the rationality of business decisions and the presence of conflicts of interest.(Panjaitan et al., 2021)

In the context of the Business Judgment Rule, Eisenberg's theory of director accountability provides a comprehensive framework for evaluating the actions and decisions of directors. If directors can demonstrate that they have fulfilled their duties of care, loyalty, and good faith in making business decisions, then those decisions will be legally protected under the principles of the Business Judgment Rule.(Raffles, 2020)

This research will examine the influence of BJR on director accountability for their errors or negligence based on Eisenberg's director accountability theory, as well as its implications for corporate law practices in Indonesia. This research is important to provide legal certainty and consistency in the application of BJR in Indonesia, as well as to ensure a balance between protecting directors in their business decision-making and holding them accountable for their errors or negligence. The results of this research are expected to serve as a reference for parties involved in managing limited liability companies, and to contribute to the development of corporate law in Indonesia. The formulation of the problem in this research is as follows:

- 1) How is the application of the Business Judgment Rule in corporate law in Indonesia aimed at protecting directors from liability for their mistakes or negligence?
- 2) What is the influence of the Business Judgment Rule on directorial accountability for errors or negligence in running a company based on

Melvin A. Eisenberg's theory of directorial liability?

2. Research Method

This research utilizes the normative legal research method, which is a research method that examines law from an internal perspective with its object of study being legal norms. This method is chosen because the research aims to analyze and interpret the legal provisions governing the application of the Business Judgment Rule and director accountability in corporate law in Indonesia, as well as examining the influence of Eisenberg's director accountability theory on the application of this doctrine. The approach used in this research is a conceptual approach. The conceptual approach is carried out by studying the views and doctrines that develop in legal science,(Marzuki, 2021) Especially concerning the concept of the Business Judgment Rule and Eisenberg's director accountability theory. This approach is necessary to understand and analyze these concepts deeply, as well as to examine their influence on director accountability for errors or negligence.

The legal sources used in this research consist of primary, secondary, and tertiary legal materials. Primary legal materials include legislation related to corporate law, such as Law Number 40 of 2007 concerning Limited Liability Companies (UUPT) and its implementing regulations, as well as relevant court decisions. Secondary legal materials include books, journals, articles, and other legal literature discussing the Business Judgment Rule, director accountability, and Eisenberg's director accountability theory. Meanwhile, tertiary legal materials include legal dictionaries and encyclopedias used to aid in understanding the legal terms used in this research.

The data collection technique used is library research, which involves gathering and studying relevant primary, secondary, and tertiary legal materials on the research topic.(Butarbutar, 2018) The data collection was conducted by searching and examining legislation, court decisions, books, journals, articles, and other sources discussing the Business Judgment Rule, director accountability, and Eisenberg's theory of director accountability. After the data was collected, the data analysis technique used was qualitative analysis using interpretation and legal construction methods. Qualitative analysis was carried out by interpreting and constructing legal provisions related to the Business Judgment Rule and director

accountability, as well as examining the influence of Eisenberg's theory of director accountability on the application of that doctrine. Legal interpretation was performed using grammatical, systematic, historical, and teleological methods to understand the meaning and purpose of relevant legal provisions. Legal construction was carried out by formulating legal arguments based on the interpretation and analysis conducted.

3. Results and Discussion

The Implementation of the Business Judgment Rule in Corporate Law in Indonesia in Protecting Directors from Liability for Errors or Negligence

The implementation of the Business Judgment Rule in corporate law in Indonesia is specifically regulated in Law Number 40 of 2007 concerning Limited Liability Companies (UUPT). This doctrine aims to provide protection to directors from personal liability for losses arising from business decisions made with good faith and reasonable care, even if those decisions ultimately result in losses for the company. (Wildayanti & Salenda, 2022)

The main provision governing the Business Judgment Rule in the Company Law is found in Article 97 paragraph (5), which states:

" The Board of Directors cannot be held responsible for the losses as referred to in paragraph (3) if they can prove:

- a. The losses are not due to errors or negligence;
- b. Has conducted management with good faith and prudence for the benefit and in accordance with the purposes and objectives of the Company;
- c. Does not have any direct or indirect conflicts of interest regarding management actions that result in losses; and
- d. Has taken measures to prevent the occurrence or continuation of such losses."

Based on this provision, the board of directors can seek protection under the Business Judgment Rule doctrine and be exempt from liability for losses arising from its business decisions if it can prove that the decision was made by fulfilling four main conditions, namely: (Nasution, 2018)

1. The loss was not caused by his own fault or negligence.
2. The board has acted in good faith and reasonable prudence for the benefit of the company and in accordance with the purposes and goals of the company.

3. There is no conflict of interest, either direct or indirect, in management actions resulting in losses.
4. The board has taken necessary steps to prevent the occurrence or continuation of such losses.

The implementation of the Business Judgment Rule in the Company Law is in line with common practices in various other countries. This doctrine is based on the idea that company directors should be given adequate discretion in making risky business decisions, as long as these decisions are made in good faith and with reasonable prudence. If directors were to bear personal liability risks for every decision resulting in losses, they would likely be more cautious and reluctant to take the necessary risks to advance the company. (Lestari, 2015)

The implementation of the Business Judgment Rule in practice is also regulated in Supreme Court Decision Number 1286 K/Pdt/2012. In this decision, the Supreme Court asserts that the Business Judgment Rule is a doctrine that protects directors from liability for business decisions made with good faith and reasonable caution, even if those decisions later prove to be detrimental to the company. (Januarsyah et al., 2022) However, the Supreme Court also emphasizes that the protection of the Business Judgment Rule does not apply absolutely. Directors can still be held accountable if they are found to violate principles of good corporate governance, such as good faith, prudence, and the absence of conflicts of interest. For example, if directors are found to make decisions with bad faith or fail to exercise reasonable prudence, they can be held personally liable for resulting losses. (Silitonga et al., 2022)

In its application, the burden of proof lies with the board of directors. The board must be able to prove that the four conditions in Article 97 paragraph (5) of the Company Law have been met in order to seek refuge under the Business Judgment Rule doctrine. If the board fails to prove this, they may be held accountable for any resulting losses. Furthermore, the application of the Business Judgment Rule is also limited to business decisions made within the scope of the board's authority. Decisions that exceed the board's authority or violate laws and regulations will not be protected by this doctrine. (Suharto, 2022)

The Company Law also regulates the duties and responsibilities of the board of directors in general in Article 97 paragraph (2) and paragraph (3). Article 97 paragraph (2) states that every member of the board of directors must, in good faith and with full responsibility, perform duties for the benefit and interests of the company. Meanwhile,

Article 97 paragraph (3) emphasizes that every member of the board of directors is personally liable for losses incurred by the company if they are at fault or negligent in carrying out their duties in accordance with the provisions of paragraph (2). Thus, although the Business Judgment Rule provides protection to the directors, they still have an obligation to perform their duties in good faith and with full responsibility for the benefit of the company. If directors are found to be at fault or negligent in performing their duties, they may be held personally accountable for any resulting losses.(A. P. & Yusup, 2024)

In practice, the application of the Business Judgment Rule in corporate law in Indonesia remains a subject of debate and often leads to differences in interpretation. Some argue that this doctrine provides too much protection to directors, while others believe it is necessary to encourage directors to make risky but necessary business decisions to develop the company. Therefore, in applying the Business Judgment Rule, judges must carefully consider the facts and evidence presented by the parties and analyze whether the directors' decisions were truly made in good faith and with reasonable care, and did not violate principles of good corporate governance.(Prasetyo, 2021)

Overall, the application of the Business Judgment Rule in corporate law in Indonesia aims to provide a balance between protecting directors in making necessary but risky business decisions, while ensuring that directors remain accountable for harmful errors or negligence that affect the company. This doctrine is not absolute protection, but rather must meet certain criteria and be balanced with principles of good corporate governance. (Priyo Sembodo et al., 2022)

In practice, the application of the Business Judgment Rule in corporate law in Indonesia remains a subject of debate and often depends on the judge's assessment in specific cases. Judges must evaluate whether the decisions of the board of directors resulting in losses meet the criteria set forth in Article 97 paragraph (5) of the Company Law or not. Therefore, although the Business Judgment Rule provides protection to directors, they must still exercise caution in making business decisions and ensure that such decisions are made in compliance with the obligations and prudence required. Directors must also consider the risks that may arise from such decisions and take necessary actions to prevent or mitigate potential losses.(Mazlan, 2023)

The Influence of the Business Judgment Rule on the Accountability of the

Board of Directors for Errors or Negligence in Running the Company Based on the Theory of Director Accountability by Melvin A. Eisenberg

The theory of director accountability proposed by Melvin A. Eisenberg in his book "The Duty of Good Faith in Corporate Law" provides a different perspective in assessing the influence of the Business Judgment Rule on directors' accountability for errors or omissions in running the company. Eisenberg argues that although the Business Judgment Rule provides protection to directors in making business decisions, this protection does not apply if directors violate any of the four main principles that must be met in running the company. (Hadi et al., 2021) The fourth main principle proposed by Eisenberg is: (Dai & Wicaksana, 2019)

1. Duty of Care (kewajiban kehati-hatian)
2. Duty of Loyalty (kewajiban kesetiaan)
3. Duty of Good Faith (kewajiban itikad baik)
4. Duty of Candor (kewajiban keterbukaan)

Eisenberg argues that although the Business Judgment Rule provides protection to directors in making business decisions, this protection does not apply if directors violate any of the four principles. In other words, directors can still be held accountable for errors or negligence if it is proven that they violate the duty of care, loyalty, good faith, or disclosure in running the company. (Sembodo et al., 2021)

The duty of care requires directors to act with reasonable care in making business decisions and managing the company. If directors are found not to exercise reasonable care, they can be held accountable for errors or negligence, even if the decision is protected by the Business Judgment Rule. (Syarif & Balqist, 2017)

The duty of loyalty requires directors to prioritize the interests of the company over personal or other party interests. If directors are found to make decisions that benefit themselves or others at the expense of the company's interests, they can be held accountable for breaching this duty of loyalty, regardless of protection under the Business Judgment Rule. (Harahap, 2008)

The Duty of Good Faith requires directors to act with sincere and honest intentions in running the company. If directors are found to make decisions with bad faith or disrespectful motivations, they can be held accountable for breaching this duty of good faith, even if the decisions are protected by the Business Judgment Rule. (Dai & Wicaksana, 2019)

The Duty of Candor requires the board of directors to provide complete and

accurate information to shareholders and other stakeholders. If the board is found to conceal or provide false information, they can be held accountable for breaching this duty of candor, regardless of the protection provided by the Business Judgment Rule.(Abdullah et al., 2023)

In the context of corporate law in Indonesia, the principles outlined by Eisenberg are in line with the provisions of Law Number 40 of 2007 regarding Limited Liability Companies (UUPT). However, the UUPT does not explicitly mention these four principles as conditions for exempting directors from liability under the Business Judgment Rule.(Angelica & Azzahra, 2021)

The principle of Duty of Care is reflected in Article 97 paragraph (2) of the Company Law, which states that every member of the board of directors must, with good faith and full responsibility, carry out duties for the benefit and efforts of the company. In other words, directors have a duty to act with reasonable care in carrying out their duties and authority. The principle of Duty of Loyalty is also reflected in Article 97 paragraph (2) of the Company Law, which emphasizes that directors must perform their duties for the benefit and efforts of the company. This means directors have a duty to be loyal and prioritize the interests of the company above personal interests or those of others.(Maristella et al., 2018)

The Principle of Duty of Good Faith (kewajiban itikad baik) is explicitly mentioned in Article 97 paragraph (2) of the Company Law which obliges directors to carry out their duties with good faith. Furthermore, Article 97 paragraph (5) letter b of the Company Law also states that directors must conduct management with good faith in order to be protected under the Business Judgment Rule. Meanwhile, the Principle of Duty of Candor (kewajiban keterbukaan) is not explicitly mentioned in the Company Law, but it can be considered as part of the directors' obligation to carry out their duties with good faith and full responsibility according to Article 97 paragraph (2) of the Company Law.(Item, 2021)

Based on the Eisenberg theory, although the decisions of the board of directors are protected by the Business Judgment Rule, if the board of directors is found to violate any of the four main principles (Duty of Care, Duty of Loyalty, Duty of Good Faith, and Duty of Candor), then such protection can be removed, and the board of directors can be held accountable for their errors or negligence. For example, if the board of directors makes a business decision that harms the company, but it is proven that the decision was made with bad faith or disrespectful motivation (violation of

Duty of Good Faith), then the board of directors can be held accountable for the loss, even though the decision is protected by the Business Judgment Rule.(Wardani, 2023)

Dalam praktiknya, pengaruh teori Eisenberg terhadap penerapan Business The Judgment Rule in corporate law in Indonesia is still limited. This is because the Company Law does not explicitly adopt these four principles as conditions to exempt directors from liability based on the Business Judgment Rule. However, judges can use these principles as considerations in assessing whether directors have violated their obligations and responsibilities in running the company. Thus, although the Business Judgment Rule provides protection to directors in making business decisions, this protection is not absolute and can be limited if directors are proven to violate the principles outlined by Eisenberg, such as the duty of care, loyalty, good faith, and transparency. Therefore, directors must remain cautious in carrying out their duties and ensure that they do not violate these principles in order to seek refuge under the Business Judgment Rule.(Hafizh Akram & Primadani Fanaro, 2019)

Similarly, if the board of directors makes decisions benefiting themselves or others at the expense of the company's interests (breach of Duty of Loyalty), or if the board is found to have not exercised reasonable care in making decisions (breach of Duty of Care), then the directors may be held accountable for their errors or negligence, regardless of the protection afforded by the Business Judgment Rule. Therefore, Eisenberg's theory of director liability imposes clearer limitations on the application of the Business Judgment Rule in shielding directors from liability for their errors or negligence. Although the Business Judgment Rule provides protection, such protection is not absolute and can be overridden if the directors are found to violate the fundamental principles of running the company, namely the duties of care, loyalty, good faith, and disclosure.(Nailul Fikriya, 2020)

4. Conclusion

The implementation of the Business Judgment Rule in corporate law in Indonesia is specifically regulated under Law Number 40 of 2007 concerning Limited Liability Companies, especially in Article 97 paragraph (5). According to this provision, the board of directors can seek shelter under the Business Judgment Rule doctrine and be exempted from liability for losses arising from its business decisions if it can prove that the decision was made by fulfilling four main conditions: the loss was not due to its error or negligence, it acted in good faith and with prudence for the

company's interests, there was no conflict of interest, and it took action to prevent the loss. However, the protection provided by the Business Judgment Rule is not absolute. Directors can still be held accountable if they are found to have violated principles of good corporate governance, such as good faith, prudence, and absence of conflicts of interest. In practice, the application of the Business Judgment Rule depends on the judge's assessment in specific cases. Directors must be cautious in making business decisions and ensure compliance with obligations and necessary prudence to avoid liability for their errors or negligence.

The theory of directorial accountability proposed by Melvin A. Eisenberg provides clearer limitations on the application of the Business Judgment Rule in protecting directors from liability for their errors or negligence. Eisenberg states that although the Business Judgment Rule provides protection to directors in making business decisions, this protection does not apply if directors violate four main principles: the duty of care, the duty of loyalty, the duty of good faith, and the duty of candor. According to Eisenberg's theory, if directors are found to have violated any of these four principles, the protection of the Business Judgment Rule can be revoked, and directors can be held accountable for their errors or negligence. For example, if directors make decisions with bad faith or fail to exercise reasonable care, they can be personally liable for resulting losses, regardless of the protection of the Business Judgment Rule. Thus, Eisenberg's theory emphasizes that the protection of the Business Judgment Rule is not absolute and can be limited if directors violate fundamental principles in running the company.

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