Business Judgment Rule and Limits of Directors' Liability in Limited Liability Company Law in Indonesia

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Abstract

The Business Judgment Rule principle is a legal doctrine that provides protection for directors in carrying out their managerial functions, as long as the business decisions taken are made in good faith, with prudence, and based on adequate information. In the context of limited liability company law in Indonesia, this principle plays an important role in balancing the legal responsibilities of directors and the freedom to make risky business decisions. This study aims to analyze the concept and application of the Business Judgment Rule in the legal system of companies in Indonesia and to examine the limits of directors' liability for losses arising from business decisions they take. The research method used is a normative juridical approach by examining relevant laws and regulations, doctrines, and court decisions. The results of the study indicate that the application of the Business Judgment Rule principle in Indonesia has been reflected in Article 97 paragraph (5) of Law Number 40 of 2007 concerning Limited Liability Companies, which provides limitations on directors' liability if the decisions taken are made in good faith and based on rational considerations. Thus, the directors cannot be held responsible for company losses arising from reasonable business risks, as long as the decisions are taken professionally and do not contain elements of negligence or abuse of authority.

I. Introduction

Limited Liability Company (PT) is the most common form of legal entity used in conducting business activities in Indonesia. Through Law Number 40 of 2007 concerning Limited Liability Companies, a corporate institutional framework was established that separates ownership (shareholders) from management (board of directors) and supervision (commissioners). Within this framework, the company's management, particularly the board of directors, has a strategic task in running the company's operations, making business decisions that determine the direction, sustainability and performance of the company.

As a management body, the board of directors bears significant responsibility because the decisions they make can not only lead the company towards growth and profitability, but also carry the risk of loss. The risk of loss in business is something that cannot be avoided in market dynamics, including in Indonesia, where competition, regulations, macroeconomic conditions, and technology are constantly changing. Thus, the company's management is required to act properly, in accordance with the company's aims and objectives, with great care, and to avoid conflicts of interest.

However, an important question arises: To what extent can management, especially directors, be held legally responsible when business decisions they make result in losses for the company? Is every loss Does the company's losses automatically lead to personal liability for the directors? Or is there room for directors to make business decisions within reasonable risk limits, without having to worry about being personally sued for the resulting losses? The answers to these questions can be seen through two main focuses: first, the introduction and application of the principle known as the Business Judgment Rule (BJR) in the context of Indonesian law; and second, the determination of the limits of directors' liability under the Limited Liability Company Law and the development of relevant jurisprudence and literature.

The BJR principle is a doctrine from the Anglo-Saxon legal system that provides protection for the board of directors or company managers in making business decisions: that if the decision is taken in good faith, with due care, without conflict of interest, and in the interests of the company, then the board may not be held accountable simply because the decision turns out to cause losses. Thus, the BJR doctrine encourages managers to make strategic and risky decisions while still receiving legal protection as long as they meet these criteria.

In Indonesia, the BJR principle has begun to be studied and applied normatively through Article 97 paragraph (5) of the PT Law which states that:

"Members of the board of directors cannot be held responsible for losses to the company if they can prove that the loss was not due to their fault or negligence, they have managed the company in good faith, with due care, and for the benefit and in accordance with the aims and objectives of the company; and members of the board of directors do not have a conflict of interest, either directly or indirectly, regarding the management actions that result in losses, and have taken action to prevent the occurrence or continuation of such losses. The provision explicitly provides criteria similar to the BJR doctrine and thus

indicates that Indonesia has attempted to adopt the concept into its national corporate law system. For example, one article states that "the principle of the business judgment rule… is regulated in Article 97 paragraph (5) of the Limited Liability Company Law ."

However, despite being formally accommodated, the implementation and application of the BJR principle in Indonesia faces a number of challenges. Among these is the vagueness of the norm in Article 97 paragraph (5) of the Limited Liability Company Law — for example, the phrases "in accordance with the company's intent and purpose," "in good faith and with due care," and "having no direct or indirect conflict of interest" have not been concretely formulated or clearly defined in Indonesian law. This raises concerns about legal uncertainty in the application of the doctrine.

In addition, from a practical perspective, management decisions that are detrimental to the company are often associated with state losses (especially in state-owned enterprises/BUMN) and are then followed up through the criminal or public accountability realm, even though business decisions may be a reasonable commercial risk. A study shows that in business transactions of state-owned enterprises, managers tend to face dilemmas due to overlapping regulations between the Limited Liability Company Law, state financial regulations, and special laws. In this context, it is necessary to further examine how BJR is implemented in practice, and how the limits of directors' liability are identified and implemented in Indonesia — in order to achieve a balance between business decision-making that is responsive to reasonable risks and legal protection for directors, while ensuring accountability in the event of errors, negligence, or conflicts of interest.

Thus, this research will examine two important problem formulations: (1) What is meant by the Business Judgment Rule principle and how is it applied in the context of limited liability company law in Indonesia? (2) What are the limits of directors' liability for losses arising from business decisions they make?

The study of these two problem formulations is important theoretically and practically. Theoretically, this study provides an in-depth understanding of how the BJR doctrine is adapted in the Indonesian legal system and how the limits of directors' liability are formed. In practice, the results can serve as a reference for company managers, shareholders, and other stakeholders to understand the legal position of managers when making business decisions, strengthen corporate governance, and provide legal certainty.

Furthermore, in the era of globalization and increasingly competitive business, companies in Indonesia—both private and state-owned enterprises—are required to be more proactive and innovative, and to make strategic decisions that are risky and potentially detrimental if not implemented appropriately. Without adequate protection for management, directors may become overly cautious, hindering innovation or making important decisions, or conversely, making decisions without carefully considering legal aspects and risks. Therefore, a proper understanding and clear boundaries of directors' responsibilities are essential to achieve a balance between management flexibility and accountability.

Furthermore, legal certainty and protection for managers can also attract investment and increase stakeholder confidence in corporate governance in Indonesia. On the other hand , shareholders and other stakeholders need to be assured that managers are not immune from liability for decisions that deviate from their duties, good faith, and prudence. If managers are given unlimited freedom, the risk of moral hazard increases.

Overall, it can be said that the Indonesian government through the Limited Liability Company Law has laid a normative basis for the implementation of BJR and the limits of directors' liability, however, the dynamics of practice and the development of jurisprudence indicate that there are still gray areas that require regulatory sharpening, better legal understanding, and consistent court interpretation. Therefore, this research is expected to contribute to clarifying and strengthening the legal position of directors within the framework of limited liability company management in Indonesia, while also clarifying the limitations of responsibility so as to create a healthy and accountable management system.

2. Research Method

This research uses a normative legal research method *(doctrinal legal research)* , namely research that emphasizes the study of legal documents, laws and regulations -, and relevant legal literature to analyze the principles of *the Business Judgment Rule* and the limits of directors' liability in the context of Limited Liability Companies in Indonesia. Researchers use primary legal materials such as; Law Number 40 of 2007 concerning Limited Liability Companies, as well as its implementing regulations, court jurisprudence related to directors' liability, and corporate law doctrine, Secondary law; including textbooks, scientific journals, articles, and previous research on the Business Judgment Rule, the limits of directors' liability, and corporate governance practices in Indonesia. This method was chosen because the focus of the research is on conceptual and juridical studies by systematically analyzing the Business Judgment Rule Concept; including definitions, elements, and principles of its application in international law and comparisons with Indonesian law and the limits of directors' liability by examining articles of the Limited Liability Companies Law, juridical interpretations, and judicial practices to determine the extent to which directors are responsible for business decisions that are detrimental to the company. To strengthen the analysis, the researcher compared the implementation of the Business Judgment Rule in Indonesia with other countries that use the Anglo-Saxon legal system (for example, the United States) as a benchmark, so that similarities, differences, and the relevance of these principles in the context of national law can be seen. This method is qualitative, because the research emphasizes the analysis of legal texts, doctrines, and jurisprudence to gain in-depth understanding, rather than quantitative measurements. Thus, this method is suitable for examining the normative and juridical legal aspects of the Business Judgment Rule and the accountability of directors in limited liability company law in Indonesia.

3. Results and Discussion

Limited Liability Company (PT) is one of the most widely used forms of business entity in Indonesia because of its ability to provide limited protection to shareholders, as well as separating ownership and management of the company. The Board of Directors as the main management organ has a central role in making strategic and operational business decisions. Their responsibilities towards the company and shareholders are regulated in Law Number 40 of 2007 concerning Limited Liability Companies.

In business practice, decisions made by directors do not always result in profits; sometimes these decisions result in losses. The legal question that arises is whether directors can be held personally liable for losses arising from their business decisions. The Business Judgment Rule (BJR) doctrine exists to provide limits on this responsibility. BJR, which was born from the common law legal system, provides room for directors to take business risks as long as decisions are made in good faith, with caution, and in the interests of the company.

The Business Judgment Rule is a legal doctrine that asserts that courts will not judge the poor results of business decisions alone, but rather assess whether those decisions were made with proper procedures and in good faith. In other words , the Business Judgment Rule presumes that directors acted with good intentions, with prudence, loyalty, and responsibility in managing the company.

According to Glassman, BJR is "the legal principle that protects directors from liability for decisions made in good faith, with due care, and in the best interest of the corporation, even if such decisions result in losses." With this principle, negative outcomes from business decisions do not automatically make directors liable, as long as the decision-making process meets good governance and prudent standards.

Easterbrook and Fischel define BJR as:

"a presumption that in making a business decision, the directors of a corporation acted on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the company". From this definition there are 3 main elements of BJR, namely;

1. Good Faith: Directors must act in the interests of the company, not personal interests.
2. Due Care: Decisions must be taken after obtaining adequate information and considering the risks and alternatives available.
3. Proper Purpose (Company Interests): Decisions must be in line with the company's goals and objectives, not merely for individual gain.

BJR developed from corporate law in the United States in the early 20th century, in response to the need to protect directors from lawsuits that might arise from business risks taken in running a company. The main philosophy of BJR is that the courts must respect business policies made by company management, as long as the decisions are taken rationally and in good faith, and are not driven by personal interests or abuse of

power. BJR aims to encourage rational decision-making and the courage to take reasonable business risks. Without BJR, directors tend to be overly conservative to avoid legal liability, thus limiting the company's growth.

This principle also encourages reasonable risk-taking in business, as business always involves uncertainty. Without a BJR, directors will tend to make very conservative and risk-averse decisions, which can actually harm the company's growth and sustainability. Compared to three countries, namely the United States, BJR is widely recognized through the Smith v. Van Gorkom ruling and numerous Delaware cases. Protection is provided if directors act with sufficient information and in good faith; UK: Similar principles are known through business judgment and fiduciary duty, but focus more on conflicts of interest and integrity of decisions; Australia: BJR is regulated in the Corporations Act 2001, emphasizing the responsibilities of directors but providing protection if the decision-making process is rational and documentation is adequate.

Law Number 40 of 2007 concerning Limited Liability Companies clearly regulates the roles, authorities, and responsibilities of directors. Several important articles regarding the responsibilities of directors include:

- Article 92 paragraph (1) UUPT: The Board of Directors carries out the management of the company in the interests of the company and in accordance with the aims and objectives of the company.
- Article 97 paragraph (3) UUPT: The Board of Directors is responsible for the company's losses if it is proven that they have committed an error or negligence.
- Article 97 paragraph (5) UUPT: The Board of Directors cannot be held responsible for company losses if they can prove that management was carried out in good faith, with due care, without any conflict of interest, and have taken action to prevent losses.

The provisions of Article 97 paragraph (5) implicitly reflect the BJR principle, because it provides legal protection for directors who make business decisions using correct procedures, even if the decision results in losses.

Based on the literature and provisions of the UUPT, there are several conditions that must be met in order for directors to obtain legal protection:

1. Good Faith

The Board of Directors must act in the interests of the company, not in the interests of individuals or certain parties.

2. Due Care

Business decisions should be made after obtaining adequate information, conducting risk analysis, and considering the best alternatives.

3. Company Interests (Proper Purpose)

Decisions must be in accordance with the company's aims and objectives, not solely for

personal gain or third party benefit.

4. No Conflict of Interest

The Board of Directors must be free from interests that conflict with the interests of the company.

5. Preventive Actions for Losses

If a decision creates a risk of loss, the board of directors is obliged to take action to prevent or minimize the loss.

6. Rational Decisions (Rational Basis)

The decision-making process must be based on rational considerations, not on emotions, personal interests, or hasty policies.

If all the above conditions are met, the directors can claim legal protection and are not personally liable for the company's losses.

Practical Implications of BJR Implementation in Indonesia

1. Losses Do Not Automatically Give Rise to Liability

In practice, company losses do not directly make directors personally liable. There must be an element of error or negligence in the management for accountability to arise.

2. Focus on the Process, Not the End Result

Indonesian courts tend to emphasize the decision-making process over business outcomes. If the decision-making process meets governance standards, a negative outcome does not automatically constitute liability.

3. Collective and Individual Accountability

Directors can be held collectively (if decisions are made together) or individually (if a particular member is proven to be negligent or has committed an error). This is in accordance with the principle of joint and several liability.

4. Challenges of Implementation in State-Owned Enterprises

In the context of state-owned enterprises (SOEs), problems arise when company losses are linked to state losses. The protection of state-owned enterprises (BJR) remains frequently debated, as courts and law enforcement officials tend to question the impact of losses on state finances.

5. Good Documentation and Governance

For BJR protection to be effective, companies need to implement Good Corporate Governance (GCG), document their decision-making processes, and conduct written risk analyses. Without sufficient evidence, protection claims may fail in court.

One illustrative case in Indonesia is the case of a state-owned enterprise director who faced legal action due to company losses. In several court decisions, even though the directors submitted a defense based on the BJR principle, the court rejected it because it was proven that there was abuse of authority and conflict of interest. For example, Decision No. 34/Pid.Sus-TPK/2019/PT DKI confirms that directors can lose BJR protection

if they are proven to have abused their position for personal gain. Normative research shows that implementing Good Corporate Governance (BJR) in the context of private companies is easier than in state-owned enterprises. Directors who carry out decision-making processes in good faith, consider information, and take preventive measures against the risk of loss can obtain legal protection. Companies that consistently implement GCG are able to build a culture of transparent, documented, and well-oriented decision-making. This makes it easier for directors to use the BJR principle as a basis for legal defense.

Challenges of BJIR Implementation in Indonesia: Lack of Legal Precedent

There are still few cases in court that explicitly adopt the BJR principle, so the implementation standards are not yet standardized; Limitations of GCG in State-Owned Enterprises Some State-Owned Enterprises have not fully implemented transparent and documented governance, making it difficult to prove that the decisions of the board of directors meet the BJR criteria; Sensitivity of Losses to the Public, Losses involving public funds create political and public pressure, so that legal protection for State-Owned Enterprise directors is more vulnerable; The role of the Board of Commissioners must be active in supervising so that BJR can be implemented effectively, including ensuring that the decisions of the board of directors are rational and free from conflicts of interest.

4. Conclusion

After conducting normative and conceptual studies, it can be concluded that the *Business Judgment Rule* (BJR) principle is a corporate legal doctrine that provides legal protection to directors from personal liability for company losses arising from their business decisions, as long as the decisions are taken in good faith, with caution, and in the interests of the company . This doctrine is not intended to absolve directors of all liability, but to emphasize the distinction between "business misconduct" and "legal negligence" . Business by its very nature always involves risks — market fluctuations, technological changes, government policies, or consumer behavior — all of which are beyond human control. Therefore, it is unfair if every loss is automatically used as a basis for suing the directors personally.

The Business Judgment Rule (BJR) principle is a legal doctrine that provides protection to directors from personal liability for business decisions that cause losses to the company, as long as the decision is taken in good faith, based on rational considerations and adequate information, does not have a conflict of interest, and is intended for the best interests of the company. In the context of Limited Liability Company law in Indonesia, this principle is reflected in Article 97 paragraph (5) of Law Number 40 of 2007 concerning Limited Liability Companies (UUPT), which provides a legal basis that directors can be released from liability if they can prove that they have carried out their duties in good faith and with due care. The application of this principle in practice is important to balance the

needs of directors in taking business risks with protecting the interests of the company and shareholders. *The Business Judgment Rule* functions as legal protection *so* that directors are not afraid to make rational strategic decisions for the progress of the company, as long as the decisions are taken in accordance with the principles of *fiduciary duties, namely the duty of care, duty of loyalty, and duty to act in good faith.*

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