



THE BUSINESS JUDGMENT RULE IN CORPORATE LAW: A COMPARATIVE STUDY OF INDONESIA AND SINGAPORE

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ABSTRACT

The Business Judgement Rule (BJR) is a fundamental doctrine in corporate governance that provides directors with protection when making informed, good-faith business decisions, while maintaining accountability to shareholders. As jurisdictions develop distinct approaches to balancing managerial discretion and oversight, differences in BJR application significantly influence legal certainty, director liability, and shareholder protection. This study aims to compare BJR implementation in Indonesia and Singapore, focusing on legal frameworks, judicial interpretations, and their implications for corporate governance effectiveness. Using a normative juridical method with a comparative law approach, the analysis reveals Singapore's robust BJR framework, supported by clear jurisprudence and strong governance practices that consistently protect prudent directors. Conversely, Indonesia faces challenges due to the absence of explicit BJR codification in the Limited Liability Companies Act and inconsistent judicial interpretations, leading to uncertainty in determining director responsibility. These contrasts arise from differing legal traditions and regulatory structures. The study concludes that Indonesia should strengthen its regulatory framework and promote judicial consistency to enhance the role of BJR in ensuring good corporate governance and balancing director responsibilities with shareholder rights.

A. INTRODUCTION

In the modern corporate governance framework, the issues of director liability and shareholder protection occupy a central position, reflecting the need to balance managerial discretion with accountability to stakeholders.¹

¹ Hamidin, Siswantari Pratiwi, and Hartanto, "Analisis Penerapan Prinsip Business Judgment Aturan Terkait Dengan Pertanggung Jawaban Pidana Pada Direksi Badan Usaha Milik Negara (BUMN)," *YUSTISI* 11, no. 2 (2024): 343. See too, Anita Kamilah, and Trini Handayani, "The Application of Business Judgment Rule Principles: The Protection for State-Owned Enterprises Directors to Business Risk Failure," *UNIFIKASI: Jurnal Ilmu Hukum* 8, no. 1 (2021): 21.

The increasing complexity of business activities, the globalization of markets, and the growing awareness of corporate responsibility have significantly impacted the standards expected of directors in carrying out their duties. Directors are entrusted with managing corporate resources and making strategic decisions that often involve significant risks. However, the inherent uncertainty in these decisions raises the question of whether directors should be held personally liable for adverse outcomes.² This dilemma underscores the importance of the Business Judgement Rule (BJR), a legal doctrine designed to protect directors as long as they act in good faith, with due care, and in the best interests of the company.³

In Indonesia, despite being a civil law jurisdiction without a fully codified BJR formulation, this doctrine has gained recognition through both legislation and jurisprudence. Implicit recognition of BJR is found in Article 97 Paragraph (5) of Law Number 40 of 2007 concerning Limited Liability Companies (Law 40/2007), which exempts directors from liability if they can prove that the loss was not due to their fault or negligence, that they acted in good faith and with due care in the interests of the company, that they had no conflict of interest, and that they had taken steps to prevent or mitigate the loss.⁴ Explicit recognition is provided for in Article 3Y of Law Number 1 of 2025 (Third Amendment to the State-Owned Enterprises Law, Law 1/2025), which offers similar protection to ministers, corporate bodies, and BUMN officials.⁵ Furthermore, the Supreme Court of Indonesia, in important decisions such as Decision Number 3849 K/Pid.Sus/2019 and Decision Number 121 K/Pid.Sus/2020, has established BJR as the basis for exempting directors from personal criminal liability if the business policy that results in losses is carried out in good faith and in line with the principles of corporate governance.⁶

² Kuswandi, Yudi Junadi, and Aulia Putri, "Penerapan Prinsip Business Judgment Aturan Dalam Putusan Lepas Terkait Tindak Pidana Korupsi Direktur Korporasi," *Jurnal Hukum Mimbar Justitia* 8, no. 2 (2022): 509. See too, Sudarna, "Penerapan Business Judgement Rule Terkait Dengan Keputusan Direksi PT BUMN," *Lex Stricta: Jurnal Ilmu Hukum* 3, no. 3 (2025): 198.

³ Satwika Narendra, Gde Made Swardhana, and Diah Ratna Sari Hariyanto, "Pertanggungjawaban Korporasi Berdasarkan Kesalahan Menurut Hukum Pidana," *J-CEKI : Jurnal Cendekia Ilmiah* 3, no. 5 (2024): 5293.

⁴ Mochammad Tanzil Multazam, Noor Fatimah Mediawati, and Sri Budi Purwaningsih, *Buku Ajar Hukum Perusahaan* (Sidoarjo: Umsida Press, 2023), 12.

⁵ Muhammad Mirza Habibie, Yuliani Catur Rini, and Kartika Winkar Setya, "Business Judgment Rule in the Amendment of the State-Owned Enterprises Law," *Jurnal Hukum In Concreto* 4, no. 2 (2025): 276. See too, Grasia Kurniati, "Studi Perbandingan Penyelesaian Sengketa Bisnis dan Implementasinya Antara Lembaga Badan Arbitrase Nasional Indonesia dan Singapore International Arbitration Centre," *Jurnal Ilmiah Hukum DE'JURE: Kajian Ilmiah Hukum* 1, no. 2 (2016): 223.

⁶ Ahmad Mukri Aji, Syarifah Gustiawati Mukri, dan Gilang Rizki Aji Putra, "Implementasi Harmonisasi Akad Perbankan Syariah dengan Hukum Positif di Indonesia," *Mizan: Jurnal Hukum Islam* 6, no. 2 (2022): 267.

In comparison, Singapore as a common law jurisdiction has shaped the BJR more coherently through its body of case law. Directors in Singapore receive more well-defined protections as long as their business decisions are made with honesty, prudence, and in good faith.⁷ However, in Indonesia, the lack of explicit codification and varying interpretations of the law give rise to greater legal uncertainty, which in turn affects the level of protection afforded to shareholders when directors' decisions cause financial loss or corporate loss.⁸ The main legal issue in Indonesia concerns the uncertainty in shareholder protection, particularly for minority shareholders, due to the lack of clear codification and varying interpretations of corporate law. While Law Number 40 of 2007 on Limited Liability Companies provides a legal framework, inconsistent implementation and differing interpretations create risks when directors' decisions lead to financial or corporate losses.⁹ Recent studies highlight that this legal uncertainty undermines accountability and transparency in corporate governance, emphasising the need for regulatory harmonisation, clearer enforcement mechanisms, and stronger minority shareholder protections to enhance legal certainty and investor confidence.¹⁰

From a normative perspective, corporate law ideally (*das sollen*) should provide a clear and predictable standard that both shields directors from excessive liability and ensures that shareholders retain their rights to effective legal remedies. In practice (*das sein*), however, Indonesia's regulatory framework does not fully realize this balance, as the absence of codified BJR standards and inconsistent judicial application generate uncertainty. This gap between normative expectations and legal reality undermines the effectiveness of corporate governance. Singapore, on the other hand, demonstrates stronger alignment between normative principles and judicial practice, as its courts consistently apply BJR to safeguard both directors and shareholders.

The urgency of this research lies in Indonesia's pressing need to strengthen legal certainty and investor confidence in its corporate governance system. Without a clear and consistently applied BJR doctrine, directors may become overly risk-averse, refraining from bold but necessary business

⁷ Surya Indra dan Ivan Yustiavandana, *Penerapan Good Corporate Governance Mengesampingkan Hak-Hak Istimewa Demi Kelangsungan Usaha* (Jakarta: Prenada Media Group dan LKPMK FH UI, 2006), 23.

⁸ Gusnia, Etika Khairina, and Timbul Dompok, "Implementasi Good Corporate Governance Penguatan BUMN Dalam Perlindungan Keuangan Negara," *Prosiding Seminar Nasional Ilmu Sosial dan Teknologi (SNISTEK)* 5 (September 2023): 188.

⁹ Andyna Susiawati Achmad, and Astrid Athina Indradewi, "Hubungan Hukum Antar Perusahaan Dalam Sistem Perusahaan Grup Ditinjau Dari Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas," *Jurnal USM Law Review* 4, no. 2 (2021): 475.

¹⁰ Ade Pratiwi Susanty, "Tanggung Jawab Perusahaan Swasta Terhadap Negara Berdasarkan Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas," *Jotika Research in Business Law* 1, no. 1 (2022): 9.

decisions for fear of personal liability. At the same time, shareholders may find themselves with limited legal protection when directors act negligently or in bad faith. This dual challenge not only weakens accountability mechanisms but also threatens the competitiveness of Indonesian corporations in the global market. Therefore, examining Indonesia's framework alongside Singapore's experience is both timely and essential.

Previous studies on director liability and the BJR have largely emphasised normative definitions, legislative frameworks, or historical developments, with limited focus on functional comparative analysis. Few works systematically examine how the BJR operates in balancing director liability and shareholder protection in practice, particularly in the Indonesian context vis-à-vis Singapore. The novelty of this study lies in adopting a functional comparative approach that not only analyses the legislative framework but also evaluates how the BJR is concretely applied in judicial practice and regulatory enforcement. By highlighting the differences between the civil law system (Indonesia) and the common law system (Singapore), this study provides deeper insights into how legal traditions, corporate governance structures, and judicial practices shape the application of the BJR.

Therefore, this study aims to provide both theoretical and practical contributions: theoretically, by enriching the comparative corporate governance literature on director duties and shareholder rights; and practically, by providing constructive recommendations to strengthen legal certainty, judicial consistency, and regulatory reform in Indonesia. Ultimately, this study aims to position the BJR not merely as a shield for directors, but also as a dual-purpose doctrine that upholds accountability while ensuring shareholder protection in sustainable corporate governance efforts.

This study also provides a critical evaluation of the implications of implementing the BJR for directors and shareholders. While the BJR serves as a shield to protect directors from undue liability, it must also ensure that shareholders, as the ultimate owners of the company, do not lose their right to effective legal remedies when directors act negligently or in bad faith. The challenge lies in finding the right balance where directors are encouraged to take the entrepreneurial risks necessary for company growth without being exposed to excessive personal liability, while shareholders are adequately protected from abuse of power or managerial misconduct. This balance has not been sufficiently emphasised in previous studies, which often treat BJR primarily as a defence mechanism for directors, rather than as a dual-purpose doctrine that simultaneously enforces shareholder protection.

The limitations of existing literature and practice underscore the importance of systematically examining how Indonesia and Singapore apply the BJR to address the issues of director liability and shareholder protection.

Adopting a comparative legal approach, this study seeks to analyse the normative framework, court decisions, and practical implementation of the BJR in both jurisdictions. Furthermore, it examines the influence of legal traditions, corporate regulatory structures, and governance dynamics on the doctrine's effectiveness. Therefore, this study aims to demonstrate how differences in legal systems shape the role of the Business Judgment Rule (BJR) in Indonesia and Singapore as a corporate governance instrument. What factors contribute to the differences in BJR implementation between Indonesia and Singapore, and What are the implications for shareholder protection and corporate governance reform efforts in Indonesia.

Accordingly, this study aims to conduct a critical comparison of how the BJR is applied in Indonesia and Singapore, particularly in its function of balancing director responsibility with shareholder protection. The results are expected to offer both theoretical and practical contributions: theoretically, by advancing comparative corporate law discourse on directors' obligations and shareholder entitlements; and practically, by proposing recommendations to strengthen regulatory frameworks and promote judicial coherence in Indonesia. Consequently, this research not only provides a descriptive and comparative analysis but also delivers constructive insights to enhance the effectiveness of the BJR as a mechanism for ensuring accountability, fairness, and sustainable corporate governance.

B. RESEARCH METHODS

This research is designed as doctrinal legal research, relying primarily on library-based study of legislation, judicial decisions, and scholarly commentary. The research design is descriptive-analytical, aiming to systematically describe, interpret, and compare legal norms and doctrines in order to evaluate their application in practice.

This study uses a normative juridical approach combined with comparative legal methods to analyse how BJR functions as a doctrinal protection for directors' liability while also functioning as a protection mechanism for shareholders in Indonesia and Singapore.¹¹ This normative juridical approach was adopted because the main focus of this research is on legal norms, statutory provisions, judicial doctrines, and regulatory frameworks governing the duties of directors and the rights of shareholders in both jurisdictions.¹² Using this approach, this study systematically examines the written law and jurisprudential developments that shape the interpretation and application of BJR in the context of corporate governance.

¹¹ Elisabeth Nurhaini, *Metode Penelitian Hukum, Langkah-Langkah Untuk Menemukan Kebenaran Dalam Ilmu Hukum* (PT. Refika Aditama, 2018), 15.

¹² Zainuddin Ali, *Metode Penelitian Hukum* (Sinar Grafika, 2014), 46.

The comparative legal method is highly relevant to this study because it examines the similarities and differences between Indonesia's civil law system and Singapore's common law system. This approach allows a functional comparison by looking not only at the written laws but also at how courts and corporate governance practices apply the BJR in each country. Through this perspective, the study gains clearer insight into the strengths and weaknesses of both systems and can propose recommendations for improving Indonesian corporate law. The data used come from primary and secondary legal materials. Primary sources include Law 40/2007, the Singapore Companies Act, Indonesian court decisions, and key Singapore cases that shaped the BJR doctrine.

This study also examines corporate governance codes, ethical guidelines, and official regulatory documents from both countries to understand how directors' duties and shareholder protection operate in practice. Secondary materials include academic articles, legal commentaries, corporate law textbooks, and prior comparative studies on directors' responsibilities, fiduciary duties, and the development of the BJR in various jurisdictions. The research uses a qualitative legal analysis, in which the collected data are described, interpreted, and compared to identify key similarities and differences in the legal framework, court interpretations, and practical application of the BJR in Indonesia and Singapore. This analysis combines doctrinal study of directors' duties and shareholder rights with comparative evaluation to assess how each legal system balances managerial discretion with accountability.

A conceptual approach was also used to place the BJR within broader theories of corporate governance, fiduciary duties, and shareholder protection. This method helps provide a clearer understanding of how the BJR functions in balancing directors' responsibilities with shareholder rights. The comparative approach is expected to highlight best practices from Singapore that Indonesia can adopt to improve its governance framework, increase legal certainty, and align with international standards. Overall, this approach enables both descriptive and normative analysis while offering a solid basis for proposing regulatory reforms and promoting judicial consistency in the application of the BJR in Indonesia.

C. DISCUSSION

1. Legal System Differences and the Function of the Business Judgment Rule in Corporate Governance

To understand the responsibilities of directors within corporate governance, this study examines the relevant legal doctrines and theoretical frameworks, particularly the concept of the Business Judgment Rule (BJR).

The normative framework for board accountability reflects the fundamental principles of corporate governance, which seek to balance managerial discretion with accountability to shareholders and other stakeholders. In Indonesia, the regulation of board accountability is primarily regulated in Articles 92 to 107 of Law 40/2007, which define the duties of board directors in managing the company.¹³ Articles in Law 40/2007 outline that directors are personally liable if proven negligent or in breach of their fiduciary duties, particularly when their actions cause losses to the company.

However, Law 40/2007 does not explicitly codify the BJR as doctrinal protection for directors. This absence creates ambiguity as directors are often unsure whether decisions made in good faith and with due care can protect them from liability.¹⁴ As a result, the protection of directors in Indonesia relies heavily on judicial discretion and the evolving interpretations of legal experts, which may vary from case to case. This leads to a fragmented understanding of director liability and undermines the predictability necessary for stable corporate governance.¹⁵

In contrast, Singapore offers a more consolidated and predictable normative framework. As a common law jurisdiction, Singapore explicitly recognizes BJR through judicial precedent and statutory provisions in the Companies Act.¹⁶ This doctrine is firmly entrenched in the jurisprudence of Singapore courts, which have consistently held that directors are not personally liable for business decisions made honestly, prudently and in the best interests of the company.¹⁷ Singapore law places greater emphasis on the

¹³ Dian Afrilia, and Sayit Bandung Bondowoso, "Pertanggungjawaban Direksi BUMN Terhadap Kerugian Negara Berdasarkan Regulasi Pemerintahan Sektor Perusahaan Dan Pidana," *Lex Stricta : Jurnal Ilmu Hukum* 4, no. 1 (2025): 15. See too, P. I. M. Dharsana, Indrasari Kresnadjaja, and I. Putu LINGGA Dhananjaya, "Application of the business judgment rule doctrine in Indonesian companies," *Journal of Public Administration, Finance and Law* 27 (2023): 385; Faisal Santiago, "Reconstruction of the Business Judgment Rule Doctrine in Indonesia: Legal Comparison with England, Canada, the United States, and Australia," *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 1 (2024): 112.

¹⁴ Amir Firmansyah, Aris Machmud, and Suparji Suparji, "Peran BUMN sebagai Pilar Utama Ekonomi Nasional yang Mandiri: Sebuah Kajian Hukum Korporasi," *Binamulia Hukum* 13, no. 2 (2024): 519.

¹⁵ Selamat Lumban Gaol, "Rekonstruksi Regulasi Business Judgment Rule Sebagai Alasan Penghapusan Pertanggungjawaban Pidana Pribadi Perseroan Terbatas Dalam Pengambilan Kebijakan Bisnis Yang Menimbulkan Kerugian Bagi Perseroan Terbatas Berbasis Nilai Keadilan" (Disertasi, Universitas Islam Sultan Agung, 2022).

¹⁶ Helmi Kasim, "Memikirkan Kembali Pengawasan Badan Usaha Milik Negara Berdasarkan Business Judgment Rules," *Jurnal Konstitusi* 14, no. 2 (2017): 440. See too, Wilda Shafira, Ananda Elena Nurul Izzah, Primanadya Dian Pamella, and Nabila Ghina Dzakhirah, "The business judgment rule in a progressive legal perspective: Essence and implications in Indonesia," *Rechtsidee* 10, no. 2 (2022): 2107.

¹⁷ Lynette J Chua, "Interpretasi Konstitusional dan Kesadaran Hukum: Keluar dari Pengadilan dan Menuju Lapangan," *Jurnal Internasional Hukum Tata Negara* 20, no. 5 (2022): 1937. See too, Muhamad Hafizh Akram, and Nisriina Primadani Fanaro, "Implementasi Doktrin Business Judgement Rule di Indonesia," *Ganesha Law Review* 1, no. 1 (2019): 79.

decision-making process than on its outcomes, thereby protecting directors who take reasonable risks essential to entrepreneurial activity. Furthermore, the recognition of BJR is closely linked to the fiduciary duties imposed on directors, including the duty of care, the duty of loyalty, and the duty to avoid conflicts of interest.¹⁸ As long as these obligations are met, directors are protected from ex post facto lawsuits by shareholders dissatisfied with business results. This normative clarity provides stronger legal certainty for directors and shareholders, thus creating a more balanced and effective corporate governance system.

The differences between Indonesia and Singapore highlight the influence of legal traditions on the development of corporate governance doctrine.¹⁹ Indonesia's civil law system tends to prioritize codification and statutory provisions, meaning the lack of explicit regulations regarding BJR significantly limits the development of the doctrine. Indonesian courts often rely heavily on statutory interpretation and are less inclined to create binding precedent, further explaining the inconsistency in the application of BJR principles. In contrast, Singapore's common law tradition allows courts to dynamically shape the doctrine through jurisprudence, giving BJR a stronger position in corporate law. This flexibility ensures that the doctrine evolves with business practices and remains responsive to changing corporate governance needs.

Table 1. Comparison of Directors' Liability and Business Judgement Rule

Aspect	Indonesia	Singapore
Legal System	Civil law tradition; relies on statutory codification (Company Law No. 40/2007).	Common law tradition; relies on Companies Act and binding judicial precedents.
Recognition of BJR	Not explicitly codified; application depends on judicial interpretation and doctrinal debate.	Explicitly recognized in case law and reinforced by Companies Act provisions.

¹⁸ Trevor TW Wan, "Unshackling from Shadows of the Anisminic Orthodoxy: Reconceptualising Approaches to Ouster Clauses in Hong Kong," *Asian Journal of Comparative Law* 19, no. 2 (2024): 374. See too, Sugiarto, Sapta Eka Yanto, Sudiyanto Sudiyanto, Panji Riyadi, Purnomo Purnomo, Royan Siagian, and Zainal Arifin Hosein, "Comparative Analysis of Business Judgment Rules in Civil Law and Common Law Systems," *Mandub: Jurnal Politik, Sosial, Hukum Dan Humaniora* 2 (2024): 151.

¹⁹ Selamat Lumban Gaol, "Business Judgment Rule Sebagai Alasan Penghapus Pertanggungjawaban Pidana Pribadi Direksi Perseroan Terbatas Dalam Pengambilan Kebijakan Bisnis Yang Menimbulkan Kerugian Bagi Perseroan Terbatas Di Luar KUHP," *Jurnal Ilmiah Hukum Dirgantara* 11, no. 2 (2021): 34. See too, Busyra Azheri, and Upita Anggunsuri, "The implementation of business judgment rule principle in managing the company," *Nagari Law Review* 3, no. 2 (2020): 37.

Directors' Liability	Directors may be personally liable if company suffers loss; focus often on outcomes rather than process.	Directors protected when acting in good faith, with due care, and in company's best interests; focus on decision-making process.
Judicial Approach	Courts inconsistent; limited reliance on precedent; fragmented interpretations of BJR.	Courts consistent in applying BJR; established jurisprudence such as <i>Intraco Ltd v Multi-Pak Singapore Pte Ltd</i> .
Shareholders' Protection	Difficult to distinguish between legitimate business risks and negligence; weaker legal remedies and investor confidence.	Clearer mechanisms such as derivative actions; balanced protection for both directors and shareholders.
Corporate Governance Implications	Uncertainty discourages risk-taking; may hinder innovation and competitiveness.	Certainty encourages entrepreneurial decision-making; strengthens investor confidence and governance stability.

A comparison between Indonesia and Singapore regarding directors' liability and the recognition of the BJR reveals fundamental differences rooted in their respective legal traditions. Indonesia, as a civil law jurisdiction, relies heavily on codified laws such as Law 40/2007. This Law provides a general framework for the duties and responsibilities of directors, but does not explicitly codify the BJR. Consequently, the recognition and application of this doctrine rely heavily on judicial interpretation and academic discourse. This reliance on fragmented judicial reasoning creates legal uncertainty for directors, as courts can interpret the limits of liability inconsistently. In contrast, Singapore, grounded in a common law tradition, provides a more coherent framework in which the BJR is explicitly recognized through the Companies Act and judicial precedent. The adaptability of common law allows courts to shape the BJR in response to evolving business practices, making it a more entrenched and reliable doctrine in Singapore's corporate governance system.

Another significant difference is how directors' liability is assessed in practice. In Indonesia, courts tend to focus on the outcome of business decisions, often imposing personal liability on directors when their actions result in losses to the company, even if the decisions were made in good faith. This outcome-oriented perspective weakens the protective function of BJR, as it ignores the inherent uncertainty of business judgment. Consequently, directors may feel constrained, avoiding bold or innovative decisions for fear

of personal liability. Singaporean courts, on the other hand, emphasize the decision-making process rather than the outcome. As long as directors act with due diligence, prudence, and honesty, they are protected from personal liability, regardless of whether the business decision results in success or failure. This process-oriented approach, illustrated in landmark cases such as *Intraco Ltd v Multi-Pak Singapore Pte Ltd*, gives directors a greater degree of confidence in exercising their managerial discretion. It also reflects a core principle of BJR, which prevents courts from substituting their own business judgment for that of directors.

The differences between Indonesia and Singapore also extend to shareholder protection. In Indonesia, shareholders often face difficulties distinguishing between legitimate business risks and directorial negligence due to the lack of explicit recognition of BJR. This ambiguity not only weakens the effectiveness of legal remedies available to shareholders but also undermines investor confidence in corporate governance structures. The lack of clear standards means that disputes between shareholders and directors are more likely to arise and be resolved inconsistently, contributing to a less predictable corporate environment. In contrast, Singapore offers stronger protection to shareholders through mechanisms such as derivative actions, which allow them to seek redress when directors breach their fiduciary duties. The consistent application of the BJR ensures that directors cannot abuse it as a shield for misconduct, while also preventing frivolous lawsuits against directors for legitimate business risks. This dual function of protecting both directors and shareholders reflects the balanced nature of corporate governance in Singapore.

The corporate governance implications of these differences are substantial. In Indonesia, the lack of codified BJR standards and inconsistent legal interpretations create a climate of uncertainty that discourages directors from engaging in entrepreneurial risk-taking. This conservatism can hinder innovation and competitiveness, especially in a global business environment where bold decision-making is often crucial. In contrast, Singapore's recognition of BJR fosters a legal environment that encourages directors to make entrepreneurial decisions, knowing they will be protected if they act prudently and in good faith.²⁰ This legal certainty not only strengthens investor confidence but also contributes to the stability and credibility of the corporate governance system. As a result, Singapore is better positioned to attract foreign investment and foster sustainable corporate growth.

²⁰ K. O. H. Pearlie, and Hwee Hoon Tan, "Directors' Duties in Singapore: Law and Perceptions," *Asian Journal of Comparative Law* 14, no. 1 (2019): 45. See too, Roro Ajeng Muningsgar, and Rosdiana Saleh, "Perbandingan sistem hukum Indonesia dan Australia tentang pengaturan pertimbangan bisnis (business judgement)," *UNES Law Review* 6, no. 3 (2024): 9107.

In summary, the comparison demonstrates that Indonesia needs to improve its corporate governance system by formally incorporating the BJR into its legislation and ensuring more consistent judicial application. These changes would enhance legal certainty for directors, strengthen shareholder protection, and bring Indonesia's governance practices closer to international norms.²¹ Singapore, on the other hand, illustrates how the BJR can be effectively embedded within legal and judicial structures to balance director duties and shareholder interests. By drawing lessons from Singapore's approach, Indonesia can reinforce its governance framework and create a more transparent, accountable, and attractive environment for investors.

Another crucial difference lies in its implications for directors' willingness to take business risks. In Indonesia, the absence of a clear BJR framework can discourage directors from making bold or innovative decisions, as they may fear personal liability if those decisions result in financial losses. This creates a conservative corporate culture that can limit competitiveness in an increasingly globalized economy. On the other hand, Singapore's explicit recognition of BJR encourages directors to engage in entrepreneurial risk-taking, recognizing that their liability is limited if they act in good faith and with due diligence. This legal environment not only strengthens investor confidence but also fosters corporate dynamism and innovation.

Finally, from a shareholder protection perspective, Indonesia's reliance on general fiduciary duty provisions without a clear BJR doctrine places shareholders in a more precarious position. Shareholders may have difficulty distinguishing between legitimate business risks and directorial negligence, leading to frequent disputes and legal uncertainty. In Singapore, shareholders benefit from a more structured system that clearly separates these two categories, ensuring that directors cannot abuse the BJR shield while simultaneously preventing frivolous lawsuits against directors for legitimate business losses. This comparative analysis shows that while both countries aim to balance director liability with shareholder rights, Singapore's normative framework provides a stronger, more predictable, and more effective model for ensuring good corporate governance.

2. Judicial Interpretation, Implementation, and Challenges of the Business Judgment Rule in Indonesia and Singapore

Legal interpretation plays a decisive role in shaping the meaning and application of BJR, especially in jurisdictions where legal recognition is limited

²¹ Eko Priyono, Agus Surono, and Sadino Sadino, "Doktrin Business Judgment Aturan Dalam Memberikan Perlindungan Hukum Kepada Direksi BUMN (Studi Kasus PT. PLN)," *Jurnal Magister Ilmu Hukum* 7, no. 2 (2022): 29. See too, Geofani Milthree Saragih, "A Judges' Role in Pursuing Justice: Oliver Wendell Holmes' Sociological Jurisprudence Perspective," *International Journal of Law Society Services* 3, no. 2 (2024): 61.

or even non-existent.²² In Indonesia, the absence of explicit codification of BJR in Law 40/2007 has placed the burden on the courts to determine the extent of directors' liability when business decisions result in financial loss.²³ Indonesian judges, operating within the civil law tradition, often adopt a textual and outcome-oriented approach, focusing on whether a decision has caused measurable harm to the company, rather than on the integrity of the decision-making process. This tendency has led to inconsistent rulings, where directors are sometimes held personally liable despite acting in good faith and in the best interests of the company. Consequently, this legal inconsistency contributes to legal uncertainty, discouraging directors from taking entrepreneurial risks essential to corporate innovation and competitiveness.

In contrast, Singapore provides a clearer and more predictable framework through its consistent judicial recognition of the BJR, underpinned by its common law tradition. Singaporean courts have developed the BJR through landmark cases such as *Intraco Ltd v Multi-Pak Singapore Pte Ltd* and subsequent decisions that emphasize process over outcome.²⁴ Singaporean courts evaluate whether directors have acted honestly, in good faith, with reasonable care, and without a conflict of interest. If these fiduciary standards are met, directors are protected from liability regardless of the ultimate financial outcome of their decisions. This process-oriented evaluation underscores the essence of BJR: courts should not substitute their own business judgment for directors' judgment, as directors are better positioned to assess commercial risks. By consistently applying this principle, Singaporean courts strengthen directors' confidence in exercising managerial discretion while enforcing standards of accountability.

The practical consequences of this divergent judicial approach are profound. In Indonesia, the lack of an established BJR doctrine means that directors operate under constant uncertainty about how their decisions will be judged.²⁵ This can lead to overly cautious corporate behavior, with directors

²² I. Gusti Putu SD, and M. Nasir Majid, "Optimising green industry development to strengthen the national economy," *Jurnal Lemhannas RI* 12, no. 3 (2024): 379.

²³ Anisa Deny Setiawati and Mokhamad Gisa Vitrana, "Doktrin Business Judgment Rule dalam UU BUMN: Batas Tanggung Jawab Direksi dalam Tindak Pidana Korupsi," *Jurnal Rechtsens* 14, no. 1 (2025): 167. See too, Juan Kasma, and Christian Andersen, "Business Judgment Rule and Corporate Governance as the Strategic Imperative of Indonesian State-owned Enterprise," *European Journal of Law and Political Science* 3, no. 4 (2024): 54.

²⁴ Chen Wang, and Ke Xu, "Toward Digital Corporate Law: Revisiting Corporate Law's Responses to Technology," *William & Mary Business Law Review* 17, no. 1 (2025): 123.

²⁵ Larassati Putri Syaflizar, "Business Judgment Rule: Sebuah Prinsip Tanggung Jawab Direksi Atas Kerugian Dalam Pengelolaan Bumn (Persero)," *Jurnal Privat Law* 11, no. 1 (2023): 146. See too, Ambareen Beebeejaun, and Pramod Bissessur, "The Business Judgment Rule as a Protective Armor for Directors' Responsibilities: A Comparative Study Among Mauritius, United Kingdom, and United States," *Statute Law Review* 45, no. 2 (2024): 28; Hamid Abhary, Tahereh Mosavi Khatir, and Omolbanin Ramzanzadeh Badeli, "The Uniform Model of the Business-

avoiding high-risk but potentially high-reward ventures for fear of personal liability. Such judicial inconsistencies also weaken the enforcement of fiduciary duties, as directors may perceive the law as unpredictable and subject to varying interpretations. In contrast, Singaporean courts provide clear and reliable guidance to directors: as long as their fiduciary duties are adhered to, they will not be questioned by the courts. This clarity allows directors to focus on strategic decision-making rather than potential legal repercussions, thereby fostering an environment conducive to continued corporate growth and innovation.

Furthermore, the application of BJR in Singaporean courts strengthens shareholder protection by ensuring that directors cannot abuse the doctrine as a blanket defense against liability. Courts remain careful to distinguish between legitimate business decisions and cases of negligence, bad faith, or self-dealing. Shareholders retain access to legal remedies such as derivative suits when directors breach their fiduciary duties, thus maintaining accountability. However, in Indonesia, shareholders face greater challenges in bringing claims due to the absence of a standardized judicial test to distinguish legitimate business risks from violations.²⁶ This lack of judicial clarity undermines minority shareholder protection and broader investor confidence in the fairness of Indonesia's corporate governance system.

A comparative analysis demonstrates that judicial interpretation is not merely a technical issue, but a key determinant of corporate governance effectiveness. Singapore's consistent application of the BJR enhances the protection of directors and shareholder rights, achieving a balance that promotes accountability without stifling entrepreneurship. Indonesia, on the other hand, illustrates the risks of leaving key doctrines underdeveloped, where judicial inconsistency creates uncertainty for all corporate actors. For Indonesia to advance its corporate governance framework, it must encourage greater judicial consistency in applying fiduciary duty standards and, ideally, codify the BJR into statutory law. This would not only align judicial practice with international standards but also provide directors and shareholders with the legal certainty necessary for a dynamic and competitive corporate environment.

Judgment Rule: a Comparative Study in English, American, Australian and Iranian Law," *Comparative Law Researches* 28, no. 4 (2025): 45.

²⁶ Mas Putra Zenno Januarsyah, Dwidja Priyatno, Agung Sujati Winata, and Khairul Hidayat, "Penerapan Doktrin Business Judgment Rule Dalam Perkara Tindak Pidana Korupsi Karen Agustawan," *Jurnal Ius Constituendum* 7, no. 1 (2022): 143. See too, Budi Tri Wijayanto, and Siska Dwi Andini, "Menguji Batas Business Judgement Rule: Studi Kasus Pengembangan Bisnis Lng PT Pertamina di Amerika Serikat," *Jurnal Syntax Admiration* 5, no. 12 (2024): 5259.

3. Implications for Shareholders' Protection and Corporate Governance Reform in Indonesia

The absence of an explicit BJR within Indonesia's corporate legal framework has significant implications for shareholder protection. Shareholders, as the ultimate owners of the company, rely on directors to carry out their fiduciary duties diligently and in good faith.²⁷ However, without a clear legal doctrine distinguishing between legitimate business risks and actionable negligence, shareholders face difficulties in pursuing legal remedies when corporate losses occur. This ambiguity not only weakens shareholders' ability to hold directors accountable but also creates uncertainty regarding the extent of their rights to challenge directors' decisions. In practice, Indonesian courts often emphasize the material outcome of directors' decisions rather than the decision-making process. As a result, shareholders are faced with inconsistent judicial outcomes, which undermines confidence in the effectiveness of corporate governance mechanisms.

From an investor protection perspective, the absence of a clearly defined BJR doctrine in Indonesia contributes to a fragile investment climate.²⁸ Shareholders may feel that their interests are not adequately protected, particularly in cases where directors' actions cause significant financial losses but cannot be easily classified as negligence due to a lack of legal clarity. This perception can discourage domestic and foreign investment, as investors seek jurisdictions with stronger legal frameworks that ensure a balance between director autonomy and shareholder rights. In comparison, jurisdictions like Singapore provide greater certainty to shareholders through mechanisms such as derivative actions and the explicit recognition of the BJR. This ensures that while directors are protected from undue liability, shareholders are not deprived of their right to seek redress for actual misconduct or breaches of fiduciary duties. Indonesia's inability to provide comparable clarity places its corporate governance framework at a disadvantage in the global marketplace.

The implications of this gap extend beyond shareholder protection to the broader area of corporate governance reform in Indonesia. Effective corporate governance requires striking the right balance between granting directors sufficient discretion to manage the company's affairs and ensuring mechanisms that protect shareholders from abuse of power. Without codified standards in the BJR, directors in Indonesia may adopt overly conservative

²⁷ Helmi Kasim, "Memikirkan Kembali Pengawasan Badan Usaha Milik Negara Berdasarkan Business Judgment Rules," *Jurnal Konstitusi* 14, no. 2 (2017): 441. See too, William Darmawangsa, "Interpretasi Yang Salah Mengenai Business Judgment Rule Pada Substansi Dan Struktur Hukum Di Indonesia," *Unes Law Review* 5, no. 3 (2023): 1359.

²⁸ Beni Darmawan Hidayat dan Muhamad Hasan Sebyar, "Implikasi Hukum Perpindahan Pengawasan Aset Kripto dari Bappebti ke OJK terhadap Pelaku Industri dan Investor," *HAKIM Jurnal Ilmu Hukum dan Sosial* 2, no. 4 (2024): 23.

decision-making strategies to avoid personal liability. Such conservatism stifles innovation, limits corporate competitiveness, and reduces the overall dynamism of the business environment. At the same time, the lack of protection mechanisms weakens minority shareholders, who are highly vulnerable to decisions that prioritize the interests of controlling shareholders or the directors themselves. This dynamic perpetuates governance practices that are inconsistent with international standards of accountability, transparency, and fairness.

For these reasons, Indonesia urgently requires reforms to its corporate governance system to enhance shareholder protection. Integrating the BJR into the Limited Liability Company Law, along with clearer rules on derivative actions and minority shareholder rights, would significantly improve legal certainty. These changes would help differentiate between proper business judgments made by directors and conduct that warrants legal action, thereby promoting a more balanced relationship between director obligations and shareholder interests. Moreover, greater consistency in judicial application of fiduciary duty standards would minimize arbitrary rulings and strengthen investor trust. These legal reforms should also be supported by stronger regulatory oversight from bodies such as the Financial Services Authority (OJK) and the Indonesia Stock Exchange (IDX), ensuring that corporate governance codes are not merely symbolic but are effectively implemented and enforced.

Ultimately, the implications of the current framework highlight a significant opportunity for Indonesia to align its corporate governance system with global best practices. By learning from the Singaporean model, which demonstrates how BJR can coexist with strong shareholder protections, Indonesia can strengthen its legal environment for directors and investors. Such reforms will not only enhance shareholder rights protection but also contribute to the creation of a more dynamic, transparent, and competitive corporate sector. In doing so, Indonesia will move towards a governance framework that is not only responsive to domestic needs but also attractive to global investment, thereby fostering sustainable corporate growth and long-term economic development.

D. CONCLUSION

This study demonstrates that the effectiveness of the Business Judgment Rule (BJR) as a corporate governance instrument is significantly influenced by differences in legal systems, judicial interpretations, and regulatory structures. A comparison between Indonesia and Singapore demonstrates that Singapore's common law tradition has enabled the BJR to develop as a consolidated and predictable doctrine through judicial precedent and statutory support. Singaporean courts consistently emphasize the

decision-making process over the outcome of business decisions, thereby protecting directors who act in good faith, with prudence, and in the best interests of the company, while maintaining accountability through clearly defined fiduciary duties and shareholder remedies. In contrast, Indonesia's civil law system relies heavily on codified statutes, and the lack of explicit recognition of the BJR in Law No. 40 of 2007 has resulted in regulatory and interpretative uncertainty. Indonesian courts tend to adopt a results-oriented approach, focusing on the company's losses rather than the quality of the directors' decision-making process.

This uncertainty has significant implications for shareholder protection. Without a clear standard distinguishing between legitimate business considerations and negligence, shareholders face difficulties in enforcing their rights, while directors remain exposed to inconsistent liability assessments. In contrast, Singapore's structured BJR framework provides balanced protection for directors and shareholders, strengthening investor confidence and the stability of corporate governance. The study recommends that Indonesia strengthen its corporate governance framework by explicitly incorporating BJR into company law and encouraging greater consistency in judicial interpretation. Drawing on lessons from Singapore's consolidated approach, such reforms would enhance legal certainty, improve shareholder protection, and support a more dynamic, transparent, and competitive corporate environment.

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