

LIMITATIONS IN BUSINESS JUDGEMENT RULE: PT PERTAMINA, THE UNITED STATES AND AUSTRALIA COMPARISON

Novia Fitriana

Universitas Islam Indonesia Yogyakarta

*Correspondence: 23921114@students.uii.ac.id

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Abstract: This study aims to examine the application of the Business Judgment Rule (BJR) in the case of PT Pertamina and compare its practice in Indonesia, the United States, and Australia. BJR is a legal doctrine that protects the direction from personal liability for company losses; all business decisions are taken in good faith, with prudence, without conflict of interest, and in the interests of the company. The case of PT Pertamina, related to the investment in the Australian BMG Block, is the focus of the study. The Supreme Court acquitted PT Pertamina (Karen Agustiawan) because the loss was considered a normal business risk, not a state financial loss. Using a normative juridical approach through literature study, the study analyzes the limitations of the application of BJR in third countries. In the United States, BJR applies strict standards through the duty of care and duty of loyalty based on the Model Business Corporations Act. Australia regulates BJR comprehensively in the Corporations Act 2001 with four absolute conditions, including protection in force majeure conditions and a safe harbor mechanism. This comparison emphasizes the importance of clear boundaries to balance legal protection and accountability, especially in the context of state-owned enterprises that are vulnerable to being permitted. The study concluded that BJR is not absolute immunity but rather conditional protection that must be expressly regulated within the legal framework and corporate governance to encourage sound and responsible business decisions.

Penelitian ini bertujuan mengkaji penerapan Business Judgment Rule (BJR) dalam kasus PT Pertamina dan membandingkan praktiknya di Indonesia, Amerika Serikat, dan Australia. BJR merupakan doktrin hukum yang melindungi direksi dari pertanggungjawaban pribadi atas kerugian perusahaan, sepanjang keputusan bisnis diambil dengan itikad baik, kehati-hatian, tanpa benturan kepentingan, dan demi kepentingan perseroan. Kasus PT Pertamina terkait investasi Blok BMG Australia menjadi fokus kajian. Mahkamah Agung

membebaskan PT Pertamina (Karen Agustiawan) karena kerugian dianggap sebagai risiko bisnis wajar, bukan kerugian riil keuangan negara. Dengan pendekatan yuridis normatif melalui studi kepustakaan, penelitian menganalisis batasan penerapan BJR di ketiga negara. Di Amerika Serikat, BJR menerapkan standar ketat melalui duty of care dan duty of loyalty berdasarkan Model Business Corporate Act. Australia mengatur BJR secara komprehensif dalam Corporations Act 2001 dengan empat syarat mutlak, mencakup perlindungan dalam kondisi force majeure dan mekanisme safe harbour. mengatur BJR secara komprehensif dalam Corporations Act 2001 dengan empat syarat mutlak, mencakup perlindungan dalam kondisi force majeure dan mekanisme safe harbour, melainkan perlindungan bersyarat yang harus diatur secara tegas dalam kerangka hukum dan tata kelola perusahaan guna mendorong keputusan bisnis yang tepat dan bertanggung jawab.

Keywords: Business Judgment Rule; Directors; PT Pertamina.

INTRDUCTION

Over the past decade, the implementation of the Business Judgment Rule (BJR) in Indonesia has faced a fundamental dilemma between legal protection for directors and corporate accountability, particularly in State-Owned Enterprises (SOEs). A 2020 comparative study revealed that Indonesia lacks clear objective parameters for measuring duty of care and informed decision-making, unlike the United States, which applies the reasonably prudent person standard, and Australia, which regulates safe harbor provisions in the Corporations Act 2001 (Rissy 2020).

Previous studies have tended to examine BJR in a normative-descriptive manner without analyzing the concrete limitations that can prevent abuse. A recent study also analyzes how Law No. 1 of 2025 regulates BJR as legal protection for SOE directors and the limits of its application in a criminal context. The results of this qualitative normative study indicate that BJR protection only applies if decisions are made in good faith, with prudence, and with professional responsibility, and is void if there is an abuse of authority or a violation of the law. This article also highlights the challenge of distinguishing between normal business risks and criminal acts of corruption, which is a crucial point in the law enforcement process against SOE directors. The focus of this research is related to criminal acts of corruption (Setiawati 2025).

This research is crucial because the new 2025 State-Owned Enterprises (SOE) Law changes the accountability of directors. Under this law, SOE assets are no longer considered state assets, and the role of advisory is no longer the responsibility of state administrators in criminal acts such as corruption. This change means the BJR framework needs to be

restructured in a way that balances professional protection with the need for public accountability. This is to ensure there is no room for business actors to escape wrongdoing while still allowing for critical business decisions necessary to maintain the competitiveness of SOEs (Sitompoel 2025).

A Limited Liability Company, or PT, is a legal entity that operates as a group of individuals who invest capital. A PT is formed through an agreement and operates with significant authorized capital in the form of shares. This type of company must meet all the requirements stipulated in Law Number 40 of 2007 concerning Limited Liability Companies and other related regulations. In corporate law, there is a principle called the Business Judgment Rule that helps protect company directors from legal liability for the business decisions they make (Tetuko and Adam 2020).

The duties and responsibilities of the board of directors are directly the responsibility of the company as an organization, and these duties are divided among its members as a team, directly to the company. The Board of Directors is fully responsible for the management of the company. Each member of the Board of Directors is fully and personally liable if they make mistakes or fail to carry out their duties properly. In carrying out their duties, they are required to comply with company regulations and applicable laws and regulations. They are required to act honestly and take full responsibility for their actions (Putri 2025).

When a company runs a business, it usually aims to make money. However, sometimes this doesn't happen. In many business transactions, companies can incur losses. In some cases, these losses can be so significant that the company goes out of business. Losses are a part of doing business. Every action a company takes is guided by its plan. When making choices about the direction of a company, there is always a risk that could lead to losses (Sesara 2021). Regarding company losses, these losses do not necessarily make directors personally liable. In some cases, directors may not be held personally liable for the losses. If there is a possibility that the losses cannot be fully explained or accounted for, it is important to consider legal principles in corporate law. One such principle is the Business Judgment Rule (Nadapdap 2013).

The application of the Business Judgment Rule principle to the Board of Directors' decisions in managing the company cannot be challenged by anyone, even though the decision may be detrimental to the company. This requirement applies as long as the decision is taken in accordance with applicable legal regulations and is based on good faith; thus, the Business Judgment Rule Principle has been explained in Article 97, paragraph (5) of Law Number 40 of 2007 concerning Limited Liability Companies, that the board of directors has the responsibility to manage the company in good faith, act in the interests of the company, and not act for personal interests. Article 97, paragraph (5), stipulates that members of the board of directors cannot be held responsible for losses if they can prove (*Undang Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas*): a) the loss occurred without any fault or negligence; b) the management has been carried out in good faith and with due care for the benefit and in accordance with the purposes and objectives of the company; c) here is no

conflict of interest, either directly or indirectly, in the management actions that resulted in the loss; and d) actions have been taken to prevent the loss.

These requirements confirm that BJR is conditional protection, not absolute immunity. Gevurtz (1994) emphasized that one of the fundamental problems in the application of BJR is the tendency to treat it as absolute immunity, even though it only applies when certain conditions are met. This uncertainty underscores the urgency of establishing explicit limits within the Indonesian legal framework (Gevurtz 1994). Furthermore, Article 114 paragraph (5) of Law Number 40 of 2007 concerning Limited Liability Companies stipulates that members of the Board of Commissioners cannot be held responsible for losses as referred to in paragraph (3) if they can prove several things, including: a) has carried out supervision in good faith and with due care for the benefit of the Company in accordance with the Company's purposes and objectives; b) has no direct or indirect personal interest in the actions of the Board of Directors that result in losses, and c) has provided advice to the Board of Directors to prevent losses.

The high risks faced by company directors have given rise to the Business Judgment Rule, a concept derived from the common law system and used in several countries, including the United States, Australia, and Indonesia. According to corporate law experts, three key elements are needed to implement the Business Judgment Rule. First, there must be a way to support the actions of company managers or protect them from having their decisions overturned simply because they follow the rules. Second, the Business Judgment Rule is used by courts in legal cases, helping judges avoid making inappropriate decisions because judges are not business experts. Third, the Business Judgment Rule is a legal way to interpret broad economic policies that support economic freedom and encourage informed decision-making (Branson 2002).

One of the applications of the Business Judgment Rule principle in Indonesia is used in the Supreme Court Decision Number 121/Pid.sus/2020, namely against the defendant Karen Agustiawan for abuse of authority over the decision of a State-Owned Enterprise (BUMN), which resulted in a loss of Rp. 568 billion and was considered detrimental to state finances. The action was taken by the company's director, namely Karen Agustiawan, along with other directors, namely the director of PT. Pertamina Hulu Energi, which is a subsidiary of the BUMN, received an offer from Citigroup.

The case of former President Director of PT Pertamina, Karen Agustiawan, marked a milestone in understanding the implementation of the BJR in Indonesia. The Supreme Court acquitted Karen of charges related to alleged state losses under the BJR because her business decisions were deemed to have been based on good faith and prudence, even though they resulted in losses due to asset impairment. This case raises questions about the limits of legal protection that should be afforded to directors, particularly in the context of state-owned enterprises and state oversight (Anandya 2023).

Under the corporate legal framework, directors have specific roles and duties based on principles intended to protect them from liability for actions detrimental to the company.

This responsibility is supported by several articles in Law Number 40 of 2007 concerning Limited Liability Companies (Rizky Novian Hartono, Sriwati, and Wafia Silvi Dhesinta Rini1 2021). The Board of Directors is fully responsible for managing the company for the interests and objectives of the company, and represents the company both inside and outside the court. The Board of Directors is obliged to carry out its duties in good faith and with full responsibility for the interests and business of the company. The Board of Directors may sue personally in the district court if the company suffers losses due to its errors or negligence. Similarly, in the event of bankruptcy, if errors or negligence occur on the part of the board of directors and the company's assets are insufficient to cover the losses resulting from the bankruptcy, then each member of the board of directors is jointly and severally liable for those losses (Hendrawan et al. 2020).

So, this is similar to the application of the Business Judgment Rule in Australia, where this doctrine standard is used to ensure directors receive stronger protection in carrying out their duties. The Australian Corporation Act 2011 regulates four main requirements of the BJR doctrine in Australia, namely: acting in good faith, having no conflict of interest, having reasonable and reliable information before making a decision, and being directed at the interests of the company. What is interesting about 2011 is that the business judgment rule (BJR) in Australia is also related to force majeure, namely, the existence of certain conditions and situations that cause unavoidable business losses.

In the United States and Australia, both of which use common law systems, the Business Judgment Rule (BJR) is implemented in a clearer and more organized manner. In the US, the BJR means decisions must be made with due care and loyalty in mind, and there is strict oversight to ensure judges' accountability. Australia has more detailed rules on the duty of direction in The Australian Corporation Act 2001, which focus on principles such as due care, honesty, and fair dealing, which help protect direction but also carry clearer responsibilities for compliance.

Comparing Indonesia's approach with legal practices in the United States and Australia helps provide a clearer understanding of how to establish clear boundaries and ensure the BJR principal functions effectively in practice. This ensures that the principle effectively protects the public without creating opportunities for them to evade punishment. This is especially important because managing state-owned enterprises involves addressing corruption risks and maintaining the confidentiality of certain information, which can be complex (Rissy 2020).

The relevance of the application of the Business Judgment Rule principle to the existing case lies in its function as a legal framework to evaluate whether the losses incurred are a consequence of reasonable business risks that must be borne by the company or the result of actions that exceed the limits of reasonable integrity of the directors, which has the potential to be a criminal offense. This study provides an academic contribution by presenting differences from previous research and studies, especially in several crucial aspects. The first aspect is: This study presents a systematic comparative framework between Indonesia, the

United States, and Australia, which is presented in the form of a table analyzing the limitations of the BJR. This framework not only evaluates normative regulations but also highlights gaps in the practical implementation of the BJR in Indonesia, which cause confusion and frustration. These findings provide a practical roadmap for policymakers to improve BJR regulations, particularly regarding prudential standards, decision-making processes, and the concept of safe harbor, which are still not included in Indonesian law. Then, for the second aspect: This study examines in depth the main challenges of implementing the BJR in Indonesian state-owned enterprises (SOEs). Unlike previous studies that discussed the Business Judgment Rule in general, this study focuses on the key point where legal support for directors meets the need for public oversight in the management of state assets separate from the government. This is particularly important today, given the current legal environment, including the 2025 State-Owned Enterprises Law, which is changing how SOE accountability is handled. Therefore, this research will be conducted to delve deeper into several aspects of the Business Judgment Rule's application and limitations in the Karen Agustiawan case, as well as in the United States and Australia.

RESEARCH METHOD

This research uses a normative legal method with a normative juridical approach, namely studying and analyzing legal norms through secondary data (Soekanto 2003). Data collection techniques were conducted through literature studies by reading, studying, and analyzing various relevant legal materials. Primary legal materials include Law Number 40 of 2007 concerning Limited Liability Companies, the State-Owned Enterprises Law, the Corporations Act 2001 of Australia, and the United States Model Business Corporate Act, as well as Supreme Court Decision Number 121/Pid.Sus/2020 in the Karen Agustiawan case. Secondary legal materials include legal literature books, scientific journals, and academic articles on the Business Judgment Rule from various jurisdictions. A comparative method was used to compare the application of the BJR in Indonesia, the United States, and Australia to identify the optimal boundary framework. This approach was chosen to analyze in depth the application of the BJR principle in the Indonesian legal context, particularly in SOEs which have special characteristics as business entities that manage state assets, thus requiring a balance between legal protection for directors and accountability mechanisms to prevent abuse of authority.

RESULT AND DISCUSSION

Application of the Business Judgment Rule Principle in the Case of PT. Pertamina

In short, according to Article 1 paragraph (1) of the State-Owned Enterprises Law, a State-Owned Enterprise is a company with state capital. This state capital comes from separated state assets, as stated in Article 4 paragraph (1) of the same law. Separated state assets mean taking state assets from the APBN and using them as capital for the State-Owned Enterprise. This change means that the financing and management of the company no longer

follows the APBN system, but rather follows healthy and ongoing business principles. If seen from the composition of capital ownership, there are two types of BUMN (*Undang Undang Nomor 19 Tahun 2003 Tentang Badan Usaha Milik Negara*), that is: a) a Persero, or limited liability company, is a state-owned enterprise in the form of a limited liability company. The majority of its capital, at least 51%, is owned by the government, and its primary objective is to seek profit; b) a public company, also known as a Perum, is a state-owned enterprise whose capital is entirely owned by the government and is not divided into shares. Its primary objective is to serve the public by providing goods and/or services, while generating profit in accordance with standard business practices.

The losses suffered by a state-owned company in the form of a limited liability company can be seen from its capital, which is only required to be a minimum of 51%. The form of protection for directors when experiencing losses is contained in Article 97 paragraph (5) of the UUPT. Members of the board of directors cannot be held responsible for losses as referred to in paragraph (3) if they can prove that: a) the loss was not due to his/her fault or negligence; b) has conducted management in good faith and with due care for the benefit and in accordance with the purposes and objectives of the Company; c) has no direct or indirect conflict of interest in the management actions that resulted in the loss and; d) has taken action to prevent the occurrence or continuation of the loss.

Meanwhile, many are discussing major changes to the implementation of BJR in Indonesian state-owned enterprises (SOEs) by 2025. This discussion raises two main points: the need to protect professionals and concerns about gaps in public accountability. The 2025 SOE Law states that SOE assets are separate from state assets, and directors and commissioners are not considered state officials. Therefore, there is no direct loss to the state or its officials when corruption occurs. Therefore, any losses resulting from SOE business choices are not necessarily considered state losses due to corruption (Sitompoel 2025).

State-Owned Enterprises (SOEs) cannot act or operate independently due to the existence of several bodies with varying authorities. One of these bodies, the Board of Directors, plays a crucial role in managing the company. However, in the process of managing the SOEs they manage, the Board of Directors often causes losses for the SOEs they manage, which ultimately impacts the state (Tetuko and Adam 2020). In limited liability company law, the principle of business judgment rule refers to protection against actions that cause losses to the company as described in Article 97 paragraph (5) of the UUPT, which aims to prevent errors and disappointments caused by unclear or misleading actions. The principle of Business Judgment Rule (BJR) is a concept that states that company leaders cannot be held legally responsible for their decisions, even if the decision results in losses for the company, as long as the decision is made in good faith, with the right objectives and methods, a rational basis, and with appropriate caution. The implication that is a limitation in the use of this principle is the emphasis that the conditions stated in the article are crucial limitations. However, this Business Judgment Rule is not absolute immunity, but rather conditional protection.

PT Pertamina Hulu Energi is part of PT Pertamina (Persero), a state-owned enterprise in Indonesia. This company was established under the law to handle oil and gas operations. Specifically, PT Pertamina (Persero) was established under Law Number 22 of 2001, which regulates oil and gas. PT PHE manages 58 subsidiaries, 6 joint ventures, and 2 affiliated companies. These companies work on oil and gas projects, both domestically and internationally. In addition, PT PHE also supervises and manages the upstream oil and gas operational areas of each of its subsidiaries through collaboration (Pertamina 2021).

Based on the existing case, specifically the case of Karen Agustiawan, or referring to the Supreme Court Decision Number 121K/Pid.Sus/2020, the defendant was the main director of PT Pertamina (Persero) from 2009 to 2014. At that time, Karen Agustiawan had accepted an offer of equity participation in the form of participating rights (PI) in the BMG Australia Block without first discussing and explaining the problem. He also approved the PI without going through due diligence and adequate risk analysis. He has signed a share sale and purchase agreement that was not approved by the legal department or the board of commissioners. For his actions, the Public Prosecutor charged him with assisting an Australian coal mining company (ROC Ltd) in a manner that resulted in state losses of Rp. 568,066,000,000, - based on a public accountant's report.

In this case, the judges reviewed the steps taken and determined that they did not go beyond what was permitted by the business judgment rule. This decision was based on several reasons, including the lack of or failure to meet several key elements, including: a) the "loss" experienced by PT Pertamina was actually a decline in value, known as fluctuating impairment. This is a business activity in which the value of some assets decreases, and because this value can fluctuate, it does not necessarily mean the company is actually incurring losses. The losses experienced by PT Pertamina Hulu Energi, a subsidiary of PT Pertamina (Persero), are not considered part of the state's financial losses, as stated in Constitutional Court Decision Number 01/PHPU Pres/XVII/2019 dated June 27, 2019, which states, "The participation and placement of state-owned enterprise capital in a state-owned enterprise subsidiary does not make the subsidiary a state-owned enterprise."; b) regarding the commissioner's permit and approval, defendant Karen Agustiawan had received a permit and approval for the bidding/offer through a Board of Commissioners Memorandum on April 30, 2019. However, after signing the Sale and Purchase Agreement in Sydney, the Board of Commissioners demonstrated treachery; c) it is a well-established fact that oil companies are fraught with risk because there are no definitive parameters for determining the success or failure of exploration. Therefore, what happened in the Australian BMG Block is a common occurrence and is experienced by all oil and gas companies worldwide. This makes the adage "no risk, no business" even more applicable; d) the actions and decisions taken by the defendant and the board of directors of PT Pertamina were solely intended to develop PT Pertamina, namely by increasing oil and gas reserves. Therefore, this does not fall outside the scope of the business judgment rule, as there was no element of fraud (Freud), conflict of interest, unlawful act, or intentional misconduct; and e) in addition to being considered an

application of the business judgment rule, the defendant's actions are also considered not a criminal offense but rather a business risk as a director in managing the company.

The application of the Business Judgment Rule to PT. Pertamina's actions, as analyzed in Supreme Court Decision Number 121K/Pid.sus/2020, occurred during the examination stage. The Panel of Judges confirmed that Karen Agustiawan and the other directors of PT. Pertamina acted solely in the interests of the company's development. At the cassation level, they were acquitted of all legal charges, as their actions were deemed within the scope of the company's development and did not contain elements of fraud, conflict of interest, or violation of legal obligations. Furthermore, the Panel of Judges noted there was no element of intent or unlawful acts. The actions of the directors did not result in state losses, and there was no opportunity for fraud. Therefore, this decision is in line with the legal facts showing that Karen Agustiawan acted in good faith. She did not communicate with ROC, Anzon, or Citi Group before investing in the BMG Block, nor does she own shares in these entities. She was also not promised or given any benefits from the investment process. Her actions demonstrate that she made business decisions with integrity and without personal gain (Zulmawan 2023).

Role of Limitations in BJR Applications in Indonesia, the United States, and Australia

Establishing boundaries is the key to the Business Judgment Rule (BJR) in Indonesia, the United States, and Australia. These boundaries help protect directors who make honest and conscientious business decisions, while also ensuring they are held accountable if their decisions are detrimental due to dishonesty or improper conduct (Gunawan and Gunadi 2023).

The Business Judgment Rule (BJR) is a legal rule that protects company directors when making business decisions. This protection applies if directors act in good faith, think carefully, do not allow personal interests to influence their decisions, and aim to help the company. In Indonesia, this rule is stated in Article 97 paragraph (5) of the Limited Liability Company Law (UUPT). This article states that directors will not be held liable if their decisions follow BJR guidelines (Wahyuni 2022).

The Business Judgment Rule (BUJ) is contained in Indonesian law, specifically Law Number 40 of 2004 concerning Limited Liability Companies, as stated in Article 97 paragraph (5). This rule does not offer comprehensive protection but rather outlines important limitations. These limitations include: a) the loss was not the result of their fault or negligence (as directors); b) management was not carried out in good faith and due care; c) the existence of a conflict of interest that was not disclosed or managed; d) failure to take action to prevent losses; e) the Business Judgment Rule was included in Law No. 40 of 2007, also known as the 2007 Companies Law, to protect directors and commissioners from legal problems. This law clearly defines their responsibilities, so they can be held accountable if they fail to carry out their duties properly. Several sections of the law, including Articles 97, 104, 114, and 115, state that directors and commissioners can face personal liability if they

are found negligent in their duties. However, in practice, Indonesian courts often do not fully apply or scrutinize the Business Judgment Rule. This facilitates legal action, particularly in situations where there are financial losses or signs of corruption, such as the case involving PT Pertamina and Karen Agustiawan. It is important to clearly define the limits of protection under the Business Judgment Rule to ensure that directors are not protected from the law when they make decisions dishonestly or with the intent to harm the company (Rissy 2020).

The limitations on the use of the Business Judgment Rule are very significant and play an important role when applying it in the context of BUMN for several important reasons (Sidabutar 2023). The reasons include, namely: a) higher accountability: This is due to the directive of SOEs as holders of public trust, so they are expected to have a higher level of accountability compared to private companies; b) prevention of corruption or abuse of authority: In this case, the Business Judgment Rule serves as a crucial and important filter in distinguishing between pure business risks and actions that could constitute abuse of authority, gross negligence, or corruption that could harm the state; c) protection of state assets: In this explanation, the firmness in taking over BJR is a legal mechanism to protect state assets and finances from irresponsible board decisions. In existing cases, there are important limitations regarding the application of BJR. These limitations have several reasons. These include losses incurred due to normal business risks, as long as they are within reasonable limits and the company has made every effort to prevent them; and losses caused by errors, negligence, favoritism of officials, or even corruption.

The United States is the origin of the Business Judgment Rule. In America, this rule was developed through court decisions based on common law. The use of the Business Judgment Rule in the US is strictly controlled by corporate law and the common law system. The primary purpose of the Business Judgment Rule is to protect corporate directors and officers from lawsuits over business decisions, as long as those decisions were made in good faith, with useful information, and considered in the best interests of the company. US courts will only question these decisions in cases of failure to act prudently or breach of duty. This suggests that the Business Judgment Rule in the US allows directors to take reasonable risks without fear of personal liability, as long as the decision-making process is carried out appropriately (Rissy 2020).

The United States created the Business Judgment Rule, a legal standard followed by U.S. courts when making decisions. The rules governing directors' obligations are outlined in the 2016 MBCA, which is based on the Business Judgment Rule. Under the MBCA, directors have two primary responsibilities: the duty of care and the duty of loyalty. The duty of care requires directors to act with due care, caution, and vigilance, and to have sufficient information when making decisions. The duty of loyalty requires directors to act honestly and in the best interests of the company (Gunawan and Gunadi 2023).

Based on the American MBCA court, if the director has carried out his duties in accordance with the duty of care and duty of loyalty in accordance with the interests of the company in the context of business decision-making in America, thus causing confusion and

frustration, then it can be said that the director has fulfilled his actions in the criteria of the Business Judgment Rule. However, there are still places where the director can be sued under the Business Judgment Rule; this can happen if the director takes a number of financial benefits from the company, has a deliberate intention to harm the company or shareholders, intentionally commits a crime, directly or indirectly takes business opportunities for himself or others, conducts transactions in which there is a director's interest, or intentionally distributes assets or shares unlawfully (Rissy 2020).

Based on American law as interpreted by the Supreme Court in resolving related cases, 8 (eight) basic elements of the Business Judgment Rule were found, including: the decision was taken in the context of a business decision; the decision was based on reliable information; the decision was taken in good faith; the decision was taken with care and vigilance; the decision did not contain fraud or was against the law; the decision was rational (without abuse of authority); and no evidence of an unfair transaction was found (Akram 2019).

Australia was the first country to add provisions on the Business Judgment Rule (BJR) in an *amendment* to the Corporations Act, which occurred in 1999 (F. Z. I. Putri 2023). The way Australia implements the BJR is set out in the Corporations Act 2001, also known as the Australian Corporations Act 2011. This act outlines four key requirements for the BJR in Australia: acting in good faith, avoiding conflicts of interest, having reasonably reliable information before making a decision, and making a decision that is in the best interests of the company. It is also interesting to note that the Australian Corporations Act 2011 links the BJR to force majeure, which refers to certain unavoidable circumstances that cause unexpected business losses (Santiago 2024). This provision applies in both common law and equity principles. S 180 (2) of the Corporations Act 2001 states as follows: 180 Care and diligence— civil obligation only:

(2) A director or other officer of a corporation who makes a business judgment is taken to meet the requirements of subsection (1), and their equivalent duties at common law and in equity, in respect of the judgment if they: a) make the judgment in good faith for a proper purpose; b) do not have a material personal interest in the subject matter of the judgment; c) inform themselves about the subject matter of the judgment to the extent they reasonably believe to be appropriate; and d) rationally believe that the judgment is in the best interests of the corporation. The director's or officer's belief that the judgment is in the best interests of the corporation is a rational one unless the belief is one that no reasonable person in their position would hold (Rissy 2020).

Based on this explanation, it can be said that a BJR must meet four important requirements. These requirements are: a) based on this explanation, it can be said that a BJR must meet four important requirements; b) based on this explanation, it can be said that a BJR must meet four important requirements; c) he individual must have sufficient, accurate, and reliable information regarding the subject of the decision; d) must be confident that the decision is in the best interests of the company.

According to the explanation of s 180 (2) of the Corporations Act 2001, the provisions of the BJR only apply in relation to the duties expressly set out in s 180 (2) of the Corporations Act 2001 and apply in the same way as the common law duties of directors and in equity principles (Rissy 2020). Section 180(3) of the Corporations Act 2001 provides a clear definition of the term "business judgment," meaning any decision to take or not to take action on matters relevant to the company's business operations. This article covers two aspects: the decision to take action or the decision not to take action within the context of the company's business operations.

Farrar (2001) states that "business judgment is a presumption of no liability" for directors. He also outlines nine key points about business judgment in Australia:

- a. Business judgment applies not only to directors but also to other high-level company staff, such as officers;
- b. Business judgment addresses the duty of care and diligence as defined in the Corporations Act and common law, but does not affect other legal responsibilities;
- c. All four elements of section 130(2) of the Corporations Act 2001 must be met;
- d. There must be a business judgment, such as choosing to act or not to act;
- e. Decisions must be based on reliable information;
- f. The need for rationality under s 180(2)(d) of the Corporations Act 2001 does not cover decisions that cannot be coherently explained or are reckless or wasteful of company assets;
- g. The BJR is not intended to absolve directors of liability under the Corporations Act 2001;
- h. The BJR offers protection for directors; and
- i. The BJR does not apply to situations such as insolvency trading or false statements in prospective acquisitions or offers.

Furthermore, regarding the basic elements required for the BJR to apply, this rule may limit its use in Australia. These limitations are as follows: there must be a business decision being made; the directors involved must not have a personal interest in the decision, meaning they must not act for their own benefit or for the benefit of others; directors must exercise due care, meaning they must act with due care and consideration; directors must act in good faith and; decisions should not be made with a discretionary or flexible approach (Jones 2025). All of this impacts how the BJR principle is implemented. This principle requires shareholders to exercise extreme caution and discretion in selecting directors, especially independent directors. This is because independent directors play a crucial role in providing fair and impartial opinions on the company's plans and objectives. They also help maintain control without allowing the interests of related parties to influence their decisions. The clear, fair, and impartial thinking of these independent directors plays a significant role in ensuring the proper implementation of BJR.

Before the provisions on BJR were included in the Corporations Act 1999 and 2001, the High Court of Australia, in the case of *Harlowes Nominees Pty Ltd v. Woodside (Lakes Entrance Oil Co)* in 1968, had applied the principle of BJR. This was the first time that BJR was applied in Australia. The High Court stated that directors have the right and obligation

to make decisions based on what is best for the company, taking into account practical factors. If their decisions are made in good faith and not for extraneous reasons, the court cannot question their decisions. (High Court of Australia, 1968). It can be said that with the formulation of BJR in the Australian Corporations Act 1999 and 2001, BJR has become a statutory obligation in Australia and directors are guaranteed stronger protection in carrying out their duties. The limitations of the BJR principle in Australia are firmly regulated by law with a primary focus on good faith, the interests of the company, and the obligation to inform themselves, as well as the protections afforded to directors to enable them to carry out their duties with clear legal certainty.

Table 01 - Limitations on the Application of BJR

Aspects of Limitations	Indonesia	United States	Australia
Good faith	Generally regulated in Law No. 40 of 2007 concerning Limited Liability Companies (Articles 97-98), but is not detailed in judicial practice	The main requirement for BJR is that directors must act in good faith in the interests of the corporation, not their personal interests.	The Corporations Act 2001 emphasizes that directors must act in good faith in the interests of the company as a whole
Duty of care & diligence	It is in the PT Law, but the standard of "prudence" does not yet have a clear objective measure; it is often measured by the consequences (losses).	Duty of care is measured by the decision-making process: whether the directors acted like reasonably prudent persons with adequate information.	Corporations Act 2001, s.180(1): directors are required to act with a reasonable degree of care; this standard is supplemented by a safe harbor to prevent insolvency.
Informed decision	Not clearly defined; courts often assess outcomes rather than processes	Key elements of BJR: decisions must be made based on sufficient and relevant information.	It is explicitly stated: directors are protected if decisions are made rationally and based on adequate information.
Conflict of Interest	Regulated in the PT Law (Articles 92-97), but in practice, the boundaries are often still unclear, especially in state-owned enterprises	If there is a conflict of interest, BJR does not apply; transactions must go through an entire fairness mechanism.	Directors must not have a personal interest in decisions; if they do, BJR cannot be used as a shield.
Safe Harbour	Not explicitly regulated; state-owned enterprise directors, as in the case of Pertamina, do not have preventive guidelines	There is no written concept of safe harbor, but BJR protection is provided through stable jurisprudential precedent.	There is a safe harbor mechanism (s.588GA Corporations Act) that protects directors from insolvent trading liability if they meet certain criteria (e.g., having a

			viable restructuring plan).
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Source: *processed from various source*

This study yielded key findings. Some of these include: BJR does not provide absolute immunity; in this case, BJR is conditional protection, not absolute legal immunity for directors. This form of protection granted to directors only applies if certain conditions are met, including good faith, prudence, no conflict of interest, and the best interests of the company; and regarding the Karen Agustiawan case, the Supreme Court acquitted Karen on the grounds that the losses suffered were considered a reasonable business risk, not a real loss to state finances. The decision was made in good faith without any element of fraud or conflict of interest.

The legal essence here is that BJR must balance two interests: protecting directors from liability for normal business risks and ensuring accountability to prevent abuse of authority, particularly in state-owned enterprises that manage state assets (Resa 2025). The novelty of this research lies in the presence of a more systematic comparative framework. This is demonstrated by the table that comprehensively analyzes the limitations of BJR implementation between Indonesia, the United States, and Australia. This research provides a mapping that serves as an alternative for legal policymakers to pay more attention to and improve BJR regulations, particularly regarding the duty of care standard and the safe harbor concept, which have not yet been implemented in Indonesian law. Furthermore, the focus is on state-owned enterprises (SOEs), examining the challenges of establishing BJR in Indonesian SOEs, not public companies. Furthermore, this research also emphasizes the critical gap between legal protection for directors and public oversight when managing separate state assets. This is relevant to the 2025 SOE Law, which changes the status of SOE assets (no longer considered state assets) and the status of directors (no longer considered state administrators).

This research offers practical insights for improving Indonesia's legal system through several policy recommendations. First, national regulatory enforcement needs to be strengthened by establishing clear criteria for assessing the duty of care and informed decision-making, adopting the reasonably prudent person standard as applied in the United States, and implementing stricter conflict-of-interest prevention measures under the Companies Law. Second, state-owned enterprise governance needs to be improved by maximizing the role of independent commissioners and directors as impartial monitors, supported by accountability mechanisms that effectively balance professional protection with public oversight.

CONCLUSION

The Business Judgment Rule (BJR) principle provides legal protection for directors, preventing them from being held personally liable for company losses, as long as business decisions are made in good faith, with prudence, without conflict of interest, and in the best interests of the company. The Karen Agustiawan case at PT Pertamina demonstrates that losses incurred can be viewed as normal business risks, not state losses. Comparisons with the United States and Australia confirm that BJR is not absolute immunity but rather conditional protection that must be limited by accountability mechanisms, especially for state-owned enterprises (SOEs) prone to abuse of authority. Therefore, strengthening national regulations is needed with more detailed provisions regarding duty of care standards, informed decision mechanisms, and prevention of conflicts of interest. Furthermore, protection for SOE directors must be balanced with legal accountability, for example, by implementing the safe harbor concept as in Australia, strengthening the role of independent commissioners and directors as objective supervisors, and having consistent courts in assessing the decision-making process, not just the final outcome. [W]

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