



## The Responsibilities of the Board of Directors in Limited Liability Companies: A Comparative Analysis of the Business Judgment Rule in the United States, the Netherlands, and Indonesia

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### ABSTRACT

Civil liability of directors involves managing and representing limited liability companies under the doctrine of the business judgment rule, which originated in the United States within the common law system and is examined in civil cases. In contrast, Indonesia, following the civil law system, holds directors of State-Owned Enterprises (SOEs) accountable for company mismanagement that leads to state losses, typically addressed in criminal cases, such as corruption. However, this responsibility is also linked to the business judgment rule. Directors make business decisions aligned with the company's goals and objectives (*intra vires*), but such decisions can also result in breaches of fiduciary duties, leading to company losses. The business judgment rule, as practiced in the United States, is reflected in Law No. 40/2007 and influenced by the Dutch Civil Code. Directors' actions that result in losses are generally not subject to liability, as long as these actions are executed in accordance with their fiduciary duties and the principles of the business judgment rule.

### A. INTRODUCTION

The business judgment rule is a well-established doctrine of justice and an important legal standard, formulated by courts based on corporate law, designed to protect directors from liability for business decisions made in the course of managing a company. This protection applies unless the board of directors is found to have violated fiduciary duties, such as acting with bias or not exercising independence (Sharfman, 2017). The business judgment rule can be understood as a principle that grants immunity to company management (i.e., directors) for actions resulting in company losses, provided these actions are made in good faith and within the directors' power and authority (Harris & Anggoro, 2010).

In the United States, which follows the common law system (Peter De Cruz, 2007), the civil liability of directors managing and representing limited liability companies in relation to the business judgment rule was first applied in shareholder lawsuits against bank directors (Scarborough & Olderman, 2015). In these cases, courts acquitted the directors, ruling that they had acted according to ordinary business standards (Mantese &

Fields, 2020). In the U.S., directors' actions related to the business judgment rule are considered under business or corporate law (Beatty & Samuelson, 2003), and such cases are typically examined and tried as civil matters.

Indonesia, which follows a civil law system inherited from the Netherlands (Peter De Cruz, 2007), centers legal administration around written rules (Rahardjo, 2014). In the civil law system, judges rely on the law as written in statutes when making decisions. In Indonesia, actions by directors that result in losses are treated as criminal cases, but they are also related to the business judgment rule. Similarly, the Netherlands adheres to the civil law system (Suherman, 2006), where actions that are deemed appropriate and honest serve as the primary criteria for holding directors accountable.

This paper aims to examine the regulation of the business judgment doctrine, specifically in relation to the responsibilities of directors as outlined in Law No. 40/2007 on Limited Liability Companies in Indonesia. It also investigates judicial decisions regarding the responsibility of directors of limited liability companies, particularly directors of State-Owned Enterprises (SOEs), whose management is governed by Law No. 40/2004, in connection with the business judgment rule. Additionally, this research explores the regulations and formulations of business judgment rules in relation to director accountability in the United States and the Netherlands.

## **B. METHOD**

This research employs normative legal research (Soekanto, 2019), focusing on primary legal materials, including Law No. 40/2007 and several judicial decisions: Decision No. 121K/Pid.Sus/2020, Decision No. 15/Pid.Sus/TPK/2019/PN.Jkt.Pst, and Decision No. 34/Pid.Sus-TPK/2019/PT DKI, concerning the case of Karen Agustiawan (case approach). A comparative approach (Marzuki, 2017) is utilized to examine the formulation and regulation of the business judgment rule doctrine in the United States, specifically through the American Law Institute (ALI), the Model Business Corporation Act (MBCA), and the Delaware Business Judgment Rule, as well as in the Netherlands, through the Dutch Civil Code (DCC).

Additionally, secondary legal materials, including scholarly papers and books (Hartono, 2006), are consulted to explore the development and understanding of the business judgment rule. Tertiary legal materials, such as dictionaries, encyclopedias, and indexes, are also used to provide guidance and context to the primary and secondary sources.

## **C. RESULTS AND DISCUSSION**

### **Regulation of the Business Judgment Rule Doctrine in the United States' Common Law System**

The business judgment rule in the United States is not codified in statutory law but is instead based on court decisions (case law), with formulations of the rule dating back to 1829 (Seenacherry, 2020). There are three primary formulations of the business judgment rule in the U.S.: the American Law Institute (ALI) model, the Model Business Corporation Act (MBCA), and the Delaware Business Judgment Rule, the latter of which

is specifically applied in the state of Delaware ([Chia, 2016](#)).

1) American Law Institute (ALI)

was founded in 1923 as a non-profit corporate law reform organization, with the primary aim of serving the public interest. It is not a government body but works to ensure the administration of justice and promotes scholarly legal work ([Boskey, 2009](#); [Hazard, 1998](#)). The business judgment rule is addressed in Article 4(c) (1) (2) (3) of the ALI's principles ([Rissy, 2020](#)).

Several key points emerge from the provisions in Article 4(c). First, the phrase "is informed" in Article 4(c)(2) emphasizes the importance of ensuring that directors are adequately informed when making business decisions. Second, the phrase "rationally believes" in Article 4(c)(3) stresses that directors must genuinely believe their decisions align with the company's best interests and that these decisions are rational ([Chia, 2016](#)). Together, Articles 4(c)(1), 4(c)(2), and 4(c)(3) outline the duties of care that directors must uphold when making business decisions. These include: a) Ensuring there is no personal business interest that conflicts with the company's interests. b) Ensuring that directors are well-informed when making decisions. c) Ensuring that business decisions are made in the best interests of the company.

2) The Model Business Corporation Act (MBCA)

The represents a significant legal contribution by the American Bar Association's Committee on Corporate Law, particularly in the field of corporate law. The MBCA was last revised and published in 2017 ([American Bar Association, 2021](#)). It includes several provisions that outline the responsibilities of the board of directors, specifically in relation to the business judgment rule. These provisions are as follows:

Article 8.30 MBCA

Article 8.30 MBCA addresses the standards of conduct for directors of limited liability companies, specifically regarding their role in managing and representing the company. The overall official commentary on Article 8.30 focuses on setting standards for directors' conduct, rather than the correctness of their decisions. Two key phrases from Section 8.30(a) are crucial for understanding this standard.

The first key phrase is "reasonably believes," which refers to two distinct levels of understanding: First level: A director's belief that they are performing their duties in good faith, without the need to analyze the actions of other directors. Second level: The director's reasonable belief, based on objective information, that their business decisions are well-founded. This second level emphasizes the objective nature of the information considered in the decision-making process ([American Bar Association, 2021](#)).

The second key phrase is "the best interest of the corporation," which serves as a fundamental guide for directors' duties. Directors must consider the best

interests of the corporation, taking into account both the interests of shareholders and other stakeholders when making decisions. This phrase is central to understanding directors' obligations and their decision-making framework.

Another important phrase from Article 8.30(b) is “in a like position... under circumstances,” which indicates that the person in question is a director of a specific corporation. Additionally, “becoming informed” underscores the importance of directors understanding the context and ensuring they are adequately informed before making decisions. The phrase “reasonably believes appropriate” suggests that directors should exercise practical wisdom when making decisions, based on their knowledge and experience.

#### Article 8.31 MBCA

Article 8.31 of the MBCA concerns the Standards of Liability for Directors, which outlines the conditions under which directors can be held liable. According to the official commentary on Section 8.31 of the MBCA, the board of directors and corporate managers must make decisions by weighing the potential profits against the risks. Therefore, even if a decision turns out to be erroneous, it is unreasonable to hold the directors liable, provided the decision was made with sufficient information and in good faith ([American Bar Association, 2021](#)). Specifically, Article 8.31(a)(2)(i) of the MBCA states that a director's actions must be carried out in good faith, while Article 8.31(a)(2)(ii) requires that the director's belief in the decision be reasonable, based on informed judgment.

### 3) Delaware Business Judgment Rule

The Delaware Business Judgment Rule is a key component of the Delaware General Corporation Law (DGCL). This rule is applied in critical situations, granting the board of directors the authority to manage the corporation. The business judgment rule is outlined in several provisions, specifically Section 141(a) and Section 102(b)(7) of the DGCL ([Sharfman, 2017](#)).

#### Article 141(a) DCGL

In accordance with Article 141(a) of the Delaware General Corporation Law (DCGL), directors are responsible for managing the company, and therefore, business decisions must be justified. This principle was first applied in the case of *Aronson v. Lewis* in 1984, which established a precedent for assessing the responsibilities of directors ([Seenacherry, 2020](#)). A key aspect in this case is the director's duty of concern, a concept not previously found in earlier Delaware Supreme Court rulings ([Sharfman, 2017](#)). The business judgment rule, as defined in this case, holds that a director's business decision must be based on adequate information, made in good faith, and in the belief that it serves the best interests of the company. This framework is respected by the courts ([Rissy, 2020](#)).

Two critical elements guide the application of the business judgment rule. First, the court upholds the principle that the Board of Directors is granted broad authority to manage the company on its behalf. Second, courts must acknowledge that they are not business experts and should refrain from second-guessing the

decisions made by directors ([Sharfman, 2017](#)).

#### Article 102(b) (7) DCGL

The essence of Article 102(b)(7) of the Delaware General Corporation Law (DGCL) is that directors may be held personally liable for violations of their duty of loyalty, acting in bad faith, or engaging in transactions for personal gain. This provision serves to limit directors' personal liability for monetary damages resulting from breaches of the duty of care ([Sharfman, 2017](#)). Specifically, Article 102(b)(7) allows Delaware companies to shield their directors from claims for financial losses arising from breaches of the duty of care. The article effectively provides directors with protection under the business judgment rule, particularly concerning fiduciary duties such as the duty of care, duty of loyalty, and the duty to act in good faith ([Pham, 2017](#)).

### **Regulation of the Business Judgment Rule and Director Accountability in the Netherlands**

In the Netherlands, the business judgment rule is not explicitly codified, although provisions governing directors' liability exist ([Seenacherry, 2020](#)). However, its application is not as prominent as in the United States. The authority of directors to manage and represent a company is regulated under the Dutch Civil Code (DCC), specifically in Book 2: Legal Persons and Book 6: The Law of Obligations. Particularly relevant is Title 6.3 on Unlawful Conduct (Tort Law), which outlines the legal framework for directors' responsibilities and potential liabilities ([Pham, 2017](#)).

#### Article 2:8 DCC

In Article 2:8 of the Dutch Civil Code (DCC), it is stipulated that all individuals involved in a corporation must adhere to both the legal and fundamental corporate regulations (including internal arrangements), as well as customary laws that ensure fairness and honesty. Directors are accountable for performing their duties with due diligence and in accordance with the responsibilities entrusted to them ([Wuisman & Wolf, 2018](#)).

#### Article 2:9 DCC

In Article 2:9 of the Dutch Civil Code (DCC), the general duty of proper management within a company is regulated, holding directors jointly and severally liable for internal company matters. They may be prosecuted if it can be proven that they engaged in improper management ([Seenacherry, 2020](#)). In evaluating the responsibility of directors, the court applies the principle of serious reproach, which serves as an open norm for resolving disputes in various contexts ([Pham, 2017](#)). The concept of serious reproach has been developed through case law as a framework for assessing the potential personal liability of directors, considering a range of relevant factors. If the plaintiff fails to provide sufficient evidence as required under Article 150 of the Code of Private Procedure, they must accept the legal consequences ([Rhee, 2015](#)).

#### Article 2:138/248 DCC

Article 2:138/248 of the Dutch Civil Code (DCC) regulates the relationship between directors and third parties, specifically addressing the joint and several internal liabilities

of directors to the company. This article outlines secondary liability and the mutual liability of directors concerning their obligations to third parties, as presented by liquidators representing creditors (Wuisman & Wolf, 2018). Those seeking compensation must demonstrate that the directors were involved in improper management that led to bankruptcy. This involves a rigorous examination, where the director's accountability extends not only to the company but also to third parties, including creditors and shareholders, who have vested interests in the company.

#### Article 6:162 DCC

Article 6:162 of the Dutch Civil Code (DCC) stipulates the external liability of individual directors for wrongful acts. According to this provision, tortious acts result in personal liability, meaning directors cannot be held jointly liable for such actions (Seenacherry, 2020). To establish personal liability for directors, Dutch courts require evidence of serious misconduct or reproach (Pham, 2017).

### **Regulation of the Business Judgment Rule Doctrine in Law No. 40/2007 and Its Impact on the Accountability of the Board of Directors in Managing and Representing the Company**

Laws are established within a legal system that functions as a unified whole (Mertokusumo, 2007), based on integrated principles formulated by legal norms (Badruzaman, 2022). Legal norms in statutory provisions are interconnected (Mangara, 2024), and in this context, the legal norms in Law No. 40/2007 must be interpreted collectively when examining the responsibilities of directors in managing and representing a company.

The business judgment rule is outlined starting from Article 1, paragraph 5 of Law No. 40/2007, which states that the board of directors is the company's organ responsible for its management and the representation of the company, both internally and externally, in accordance with the company's articles of association. This provision indicates that directors are legal subjects (legal persons) who manage the company as an artificial legal entity (artificial person), whose nature is inward-focused (Widjaja, 2008) and who represent the company as determined by law (Subekti, 2014).

Further clarification is provided in Article 2 of Law No. 40/2007, which stipulates that a company must have objectives and business activities that do not conflict with statutory provisions. The company's articles of association define two key concepts: corporate purpose and corporate power. Corporate purpose refers to the core business of the company (e.g., textile manufacturing), while corporate power pertains to the means through which the company achieves its corporate purpose (Cox et al., 1997). Shareholders (investors) create corporations to engage in activities that align with the corporation's purpose, also referred to as "corporate purpose" or "corporate object" (Cahn & Donald, 2010).

The duties of management and representation of the company, as outlined in Article 1, point 5 of Law No. 40/2007, are reaffirmed in Article 92, paragraphs (1) and (2) of the same law. The core responsibility of managing the company is to act in its best interests, in accordance with its objectives, and to implement policies deemed appropriate, known

as *intra vires* actions (French et al., 2009). Thus, Articles 1(5), 2, and 92(1) & (2) of Law No. 40/2007 embody the principle of *intra vires*. Actions taken by the company, represented by the board of directors, that deviate from the articles of association or do not align with the company's intent are considered *ultra vires* actions (Bainbridge, 2002). This concept was first practiced in England in 1875, particularly regarding directors' performance of duties that involved making contracts contrary to the Memorandum of Association, which outlined the company's business scope (corporate object) (Ibrahim, 2011).

Further elaboration of the duties of directors is provided in Article 92(1) & (2) of Law No. 40/2007, which states that directors must manage the company in good faith and with full responsibility, adhering to the duties of care and loyalty. Failure to meet these duties results in personal liability for the directors, as stipulated in Article 97(3) of the same law. Additionally, Article 97(5) of Law No. 40/2007 outlines the conditions under which directors cannot be held personally liable in the management and representation of the company. These conditions are as follows: a) actions must align with the company's goals and objectives; b) actions must be made in good faith; c) actions must serve the company's best interests; d) the Board of Directors must not have a personal interest; and e) actions must be carried out with due caution.

The responsibilities of the board of directors, as outlined in Article 1(5), Article 92(1) & (2), and Article 97(3) & (5) of Law No. 40/2007, are consistent with the principles of the business judgment rule, as found in Article 4(c)(1), (2), (3) ALI, Article 8.31(a)(2)(i) MBCA, Article 8.31(a)(2)(ii) MBCA, Article 102(b)(7) DCGL, and Article 141(a) DCGL. The essence of the business judgment rule, as outlined above, is that directors are protected from personal liability for decisions that result in financial losses for the company, provided those decisions are made with sufficient information, in good faith, and in the best interests of the company (i.e., not for personal gain). This duty of care, known as fiduciary duties, ensures that directors cannot be held personally liable when acting within the scope of their responsibilities. Ultimately, by fulfilling their fiduciary duties, directors are afforded protection under the doctrine of the business judgment rule.

The regulation of the business judgment rule in the Netherlands, as outlined in Articles 2:8, 2:9, 2:138/248, and 6:162 of the Dutch Civil Code (DCC), shows some similarities to Law No. 40/2007. The primary benchmark for accountability is that the board of directors must manage and represent the company properly and honestly. Liability is divided into three categories: 1) internal liability, where directors are held jointly and severally responsible for losses suffered by shareholders; 2) liability due to insolvency; and 3) liability due to tortious acts towards third parties. To ensure director accountability, the regulation requires that serious misconduct be proven by the person claiming it, which mirrors the provisions in Article 97, paragraph (5) of Law No. 40/2007.

Article 97, paragraph (5) of Law No. 40/2007 protects directors by stipulating that those challenging the actions of the directors must provide evidence to the contrary in court (Gunawan Widjaja, 2008). This aligns with the application of the business judgment rule in Article 97, paragraph (5), which is examined through the concept of judicial review standards (Harris & Anggoro, 2010). The business judgment rule, as a standard of

liability, protects directors' actions when made in good faith and within their authority, a concept that originated in the United States (Bainbridge, 2004).

### **Application of the Business Judgment Rule as a Justification for Exempting Directors of Limited Liability Companies from Civil Liability in Management and Representation**

The application of the business judgment rule as a reason to exempt directors from civil liability in managing and representing limited liability companies is exemplified in Decision Number 121K/Pid.Sus/2020, in conjunction with Decision Number 15/Pid.Sus/TPK/2019/PN.Jkt.Pst, and Decision Number 34/Pid.Sus-TPK/2019/PT DKI, involving Karen Agustiawan. In this case, Karen Agustiawan, as the President Director of PT Pertamina (Persero) and President Commissioner of PT Pertamina Hulu Energi, made a business decision on behalf of PT Pertamina (Persero), a state-owned enterprise (SOE). SOEs, structured as limited liability companies, are governed by Law No. 19/2003 on State-Owned Enterprises (hereinafter referred to as Law No. 19/2003). These companies are established with capital separated from state assets, as regulated in a Government Regulation regarding the formation of SOEs (Supramono, 2016). However, the provisions and principles of Law No. 40/2007 on Limited Liability Companies remain applicable (Mulyana, 2018).

PT Pertamina was involved in a Participating Interest in ROC Ltd. Basker Manta Block and Gummy (BMG Block) in Australia, which was considered a criminal act (corruption) resulting in state financial losses of 568,066,000,000 IDR (five hundred sixty-six billion rupiah) (Decision Number 15/Pid.Sus/TPK/2019/PN.Jkt.Pst). In this decision, a panel of judges from the Central Jakarta District Court found Karen Agustiawan guilty, referencing the expert testimony of Dr. N.G.N Renti Maharani, S.H., M.H., based on Article 92(1) and Article 97(2) of Law No. 40/2007 (Decision Number 15/Pid.Sus/TPK/2019/PN.Jkt.Pst). The judge's legal reasoning included the following:

“Considering that, as explained by Dr. N.G.N. Renti Maharani, S.H., M.H., based on Law No. 40/2007, Article 97(2) states, ‘The director is responsible for the management of the company as referred to in Article 92(1)...’ (Decision Number 15/Pid.Sus/TPK/2019/PN.Jkt.Pst).

The panel of judges at the Central Jakarta District Court referred to Article 97, paragraph (2) of Law No. 40/2007, which is closely related to Article 92, paragraph (1) of the same law. These provisions emphasize that company management should align with the company's aims and objectives, executed in good faith while considering the interests of the company. The legal reasoning of the Central Jakarta District Court judges was appropriate for civil proceedings. However, Karen Agustiawan was examined and tried in a criminal case.

The DKI Jakarta High Court, in Decision Number 34/Pid.Sus-TPK/2019/PT, upheld the decision made by the Central Jakarta District Court in Case Number 15/Pid.Sus/TPK/2019/PN.Jkt.Pst. Both the Public Prosecutor and Karen Agustiawan filed a cassation against the DKI Jakarta High Court's ruling to the Supreme Court of the Republic of Indonesia. In its final decision, the Cassation Court declared the defendant

innocent after reviewing the following legal considerations:

“What the defendant and the Board of Directors of PT Pertamina did was solely aimed at advancing PT Pertamina, particularly in efforts to increase oil and gas reserves. The actions taken by the defendant...” (Decision Number 121 K/Pid.Sus/2020).

The Cassation Court examined the actions of the directors, which involved piercing the corporate veil ([Chatamarrasjid Ais, 2004](#)) and upheld the decision of the Board of Directors of PT Pertamina to enter into a contract with PI in ROC Ltd BMG Block, Australia, aimed at increasing oil reserves. This action is in line with Article 92, paragraphs (1) and (2) of Law No. 40/2007, which stipulates that directors must manage the company in accordance with its purpose and objectives. PT Pertamina’s goal of increasing oil and gas reserves is documented in Deed Number 3, dated June 3, 2008 ([Setiawan et al., n.d.](#)).

Karen Agustiwan took action after PT Pertamina received an offer from Citi Bank Indonesia for PI ROC Ltd BMG Australia Block on January 29, 2009, and subsequently formed a team in accordance with the legal considerations of the Cassation Court:

“To review the offer from ROC Ltd (January 29, 2009), an Internal and External Team (PT Deloitte Konsultan Indonesia) was formed as a financial advisor.” (Decision Number 121 K/Pid.Sus/2020).

An internal team, known as the Upstream Oil and Gas Business Portfolio Development and Management Team (TP3 UH), was formed to present an overview of investment opportunities for the acquisition of the BMG Block in Australia. Additionally, an external team from PT Deloitte Konsultan Indonesia was involved to provide expert opinions, serving as one of the key inputs for the decision on the Participating Interest (PI) in ROC Ltd’s BMG Block in Australia. Notably, the involvement of third parties in this process was a crucial step.

The team’s findings were subsequently reported to Karen Agustiawan, the President Director of PT Pertamina, for further discussion with other directors. The acquisition of PI in ROC Ltd’s BMG Block was approved, contingent upon approval from the Board of Commissioners. The cassation judge made the following legal considerations:

“The Board of Commissioners of PT Pertamina, in a meeting, decided to recommend approving the proposal from the Board of Directors to participate in the project bidding for the Non-Routine Investment Project, Diamond Project (BMG Block).” (Decision Number 121 K/Pid.Sus/2020).

In accordance with Article 11, paragraph (8) of Pertamina’s Articles of Association, a request for approval was submitted to the Board of Commissioners, represented by Federic ST Siahaan (dated May 25, 2009), to authorize PT Pertamina (Persero) in acquiring 10% of the Participating Interest (PI) in the BMG Australia Block (Decision Number 121 K/Pid.Sus/2020). In this case, the Cassation Judge presented the following legal considerations:

“...the actions of the Defendant, as President Director of PT Pertamina and President Commissioner of PT Pertamina Hulu Energi, fall within the realm of the business judgment rule, as there were no elements of fraud, conflict of interest, unlawful acts, or intentional misconduct.” (Decision Number 121 K/Pid.Sus/2020).

Eddy Hiariej clarified that the defendant’s actions were protected under the business judgment rule because Karen Agustawan acted within her authority without abusing it. The actions taken by the defendant were within her powers and authority (Setiawan et al., n.d.). However, it is noteworthy that the Cassation Judges did not refer to Law No. 40/2007 directly in their legal considerations. Instead, their decision was grounded in Article 97, paragraph (5) of Law No. 40/2007, which provides protection to directors’ actions under the business judgment rule.

First, the board of directors did not engage in any unlawful conduct or intentional wrongdoing, as their actions were consistent with the company’s goals and objectives and were undertaken in good faith, as outlined in Article 97, paragraph (5)(b) of Law No. 40/2007. Second, there was no conflict of interest on the part of the directors, as they did not receive any personal benefits, fulfilling the duty of loyalty as stipulated in Article 97, paragraph (5)(c) of Law No. 40/2007. Finally, no element of fraud was present in the actions of the directors, as the entire process adhered to legal and procedural requirements.

#### **D. CONCLUSION**

The regulation of directors’ responsibilities in managing and representing a company, in relation to the doctrine of the business judgment rule, is approached differently in various legal systems. In the United States, which adheres to the common law system, the business judgment rule is not codified but is instead based on case law. It is formulated in three key provisions: a) the ALI in Article 4(c)(1)-(3); b) the MBCA, particularly in Article 8.31(a)(2)(i) and Article 8.31(a)(2)(ii); and c) the DCGL, in Article 141(a) and Article 102(b)(7).

In contrast, the Netherlands, which follows the civil law system, codifies the responsibility of directors under the business judgment rule in Book 2 and Book 6 of the Dutch Civil Code (DCC). Key provisions include: a) Article 2:8 DCC; b) Article 2:9 DCC; c) Article 2:138/248 DCC; and d) Article 6:162 DCC.

In Indonesia, the regulation of directors’ responsibilities in relation to the business judgment rule is outlined in Law No. 40/2007 concerning Limited Liability Companies, specifically in Article 1, point 5, Article 2, Article 92, paragraphs (1) and (2), and Article 97, paragraphs (3) and (5). The application of the business judgment rule in Indonesia mirrors the approach in the United States, where violations of fiduciary duties must be proven in court, as stipulated in Article 97, paragraph (5) of Law No. 40/2007. Meanwhile, in the Netherlands, the business judgment rule is aligned with the principle of serious reproach.

The application of the business judgment rule in Indonesia is exemplified in Decision Number 121 K/Pid.Sus/2020, in conjunction with Decision Number 15/Pid.Sus/TPK/2019/PN.Jkt.Pst and Decision Number 34/Pid.Sus-TPK/2019/PT DKI,

in the case of Karen Agustiawan, who was responsible for managing and representing PT Pertamina (Persero). In this case, the Cassation Judges ruled that Karen Agustiawan was not guilty of any wrongdoing, as her actions were within the scope of the business judgment rule. This decision emphasized the absence of key elements of liability: a) no fraud, b) no conflict of interest, c) no unlawful actions, and d) no intentional misconduct. The application of the business judgment rule, in this case, aligns with the principles outlined in Law No. 40/2007, reinforcing the legal framework for director responsibility.

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