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Business Judgment Rule as Legal Protection for Directors in Non-Performing Loan Cases at Indonesian State-Owned Banks

Umar Iskandar[1*], M. Ersyad Indra[2], Darniaty Azis[3]
[1,2,3]Institut Teknologi dan Bisnis Maritim Balik Diwa, Makassar City, Indonesia
Corresponding email*: umar@itbm.ac.id

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ABSTRACT

Owned Enterprise (SOE) banking remains a complex legal issue due to the intersection of corporate law and anti-corruption law. Credit decisions resulting in Non-Performing Loans (NPLs) are frequently associated with state financial losses, creating legal uncertainty regarding directors' criminal liability. This study aims to examine the application of the Business Judgment Rule in assessing directors' liability for NPLs in SOE banks and to evaluate its role in distinguishing legitimate business risk from criminal conduct. This research employs a normative legal (doctrinal) method using statutory, comparative, and case approaches. The analysis focuses on Indonesia's legal framework governing SOEs, banking, and anti-corruption, supported by relevant Constitutional Court and Supreme Court decisions concerning directors' liability and state financial losses. The findings demonstrate that the Business Judgment Rule has been recognized within Indonesia's corporate law framework as a principle for protecting directors who act in good faith, exercise due care, and avoid conflicts of interest. However, inconsistent interpretation between corporate and criminal law continues to generate uncertainty in the assessment of credit decisions involving NPLs. Comparative analysis with the United States indicates that clearer legal recognition of the Business Judgment Rule provides stronger protection for legitimate business decisions. This study contributes by clarifying the normative boundaries between business risk and criminal liability in SOE banking and recommends harmonizing corporate and anti-corruption law to enhance legal certainty while maintaining accountability and sound corporate governance.

Introduction

The Business Judgment Rule (BJR) is a fundamental doctrine of corporate law that protects company directors from personal liability for business decisions made in good faith, with due care, and without conflicts of interest, even when those decisions ultimately result in corporate losses (Januarsyah et al., 2022; Priyono et al., 2022). Within Indonesian State-

Owned Enterprise (SOE) banks, the doctrine has particular significance in credit approval decisions because banking activities inherently involve commercial risks that may result in Non-Performing Loans (NPLs). Indonesian corporate law recognizes this principle through Article 97 of Law No. 40 of 2007 on Limited Liability Companies, which exempts directors from personal liability where decisions are taken prudently and in the best interests of the company (Alfiansyah et al., 2025). The legal basis for distinguishing corporate losses from state financial losses has also been reinforced by Constitutional Court Decision No. 62/PUU-IX/2013, which confirms the separation between SOE assets and state assets (Wijayanti, 2019).

Credit approval in SOE banks is regulated through prudential banking principles, particularly the 5C framework (Character, Capacity, Capital, Collateral, and Conditions), as required under Bank Indonesia regulations and national banking risk management standards. Directors of SOE banks, including PT Bank Mandiri Tbk and PT Bank Rakyat Indonesia Tbk, are therefore obliged to conduct comprehensive credit assessments before approving lending facilities. Nevertheless, lending decisions remain vulnerable to external factors beyond managerial control, including macroeconomic instability, financial crises, pandemics, and unexpected debtor defaults, which may subsequently result in NPLs. Under such circumstances, the Business Judgment Rule serves as an important legal safeguard by protecting directors who have fulfilled their fiduciary duties of care, loyalty, and good faith (Naser et al., 2026). However, in practice, law enforcement authorities have frequently interpreted losses arising from defaulted loans as state financial losses under Law No. 31 of 1999 on the Eradication of Corruption, thereby blurring the distinction between legitimate commercial risk and criminal misconduct (Mahyani, 2019).

The regulatory framework governing SOE banking has continued to evolve through Law No. 1 of 2025 on State-Owned Enterprises, which further recognizes the Business Judgment Rule as an important mechanism for protecting directors in legitimate business decision-making (Setiawati & Vitrana, 2025). The legislation emphasizes that losses arising from lawful commercial decisions should primarily be regarded as corporate losses rather than state losses, thereby directing legal remedies toward corporate governance mechanisms rather than criminal prosecution (Fajar & Fazriandi, 2025). Nevertheless, such protection remains conditional. Directors are required to demonstrate that lending decisions were supported by effective internal control systems, prudent risk management, comprehensive due diligence, borrower creditworthiness assessments, independent audits, and appropriate corporate approval mechanisms (Prasetio, 2021). Consequently, the Business Judgment Rule does not provide absolute immunity but instead establishes legal protection only where directors have fulfilled their fiduciary obligations.

Despite these developments, the practical application of the Business Judgment Rule in Indonesia remains inconsistent. Judicial practice demonstrates differing interpretations regarding whether losses arising from NPLs constitute ordinary commercial risks or state financial losses that justify criminal prosecution. Several prominent cases, including disputes concerning the Bank Indonesia Liquidity Assistance (BLBI) programme and more recent litigation involving PT Bank BNI Tbk, illustrate how courts and law enforcement agencies have adopted different approaches in assessing directors' liability, particularly regarding compliance with prudential banking standards and fiduciary duties (Khairiyyah & Sugiyono, 2025; Wijayanti, 2019). These inconsistencies have generated legal uncertainty for directors of SOE banks and may discourage legitimate business decision-making because directors face potential criminal sanctions even where lending decisions were undertaken through appropriate governance procedures.

Although previous studies have examined the Business Judgment Rule from the perspectives of corporate governance, fiduciary duties, banking regulation, and anti-corruption law, these studies generally discuss each issue separately (Januarsyah et al., 2022; Priyono et al., 2022; Mahyani, 2019). Existing scholarship has largely focused on the legal protection provided by the Business Judgment Rule or on the criminalization of directors' decisions, while limited attention has been devoted to harmonizing corporate law and anti-corruption law in determining criminal liability arising from Non-Performing Loans within SOE banks. Furthermore, there remains limited discussion concerning the appropriate standard of proof for distinguishing legitimate business judgment from abuse of authority and for determining when corporate losses should legally be classified as state financial losses. This unresolved normative tension represents an important research gap that continues to affect legal certainty in Indonesia's banking sector.

Comparative legal experience demonstrates that stronger legal certainty can be achieved through clearer recognition of the Business Judgment Rule. In the United States, courts apply a strong presumption in favour of directors acting in good faith, while landmark decisions such as *Revlon Inc. v. MacAndrews & Forbes Holdings* require challengers to demonstrate that directors acted improperly before judicial intervention becomes justified. Conversely, the PT Pertamina LNG procurement case (Decision No. 12/Pid.Sus-TPK/2024/PN Jkt.Pst) illustrates that Business Judgment Rule protection should not extend to decisions taken without adequate governance mechanisms or comprehensive risk assessment (Khairiyyah & Sugiyono, 2025). These comparative experiences indicate that legal protection for directors should remain conditional upon compliance with prudential governance while simultaneously preventing the criminalization of legitimate commercial risks.

Against this background, this study seeks to answer three principal legal questions: (1) how is the Business Judgment Rule positioned within Indonesia's legal framework governing State-Owned Enterprise banks; (2) to what extent can the Business Judgment Rule distinguish legitimate business risks from criminal liability in cases involving Non-Performing Loans; and (3) how should corporate law and anti-corruption law be harmonized to provide greater legal certainty while maintaining directors' accountability? Using a normative legal approach based on statutory analysis, judicial precedents, and comparative legal perspectives, this study contributes by developing a normative framework for harmonizing corporate and criminal law in assessing directors' liability for Non-Performing Loans. The findings are expected to strengthen legal certainty, support sound corporate governance, and provide clearer guidance for balancing anti-corruption enforcement with legitimate business decision-making in Indonesian State-Owned Enterprise banks (Naser et al., 2026; Setiawati & Vitrana, 2025).

Method

This study employed a normative legal (doctrinal) research design to examine the application of the Business Judgment Rule (BJR) in determining directors' criminal liability for Non-Performing Loans (NPLs) in Indonesian State-Owned Enterprise (SOE) banks (Alfiansyah et al., 2025; Khairiyyah & Sugiyono, 2025). The research applied statutory, case, and comparative approaches. The statutory approach examined legislation governing corporate law, banking, SOEs, and anti-corruption, including Law No. 31 of 1999 in conjunction with Law No. 20 of 2001, Law No. 40 of 2007, Law No. 1 of 2025 on SOEs, and relevant Financial Services Authority regulations. The case approach analyzed landmark judicial decisions, particularly Constitutional Court Decision No. 62/PUU-IX/2013 and Decision No. 12/Pid.Sus-TPK/2024/PN Jkt.Pst, selected because they represent authoritative precedents concerning state financial losses, corporate losses, and directors' liability (Alfiansyah et al., 2025; Khairiyyah & Sugiyono, 2025; Naser et al., 2026). The comparative approach examined the United States because its Business Judgment Rule doctrine has been extensively developed through corporate jurisprudence and provides a relevant benchmark for evaluating Indonesia's legal framework.

Primary legal materials consisted of legislation, Constitutional Court and Supreme Court decisions, and Financial Services Authority regulations, while secondary and tertiary legal materials included scholarly publications, legal commentaries, textbooks, legal dictionaries, and legal encyclopedias (Mahyani, 2019; Wijayanti, 2019). Legal materials were collected through library research and analyzed qualitatively using grammatical, systematic, and teleological interpretation, followed by deductive legal reasoning and comparative analysis. The consistency of legal arguments was ensured by evaluating the authority of legal sources, the hierarchy of legal norms, and triangulating statutory provisions, judicial decisions, and scholarly opinions to produce coherent and reliable legal interpretations.

Results and Discussion

Application of the Business Judgment Rule in Non-Performing Loan Decisions of State-Owned Banks

The Business Judgment Rule (BJR) constitutes the principal legal doctrine protecting directors of Indonesian State-Owned Enterprise (SOE) banks from personal liability arising from business decisions that subsequently result in Non-Performing Loans (NPLs). Article 97 of Law No. 40 of 2007 on Limited Liability Companies provides that directors are not personally liable where decisions are made in good faith, with due care, without conflicts of interest, and based on adequate information. In the banking sector, these fiduciary obligations are complemented by prudential banking requirements, including the implementation of the 5C principles, Enterprise Risk Management (ERM), comprehensive due diligence, credit committee approval, and continuous monitoring as required under POJK No. 11/POJK.03/2016 (Sukarini & Primasari, 2022; Wijayanti, 2019). Accordingly, the legal assessment of NPLs should not be based solely on the occurrence of financial loss but also on whether directors complied with these governance and prudential standards.

Judicial practice, however, demonstrates that the legal distinction between business risk and criminal liability remains inconsistent. Constitutional Court Decision No. 62/PUU-IX/2013 recognizes the separation of SOE assets from state assets, thereby indicating that corporate losses do not automatically constitute state financial losses (Fajar & Fazriandi, 2025; Mahyani, 2019). Likewise, Supreme Court Regulation No. 13 of 2016 emphasizes that corporate disputes should primarily be resolved through civil mechanisms. Nevertheless, several cases involving Non-Performing Loans have continued to be prosecuted under anti-corruption legislation, with judicial reasoning frequently emphasizing the existence of financial losses while giving limited consideration to compliance with prudential banking principles and directors' fiduciary duties. Comparative experience from the United States demonstrates a different approach, whereby courts apply a strong presumption in favour of directors acting in good faith and require evidence of bad faith, gross negligence, abuse of authority, or conflicts of interest before imposing liability (Alfiansyah et al., 2025; Meylinda & Nurhayati, 2026).

These findings indicate that the principal legal issue is not whether an NPL has occurred, but whether the lending decision satisfies the substantive requirements of the Business Judgment Rule. Based on the analysis of statutory provisions, judicial decisions, and comparative jurisprudence, this study argues that legal assessment should distinguish three different situations: (1) ordinary business risk, where directors have complied with prudential banking standards and acted in good faith; (2) prudential banking violations, where deficiencies occur in credit procedures or risk management without evidence of criminal intent; and (3) criminal corruption, where lending decisions involve bad faith, abuse of authority, conflicts of interest, fraudulent conduct, or other forms of *mens rea*. This distinction provides a more consistent normative framework for determining directors' criminal liability and reduces the risk of criminalizing legitimate business decisions in State-Owned Enterprise banking.

Anatomy of Non-Performing Loans: Internal and External Factors

Non-performing loans (NPLs) arise from both internal and external factors, each producing different legal consequences under the Business Judgment Rule (BJR). Internal factors include weaknesses in due diligence, inadequate implementation of the 5C principles, ineffective internal controls, deficiencies in risk management, conflicts of interest, and violations of corporate governance (Hannandi & Keumala, 2023; Nisa & Pramono, 2024). However, these deficiencies do not automatically remove BJR protection. From a legal perspective, the decisive issue is whether the deficiencies merely constitute procedural shortcomings or demonstrate gross negligence, abuse of authority, conflicts of interest, or bad faith. Accordingly, directors may continue to receive BJR protection where procedural deficiencies do not materially affect the integrity of the decision-making process and where fiduciary duties have been substantially fulfilled. Conversely, BJR protection is lost when lending decisions are influenced by intentional misconduct, personal interests, or serious disregard of prudential banking obligations.

External factors, including macroeconomic instability, fluctuations in interest rates, financial crises, and force majeure events such as the COVID-19 pandemic, represent ordinary business risks that are inherent in banking activities. Where directors have implemented Enterprise Risk Management, stress testing, due diligence, and prudent lending procedures in accordance with POJK No. 11/POJK.03/2016, subsequent NPLs should generally be regarded as business losses rather than criminal conduct (Wijayanti, 2019). Judicial practice further supports this distinction. Cases involving Bank Permata, BRI, and BTN demonstrate that the legal assessment should focus not solely on the occurrence of financial loss but on the degree of fault underlying the lending decision. This approach is consistent with Constitutional Court Decision No. 62/PUU-IX/2013 and comparative practice in the United States, where courts distinguish ordinary business risk, prudential banking violations, and criminal misconduct based on the presence of gross negligence, conflicts of interest, or *mens rea* rather than the existence of Non-Performing Loans alone (Alfiansyah et al., 2025; Fajar & Fazriandi, 2025).

Table 1. Legal Criteria for Assessing Business Judgment Rule Protection in Non-Performing Loan Cases

Internal/External Factor	Degree of Fault	BJR Protection	Legal Consequence
Macroeconomic shock, pandemic, market downturn	No fault	Yes	Business risk
Minor procedural deficiency	Ordinary negligence	Generally Yes	Administrative/Internal sanction
Failure of due diligence affecting lending quality	Gross negligence	Depends on evidence	Civil/administrative liability
Conflict of interest	Serious misconduct	No	Civil and potential criminal liability
Fraud, collusion, bribery, abuse of authority (mens rea)	Intentional misconduct	No	Criminal liability

Jurisprudential Analysis of Supreme Court Decision No. 121 K/Pid.Sus/2020

Supreme Court Decision No. 121 K/Pid.Sus/2020 constitutes an important judicial precedent in examining the application of the Business Judgment Rule (BJR) to directors' criminal liability arising from corporate business decisions. The case concerned the procurement of Liquefied Natural Gas (LNG) by PT Pertamina, where the prosecution argued that the transaction caused state financial losses and therefore constituted corruption. The central legal issue before the Court was whether business decisions resulting in financial losses could, by themselves, establish criminal liability or whether liability required proof of unlawful conduct beyond ordinary business risk (Khairiyyah & Sugiyono, 2025).

In its legal reasoning (*ratio decidendi*), the Supreme Court emphasized that the existence of corporate losses alone is insufficient to establish criminal responsibility. The Court examined whether the decision-making process complied with fiduciary duties, including good faith, due care, adequate information, corporate approval mechanisms, and risk assessment. The Court concluded that the procurement decision had been undertaken within the scope of legitimate business judgment and that subsequent financial losses were influenced by market conditions rather than intentional misconduct. Accordingly, the absence of bad faith, abuse of authority, conflicts of interest, or fraudulent intent precluded the imposition of criminal liability, thereby reinforcing the protective function of the Business Judgment Rule (Khairiyyah & Sugiyono, 2025).

From a jurisprudential perspective, this decision strengthens the principle that the legal assessment of Non-Performing Loans or other corporate losses should focus not merely on the occurrence of financial loss but on the quality of the directors' decision-making process. This reasoning is consistent with Constitutional Court Decision No. 62/PUU-IX/2013, which distinguishes corporate assets from state assets, and supports the view that business losses should not automatically be equated with state financial losses (Setiawati & Vitrana, 2025). Nevertheless, inconsistency remains evident in subsequent judicial practice, where similar cases continue to apply different standards in assessing directors' liability. This inconsistency demonstrates that the principal challenge lies not in the absence of legal protection under the Business Judgment Rule, but in the lack of uniform judicial criteria for determining when procedural deficiencies amount to ordinary business risk, prudential banking violations, or criminal corruption. Therefore, this study argues that clearer jurisprudential guidelines are required to ensure consistent application of the Business Judgment Rule in cases involving Non-Performing Loans in Indonesian State-Owned Enterprise banks.

Case Study of PT ASDP Indonesia Ferry

The case involving PT ASDP Indonesia Ferry provides a contemporary illustration of the continuing tension between the Business Judgment Rule (BJR) and anti-corruption enforcement in Indonesian State-Owned Enterprises. The case concerns strategic corporate investment decisions that allegedly resulted in state financial losses following adverse business conditions, including the COVID-19 pandemic and operational disruptions. As reported in the available legal sources, the directors supported their decisions with feasibility studies, board approval, and Enterprise Risk Management procedures before the disputed transactions were undertaken (Adhitia & Sodikin, 2025; Pongkor, 2026). The legal relevance of this case depends on its procedural status; therefore, the applicable court decision, case number, level of adjudication, and whether the judgment has obtained final and binding legal force should be clearly identified before it is relied upon as judicial precedent.

From a legal perspective, the significance of the PT ASDP Indonesia Ferry case does not lie in its factual similarity to Non-Performing Loan (NPL) cases but in its illustration of how business losses in State-Owned Enterprises may be interpreted within the anti-corruption framework. Similar to lending decisions in State-Owned Enterprise banks, the central legal issue concerns whether financial losses resulting from business decisions should automatically establish criminal liability or whether courts should first assess compliance with fiduciary duties, prudential governance, good faith, and the absence of conflicts of interest. If judicial findings ultimately confirm that the directors complied with these requirements, the case would reinforce the protective function of the Business Judgment Rule. Conversely, where evidence demonstrates abuse of authority, conflicts of interest, or intentional misconduct, Business Judgment Rule protection would not apply. Accordingly, the PT ASDP Indonesia Ferry case is used in this study as a comparative illustration of the legal boundaries between legitimate business risk and criminal liability in State-Owned Enterprises rather than as a direct precedent for Non-Performing Loan cases (Adhitia & Sodikin, 2025; Pongkor, 2026).

Criteria for Distinguishing Business Failure from Criminal Conduct

Distinguishing business failure from criminal conduct is essential to ensure the consistent application of the Business Judgment Rule (BJR) in cases involving Non-Performing Loans (NPLs) in State-Owned Enterprise (SOE) banks. Business losses should not automatically give rise to criminal liability merely because they result in financial losses. Instead, legal assessment must consider whether directors acted in good faith, exercised due care, complied with fiduciary duties and prudential banking principles, avoided conflicts of interest, and based their decisions on adequate information and proper corporate procedures (Meylinda & Nurhayati, 2026; Naser et al., 2026). Conversely, criminal liability requires evidence of intentional misconduct, abuse of authority, personal benefit, fraudulent conduct, or other forms of *mens rea*. This distinction is consistent with Constitutional Court Decision No. 62/PUU-IX/2013, which recognizes that corporate losses become state financial losses only where unlawful conduct directly causes financial harm to the state (Brawijaya et al., 2025).

Based on the statutory framework, judicial decisions, and comparative legal analysis, this study proposes an analytical framework for distinguishing business risk from criminal conduct. The framework classifies legal consequences according to the degree of fault, compliance with prudential banking obligations, and the existence of unlawful intent. Such a framework may assist judges, prosecutors, regulators, and banking institutions in assessing directors' liability more consistently while reducing the criminalization of legitimate business decisions in SOEs.

Challenges in Implementing the Business Judgment Rule

Although the Business Judgment Rule (BJR) has a clear statutory foundation within Indonesia's corporate law framework, its implementation in criminal proceedings remains inconsistent because courts apply different legal standards when assessing directors' liability. First, judicial decisions differ in allocating the burden of proof. In some cases, compliance with fiduciary duties creates a presumption that directors acted lawfully, whereas in others directors are effectively required to prove their good faith after criminal proceedings have commenced. Second, courts adopt different interpretations of state financial losses, with some decisions distinguishing corporate losses from state losses in accordance with Constitutional Court Decision No. 62/PUU-IX/2013, while others continue to regard losses arising from Non-Performing Loans (NPLs) as sufficient evidence of corruption without first establishing unlawful conduct (Brawijaya et al., 2025; Meylinda & Nurhayati, 2026).

A further inconsistency concerns the assessment of *mens rea* and compliance with prudential banking standards. Some judicial decisions evaluate whether directors acted with bad faith, abuse of authority, conflicts of interest, or personal benefit before imposing criminal liability, whereas others place greater emphasis on the existence of financial loss while giving limited consideration to due diligence, Enterprise Risk Management, risk assessment, or documentation supporting lending decisions (Mahyani, 2019; Syarifah & Wahyudi, 2026). These divergent approaches weaken the consistent application of the Business Judgment Rule, create uncertainty for directors of State-Owned Enterprise banks, and increase the risk that legitimate business decisions will be criminalized. Accordingly, greater harmonization of judicial standards is required, particularly regarding the burden of proof, the interpretation of state financial losses, the assessment of *mens rea*, and the evaluation of prudential governance documents.

Mapping the Criminal Law Regime in Indonesian Banking

The regulation of banking activities in Indonesian State-Owned Enterprise (SOE) banks is governed by several interconnected legal regimes, each serving a different normative function. Banking law establishes prudential standards for lending decisions, including risk management and credit assessment, while company law governs directors' fiduciary duties and provides protection through the Business Judgment Rule (BJR). The SOE Law regulates corporate governance within state-owned enterprises, whereas the Anti-Corruption Law defines the circumstances under which state financial losses may give rise to criminal liability. Although these legal regimes pursue complementary objectives, their application in practice is often inconsistent, particularly when Non-Performing Loans (NPLs) are interpreted simultaneously as corporate losses under company law and as state financial losses under anti-corruption law (Alfiansyah et al., 2025; Fajar & Fazriandi, 2025).

The principal normative conflict arises from the absence of a uniform legal standard for determining when business losses should remain within the scope of corporate and banking law and when they should be treated as criminal conduct. Constitutional Court Decision No. 62/PUU-IX/2013 distinguishes SOE assets from state assets, while prudential banking regulations require directors to implement due diligence, Enterprise Risk Management, and sound credit governance before lending decisions are made (Naser et al., 2026). Nevertheless, anti-corruption enforcement has, in some cases, prioritized the existence of financial loss over compliance with fiduciary duties and prudential standards, thereby creating legal uncertainty. To address this conflict, harmonization should extend beyond statutory interpretation by integrating the Business Judgment Rule into anti-corruption enforcement through clearer legal standards. This may be achieved through legislative refinement of the Anti-Corruption Law, the issuance of joint prosecutorial and judicial guidelines for assessing directors' liability, and the alignment of Financial Services Authority (OJK) regulations with corporate governance principles to ensure consistent application of the Business Judgment Rule in SOE banking (Brawijaya et al., 2025; Syarifah & Wahyudi, 2026).

Conclusion

This study demonstrates that the Business Judgment Rule (BJR) provides a normative basis for distinguishing legitimate business risk from criminal conduct in cases involving Non-Performing Loans (NPLs) in Indonesian State-Owned Enterprise (SOE) banks. Directors should not incur criminal liability solely because business decisions result in financial losses, provided they act in good faith, exercise due care, comply with fiduciary duties and prudential banking principles, and avoid conflicts of interest. Nevertheless, inconsistent interpretation between corporate law and anti-corruption law, particularly regarding the assessment of state financial losses, *mens rea*, and evidentiary standards, continues to undermine legal certainty. Theoretically, this study contributes an analytical framework for distinguishing business risk, prudential banking violations, civil liability, and criminal corruption, while practically supporting the harmonization of corporate law, banking regulation, SOE legislation, and anti-corruption law through clearer statutory recognition of the Business Judgment Rule and more consistent judicial and prosecutorial guidelines.

This study is limited to a normative legal approach based on statutory provisions, judicial decisions, and legal doctrine, without incorporating empirical evidence from judges, prosecutors, banking regulators, or SOE practitioners. Future research should therefore adopt empirical or socio-legal approaches to evaluate how the Business Judgment Rule is implemented in practice and to assess the effectiveness of harmonized legal standards in balancing corporate accountability with the protection of directors acting in good faith.

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