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Comparative Analysis of Business Judgment Rules in Civil Law and Common Law Systems

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Abstract. This study examines the comparative regulation of the Business Judgment Rule (BJR) between countries adopting Civil and Common Law systems. BJR is a principle that grants corporate decision-makers the discretion to make business decisions without fear of legal liability, provided that the decisions are made in good faith, are reasonable, and free from conflicts of interest. This research aims to identify the similarities and differences in the regulation of BJR between civil law and common law countries and analyze the factors contributing to these differences. This research employs a normative juridical method with a legislative and comparative law approach. These approaches are utilized to analyze relevant national and international legislation and compare the application of BJR in Indonesia with that of other countries, such as the United States and European nations. The findings are expected to provide insights into the philosophical and practical differences in the regulation and implementation of BJR across these two legal systems.

Keywords: Civil Law, Common Law, Legal Comparison.

1. INTRODUCTION

In general, legal systems around the world can be grouped into two main traditions: the Anglo-Saxon legal system (common law) and the Continental European legal system (civil law). The common law system considers societal customs and agreements as primary sources of law. In contrast, in the civil law system, legislation enacted by the government serves as the main foundation for legal practice. The common law tradition first developed in England and then spread to countries under British colonial rule, while the civil law tradition emerged in Europe, particularly in countries such as Spain and Portugal (Portuna, 2024). The civil law system was later adopted by several countries outside Europe, including Japan and Russia, in the 19th and 20th centuries. This adoption aimed to accelerate economic and political growth to compete with other European countries. On the other hand, the common law system adopted by the United States has characteristics that differ from civil law, which some circles in the country consider to be more complex and less flexible. Although England has a strong cultural bond with Western Europe, its legal system remains distinct due to unique historical reasons, including the significant role of court decisions as a primary source of law (Siagian, Sulaksana, Fernando, Rachmawati, & Sumardi, 2021).

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The fundamental difference between these two legal systems lies in codification and their sources of law. The common law system is not formally codified, meaning that legal rules are not compiled into statutory codes as in civil law. Most rules in common law are based on precedents, which are documented court decisions that serve as references for future cases. Judges in the common law system play a crucial role, not only as law enforcers but also as creators of new laws relevant to societal needs. In contrast, in civil law, the legislation drafted by legislative bodies serves as the primary source of law, and judges function more as enforcers of established rules (Santoso, 2016).

The fundamental difference between civil law and common law systems lies in the sources of law used by courts to resolve cases. In the civil law system, the primary source of law is codification, which refers to regulations systematically compiled by legislative bodies. Conversely, the common law system relies on precedents or prior judicial decisions based on the doctrine of stare decisis. This doctrine requires courts to follow previous decisions in similar cases, thereby creating continuity and legal certainty (Nurhardianto, 2015). In addition to the sources of law, the role of courts also differs substantially in both systems. In civil law, as applied in France, the courts are part of the government. Initially, the influence of the king was very dominant in this system, with courts performing administrative functions under royal control. However, the French Revolution led by Napoleon changed the role of the courts, although the close relationship between the executive power and the courts remained intact. Courts in civil law countries often do not have the authority to review government policies directly, especially in cases involving the public sector (Huda, 2020).

In contrast, in the common law system, courts operate independently of executive power. This tradition is rooted in the English legal system, where judicial institutions have full authority to interpret and determine the law without government interference. The Supreme Court, as the highest court, has the authority to establish applicable legal principles, even against government policies. This independence positions courts within the common law system as a check on the executive and legislative power, providing greater flexibility in responding to dynamic legal developments (Nugroho & dkk, 2023).

Regarding law in Indonesia related to corporations as adherents of the civil law system, Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies (UU PT) includes norms on responsibility that establish limited liability. However, under certain conditions, personal liability or joint liability can be imposed on corporate organs through the concept of piercing the corporate veil. If a company suffers losses, the Board of Directors may be held personally accountable and brought to court. However, if the Directors can prove that the loss was not due to their negligence or fault, they may receive legal protection based on the Business Judgment Rule (BJR) principle as regulated in Article 97 paragraph (5) of the UU PT. This principle protects Directors as long as business decisions are made in good faith, with care, and honesty, and in accordance with their responsibilities and authorities (Prasetio, 2014).

The Business Judgment Rule principle aims to encourage Directors to make bold, innovative business decisions, even if they involve risks so that companies can continue to compete and grow. This principle acknowledges that Directors are professionals who best understand the business they operate, making their decisions regarded as the best choices in complex and time-sensitive situations. Therefore, courts should not evaluate these business decisions based on different standards or compare them with alternative decisions. The court's role is limited to assessing legal aspects without considering the economic benefits or social conditions of the company, as courts do not have specific expertise in evaluating complex business decisions (Sastrawidjaja, 2012).

The business judgment made by Directors should receive adequate legal protection, given the characteristics of corporations as legal entities. In corporations, there is a clear separation between the corporation's assets and the personal wealth of its shareholders and management. Therefore, shareholders can hold the Directors accountable for actions taken in their capacity as managers; however, Directors are also entitled to legal protection if their decisions were made in good faith and for the benefit of the corporation. This legal protection is known as the doctrine of Business Judgment Rule (BJR), which provides immunity for Directors in making business decisions as long as those decisions are taken in good faith, without conflicts of interest, and in compliance with fiduciary duties (fiduciary duty). In Indonesian corporate law, BJR has been regulated to a limited extent in the Limited Liability Company Law (UU PT), although its application has not been optimal and is rarely referenced in judicial practice (Ais, 2017).

A significant difference in the regulation of BJR between countries that adhere to the civil law system, such as Indonesia, and those that follow common law, such as the United States, lies in the legislative approach and its implementation. Common law countries have adopted BJR as a legal obligation explicitly stated in written regulations and have been consistently implemented in judicial practice. Judges in these countries evaluate the decision-making processes of the Directors before determining their verdicts. In contrast, in civil law countries like Indonesia, BJR is more normative and less detailed in regulation. This indicates that the civil law system tends to prioritize codification and legal regulation before issues arise, while common law emphasizes the development of legal principles through precedents (Leonardy, 2024). This difference highlights the need for better harmonization in regulating BJR to strengthen legal protection for Directors in civil law countries. Thus, based on the brief elaboration in this research, the author will discuss the similarities and differences in the regulation of business judgment in Indonesia as a civil law country and Australia as a common law country. Additionally, factors causing differences and similarities regarding business judgment in civil law and common law countries will also be presented.

2. METHOD

This study uses a normative legal method with a statute approach and a comparative legal approach (Nasution., 2008). This method aims to analyze relevant laws and regulations, both at the national and international levels, to understand how the Business Judgment Rule (BJR) doctrine is regulated and applied in countries with different legal systems. The data sources include laws, regulations, jurisprudence, and academic literature such as books, journal articles, and previous research results. The statutory approach is used to examine the legal basis applicable in Indonesia, while the comparative legal approach will compare BJR regulations with other countries to identify significant similarities and differences.

3. RESULT AND DISCUSSION

Similarities and Differences in Business Considerations between Civil Law and Common Law

The Business Judgment Rule (BJR) doctrine serves as a form of legal protection for Directors regarding business decisions made in the course of fulfilling their duties. This doctrine has been incorporated into the legal systems of Indonesia and common law countries, even though these two nations operate under different legal frameworks. Indonesia follows a civil law system, which prioritizes legislation as the main source of law, while common law systems, as seen in various other countries, treat jurisprudence as the dominant source. This fundamental difference imparts distinct characteristics to the regulation of BJR, which aims to provide legal immunity to Directors for business decisions made in good faith, even if those decisions result in losses.

In common law systems, jurisprudence plays a crucial role and serves as the primary source of law. The key characteristic of this system is the application of the stare decisis doctrine, which obligates judges to adhere to previous rulings in similar cases. Additionally, this system adopts an adversarial model, where the parties involved argue their cases while the judge acts as a neutral party rendering a decision based on the arguments presented. Although legislation is also recognized in common law, its status is subordinate to that of jurisprudence, contrasting with civil law, where statutory regulations are the principal guide in legal resolutions.

Conversely, the civil law system adopted by Indonesia places greater emphasis on preventive legal regulation through the codification of laws. Within the BJR framework, legal protection for Directors is normatively outlined in corporate law, which underscores the principles of caution and good faith. These differing approaches reflect distinct philosophies regarding law enforcement. The civil law system seeks to establish legal certainty through detailed written rules, whereas common law is more adaptable, with judicial rulings evolving in response to societal needs and notions of justice. This divergence illustrates how each legal system provides protection to Directors in their business decision-making, albeit through different mechanisms.

The civil law system, also known as the Continental European legal system, is rooted in Roman law and is implemented in various countries such as the Netherlands, France, and Germany. Indonesia, which was formerly under Dutch colonial rule, adopted this system for historical reasons, although it did not completely replicate the Dutch legal framework. A primary characteristic of civil law is the systematic codification of laws to create legal certainty and uniformity of regulations. Furthermore, civil law adheres to the principle of separation of powers among the legislative, executive, and judicial branches to maintain the independence of each institution. In the judicial process, this system employs an inquisitorial model, where the judge actively directs the proceedings, gathers facts, and adjudicates based on the evidence presented.

The implementation of civil law in Indonesia has its advantages and disadvantages. Its main strength lies in the clear legal certainty provided by written regulations, which can facilitate judicial processes. This legal codification offers concrete guidance for judges in resolving cases and gives the public confidence due to the accessibility and comprehensibility of applicable rules. However, a downside is the tendency for the law to be static and relatively inflexible. The civil law system often struggles to adapt to dynamic social changes, leading to scenarios where established rules may not fully meet emerging justice needs within society.

The Business Judgment Rule (BJR) is defined in Black’s Law Dictionary as actions undertaken by Directors in making decisions for the benefit of the company while considering the best business interests. These actions must be conducted in good faith and aimed at achieving outcomes aligned with the company’s interests. In the perspective of various legal scholars, BJR provides legal protection to Directors in the execution of their duties and responsibilities, provided that in making decisions, the Directors do not have conflicts of interest and act in good faith. This principle safeguards Directors from being held accountable for business decisions made in good faith, as long as those decisions are free from fraud, conflicts of interest, legal violations, or intentional wrongdoing.

Indonesia, as a civil law nation, delineates the functions of management and oversight, where the Board of Directors is responsible for managing the company, and the Board of Commissioners is tasked with supervision. Articles 97 paragraphs (3) and (4) of the Limited Liability Company Law (UU PT) assert that Directors bear personal responsibility for errors and omissions made in the course of their duties. However, exceptions exist stipulating that Directors are not liable if they can demonstrate that their business judgments align with the principles of BJR—that is, that they were conducted in good faith, with due caution, and without conflicts of interest. Furthermore, Directors must demonstrate that preventive measures were taken to avert losses and that decisions were made in conjunction with the company's objectives.

Provisions regarding BJR have also been adopted by the Financial Services Authority (OJK) in Regulation No. 33/PJOK.04/2014, which addresses business judgment in publicly listed companies. Generally, this regulation aligns with the stipulations in the UU PT, although it does not elaborate in detail or provide a clear definition of business judgment. In contrast, Australia has established the BJR doctrine in a more systematic and detailed manner within the Australia Corporations Act, offering clearer guidance on how this principle is applied in Directors' decision-making. Nevertheless, while Indonesia has provisions regarding BJR, there remains room for improvement and refinement to provide a clearer definition and implementation of this business judgment principle.

Countries with common law systems that regulate business judgment principles within the Business Judgment Rule doctrine include Australia, governed by the Australia Corporations Act. Under Section 180 of this Act, BJR is defined such that a Director or other officer of a company must exercise their powers and responsibilities with the level of care and diligence that a reasonable person would expect in similar circumstances within that company. Specifically, to fulfill this obligation, Directors making business decisions will be deemed to have met the standard as long as those decisions are made in good faith, for legitimate purposes, without any material personal interest in the decisions made, and based on adequate information they consider necessary for decision-making. Moreover, Directors must rationally believe that their decisions are in the best interests of the company.

The regulation of BJR within the Australia Corporations Act emphasizes that decisions made by Directors, whether they involve action or inaction, must be grounded in principles of care and diligence. Every decision made—whether strategic or operational—must adhere to these principles, ensuring that Directors act in the best interest of the company without being influenced by personal interests or conflicts of interest. Should Directors fail to meet this standard of care and diligence, the BJR principle cannot be applied, and they may be held liable for any resulting losses.

Thus, business owners in Australia must be more discerning in selecting their Directors, as the decisions made by the Directors will be scrutinized in court based on BJR principles. Australian courts have adopted this principle since 1968 through various legal cases, one notable instance being Harlowes Nominees Pty Ltd v. Woodsite (Lakes Entrance Oil Co). In this case, the court ruled that decisions made by Directors, grounded in sound business considerations for the company's benefit, need not undergo further scrutiny by the court. Such decisions are regarded as legitimate business judgments that cannot be challenged by the court. Therefore, Australian courts apply a conservative approach to issues concerning BJR, prioritizing principles of care and diligence in every decision made by company Directors.

The comparison of the Indonesian and Australian legal systems in regulating business judgment is crucial for understanding how both countries formulate and implement this doctrine. According to the convergence theory proposed by Peter De Cruz, it is essential to explore the similarities and differences between civil law and common law systems. This theory not only underscores historical legacies but also encompasses various other factors influencing the differences in legal systems, such as legal sources, legal profession structures, court functions, and other external factors that play roles in law formation and implementation.

In this regard, several similarities can be identified between the Indonesian and Australian legal systems concerning business judgment regulation. First, both countries possess written legal provisions regarding the Business Judgment Rule (BJR). In Indonesia, this regulation is outlined in the Limited Liability Company Law (UU PT), which is also adopted by the Financial Services Authority (OJK) for publicly listed companies. Meanwhile, in Australia, the rules governing BJR are codified within the Australia Corporations Act. Both countries provide protection for Directors when they make business decisions in good faith and without conflicts of interest, which are crucial elements in implementing BJR.

However, despite the similarities in BJR regulations, significant differences arise due to the distinct legal systems each country adheres to. First, the Indonesian legal system employs a civil law approach, characterized by the use of written rules established through legal codification. These rules are normatively structured with the principle of "sollen," or what ought to be done. In contrast, the Australian legal system adheres to common law principles, emphasizing existing practices; rules are formulated based on historical experiences and legal cases, using an approach of "sein," meaning what actually happens.

Another difference lies in the application of those legal rules. In Indonesia, the civil law system tends to rely on statutory obligations, with a focus on fulfilling obligations stipulated in legislation. Conversely, in Australia, although statutory obligations are also present in common law, the application of these rules incorporates an approach based on previous judicial decisions or jurisprudence that serves as relevant legal authority in interpreting and applying the respective regulations.

Moreover, differences also manifest in the substance and application of the BJR doctrine itself. In Indonesia, while BJR is codified within the UU PT, the clear definition of "business judgment" is lacking within that law. The rules regarding BJR are not detailed or technical. In contrast, Australia's Australia Corporations Act explicitly regulates the BJR doctrine, stipulating the requirements Directors must fulfill for making valid and justifiable business decisions. Ultimately, the Indonesian legal system does not recognize judicial decisions or jurisprudence as valid legal sources, meaning that court rulings do not possess general binding force. Conversely, in Australia, previous judicial decisions carry binding authority and serve as precedents in handling similar legal cases, thus creating a legal framework followed in resolving subsequent matters.

Factors Underlying the Differences and Similarities in Business Judgment Rule between Civil Law and Common Law Countries

The differences and similarities regarding the regulation of business judgment between countries adhering to civil law and common law systems can be explained through various factors influencing the formation and application of law in each system. The primary difference between civil law and common law systems lies in their sources of law and methods of legal development. Nations following civil law, such as Indonesia, emphasize the importance of written laws or legal codification as the primary source of law. In this system, laws are typically formulated as clear and systematic regulations established by legislative bodies to encompass various legal norms that must be followed by individuals and legal entities. This approach prioritizes legal certainty through detailed regulations, where all relevant aspects of legal life are explicitly articulated. As a result, in civil law systems, rules concerning issues like business judgment are generally more precise and detailed. Each obligation and responsibility that corporate Directors must fulfill, for instance, is regulated by law, providing clear guidelines for their procedures and duties and minimizing the scope for different interpretations.

Conversely, in common law systems, practiced in countries like Australia, England, and the United States, there is a strong reliance on jurisprudence or court decisions. In this system, law evolves through precedents or rulings made in previous cases. Each court decision establishes new rules or legal principles that must be followed by courts in similar future cases. Consequently, law is not always detailed in written statutes yet is shaped by judicial decisions that provide interpretations of broader legal norms. The Business Judgment Rule (BJR) serves as a prime example of a principle that develops through jurisprudence in common law countries. This doctrine offers legal protection to Directors who make business decisions in good faith, based on rational considerations, and without conflicts of interest, all made in the best interest of the company.

These differences lead to variations in the application of law and its flexibility. In civil law systems, laws tend to be more stable and structured due to their explicit articulation in statutes, while in common law systems, laws can be more dynamic and evolving, as they are shaped by the outcomes of litigations in courts. Thus, in civil law countries like Indonesia, the regulations governing business judgment may be more rigid and codified, whereas, in common law countries like Australia and England, these rules are more open to interpretation and evolve through judicial practices.

The approaches to regulation within civil law and common law systems significantly differ in how laws are formulated and applied, particularly regarding the business judgment made by corporate Directors. In civil law, the approach tends to be more normative, focusing on legal certainty. Countries with this system, like Indonesia, tend to formulate legal rules clearly and in detail within codified statutes. This normative approach emphasizes definitive and clear legal obligations for the parties involved, including corporate Directors. For example, concerning business judgment, the obligations and responsibilities of Directors in decision-making must align with the provisions outlined in legislation. These statutes usually specify procedures, requirements, and standards that must be adhered to during decision-making to ensure that the choices made do not harm the company or other parties. Directors are expected to comply with established rules, thus providing legal certainty and reducing the potential for varying interpretations.

In contrast, the common law system adopts a more practical, reality-based approach. Here, law evolves through concrete cases brought before the courts, with judicial declarations as guidelines for future courts. The common law system emphasizes flexibility and the adaptation of law to social and economic changes. In the realm of business judgment, corporate directors are afforded considerable flexibility to make decisions that they believe are in the best interests of the company, provided these decisions are made in good faith and free from conflicts of interest. While the regulations governing business judgment in common law may not be extensively detailed within statutory provisions, they evolve through court rulings that establish guidelines for what constitutes valid and rational decision-making in business contexts. This framework allows for interpretation and the development of legal principles tailored to the specific circumstances encountered by the courts. Consequently, the primary difference between these two systems lies in the levels of clarity and rigidity of their regulations. The civil law system offers clearer and more definitive rules, while the common law system allows for flexibility and the evolution of law based on existing cases. The civil law approach demands strict compliance with written rules, whereas, in common law, previous court rulings (precedents) play a critical role in shaping and developing applicable legal principles.

The roles of jurisprudence and courts differ significantly between civil law and common law systems, particularly in the context of developing laws related to business judgments made by corporate Directors. This is closely linked to how both legal systems view the role of courts in interpreting and developing the law. In civil law systems, such as Indonesia, jurisprudence or court decisions are not regarded as binding sources of law. Courts in this system function more as interpreters and enforcers of existing laws codified in statutes. Therefore, while court decisions can clarify how a legal rule is applied in practice, they do not create new legal norms. In other words, jurisprudence does not significantly influence the creation or development of new legal principles. This rigidity makes the regulation of business judgment in civil law countries more constrained and tied to existing written rules. In this case, courts primarily act to ensure that existing rules are applied consistently under the provisions contained in the statute, rather than creating new standards that could alter or develop existing law.

Conversely, in common law systems, courts play a more dominant role in developing and shaping the law. Court decisions, particularly those related to significant cases, do not merely serve as interpretations of existing rules but also establish precedents that must be followed by future courts. The stare decisis principle, which requires courts to follow previously established decisions, positions jurisprudence as a highly significant source of law. In this system, each court ruling can serve as a guideline for other courts in handling similar cases. This provides greater flexibility in legal regulation, including in business judgment regulation. For example, courts can develop and adjust the business judgment doctrine based on existing cases, allowing the law to align more closely with changing conditions and needs. Therefore, court decisions and prior rulings become crucial considerations in the evolution of legal principles in common law countries, leading to a more dynamic and evolving legal framework over time. Overall, the differences in the roles of courts and jurisprudence reflect how the two legal systems develop and apply the law.

On one hand, civil law systems prioritize legal certainty by making statutes the primary source of law. While on the other hand, common law systems allow courts to develop law through existing decisions, creating flexibility and adaptability to changing circumstances.

A significant difference between civil and common law systems relates to their approaches to corporate interests, particularly concerning the business judgments made by Directors in managing companies. Both legal systems harbor differing views on the extent to which Directors are granted freedom to make business decisions that can affect the company, shareholders, and other related parties. In civil law systems, such as those applied in Indonesia, the law tends to be precise and structured in providing guidelines regarding the responsibilities of Directors, with a strong emphasis on legal certainty and the protection of public interests. In this regard, regulations concerning business judgment typically prioritize the interests of the involved parties, particularly shareholders, with stricter and more detailed procedures. Directors are required to act by clearly defined legal norms governing their obligations and responsibilities in decision-making. In many civil law countries, there are stringent oversight mechanisms regarding Directors' actions, which include the obligation to act in good faith, avoid conflicts of interest, and be accountable for the decisions made. This aims to provide greater protection for shareholders and public interests, considering the higher risks if Directors fail to meet their legal obligations. Therefore, while Directors are granted authority to make decisions, they must still adhere to highly detailed rules when performing their functions.

In common law systems, the approach to corporate interests emphasizes the freedom and initiative of Directors in making business decisions. One of the principal tenets of this system is the Business Judgment Rule (BJR), which provides greater legal protection for Directors as long as they act in good faith, have no conflicts of interest, and reach a rational belief that the decisions they make will benefit the company. In common law systems, courts typically do not intervene in Directors' decisions as long as those decisions can be rationally justified and do not contradict their obligations to the company. This approach grants Directors greater flexibility to make decisions based on their assessments of what is best for the company's sustainability and development. It creates a more dynamic and innovative environment for businesses to adapt to market changes and challenges without fear of legal action, provided they act by the fundamental principles of BJR.

The approaches to the risks and responsibilities faced by Directors in both civil law and common law systems indicate significant differences, especially in terms of oversight and protection regarding the decisions they make. These differences reflect how each legal system regulates Directors' obligations and the extent to which they are accountable for the business decisions taken. In civil law systems, such as those implemented in Indonesia and in many European countries, there are stricter rules concerning Directors' responsibilities. Countries with civil law systems often require Directors to act with caution and diligence, ensuring that each decision taken is well-founded and aligns with existing regulations. It risks the Directors more measurable and predictable, as they must comply with specific legal guidelines concerning their obligations. Decisions made by Directors are often reviewed and overseen by third parties, such as courts or regulatory authorities, which assess whether Directors have fulfilled their obligations under applicable legal standards. Legal risks for Directors under civil law are generally clearer and more easily identifiable, as they must conform to rules that are detailed and structured within existing statutes. This provides legal certainty and reduces ambiguities in business decision-making by establishing clear boundaries regarding the obligations and responsibilities of Directors.

Conversely, in common law systems, the approach to the risks and responsibilities of Directors is more flexible and subjective. While Directors in common law countries are expected to act with care and consideration, the Business Judgment Rule (BJR) offers greater protection for the decisions they make, as long as they act in good faith, without conflicts of interest, and have a rational belief that the decisions will benefit the company. The BJR doctrine limits court intervention in evaluating business decisions unless there is clear evidence of abuse of power, negligence, or underlying conflicts of interest. Consequently, the risks faced by Directors in common law systems are depend on their assessments of what is best for the company, granting them greater freedom to make decisions based on their business considerations. Courts tend to be more cautious in evaluating Directors' decisions, providing them with greater legal protection unless it can be demonstrated that the decisions violate the fundamental principles requiring Directors to act in the best interests of the company.

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4. CONCLUSION

A comparison of the application of the Business Judgment Rule (BJR) doctrine in the Indonesian legal system which adheres to civil law and the Australian legal system which is based on common law shows significant similarities and differences. Both countries provide legal protection for Directors who make business decisions in good faith and without conflict of interest, but the fundamental difference between the two legal systems lies in their approaches to the sources of law and the implementation of legal rules. Indonesia, which operates under a civil law system, relies heavily on written regulations and legal codification that offer clear guidance. However, the Business Judgment Rule (BJR) regulation in the Limited Liability Company Law remains relatively general and less comprehensive compared to Australian standards. In contrast, Australia's common law system places a greater emphasis on jurisprudence as the primary source of law. The Australian Corporations Act provides a more detailed framework regarding the criteria and application of the BJR, outlining the principles of prudence and accuracy that Directors must adhere to when making business decisions. This distinction highlights the unique legal characteristics of each country: Indonesia prioritizes legal certainty through codified regulations, while Australia values flexibility through court decisions that establish precedents.

The distinction between the regulation of business judgment in civil law and common law legal systems stems from the differing legal approaches employed. In a civil law system, such as that of Indonesia, the legal framework is typically more structured and definitive, with clearly articulated rules governing the obligations and responsibilities of a company's Board of Directors. Conversely, in a common law system, law evolves through precedents and court rulings, allowing for greater flexibility in the application of legal principles, including business considerations. This flexibility permits the Board of Directors to make decisions with a broader scope for interpretation, provided those choices are made in good faith and devoid of any conflict of interest.

Consequently, the civil law system places a premium on certainty and adherence to written regulations, while the common law system accommodates more dynamism and legal evolution through judicial practice. A notable contrast between the civil and common law systems is evident in how business considerations are regulated for a company's Board of Directors. In Indonesia's civil law framework, the regulations are more stringent, prioritizing legal certainty by necessitating that the Board follows detailed guidelines, thereby enforcing rigorous oversight of their duties and minimizing legal risks. In contrast, the business judgment rule (BJR) found in common law systems extends greater latitude to the Board in making business decisions, as long as those decisions reflect good faith and a rational basis. Courts in these systems are generally reluctant to intervene unless there is clear evidence of negligence or conflicts of interest. It illustrates the differing approaches to oversight, flexibility, and risk management in decision-making by the Board of Directors across the two legal systems.

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