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Regulation of AI Utilization in Indonesia: Business Judgment Rule Protection for Directors' Decision-Making

Adelia Kusuma Wardhani

Faculty of Law, Universitas Islam Indonesia, Yogyakarta, Indonesia, adeliawardhani@uii.ac.id, ORCID ID 0009-0009-7018-2894

Catur Septiana Rakhmawati*

Faculty of Law, Universitas Islam Indonesia, Yogyakarta, Indonesia, caturseptiana@uii.ac.id, ORCID ID 0009-0001-8598-7419

Andika Rian Putra Tama

Associate, Abrina Silaban Partnership, Jakarta, Indonesia, andikarian@abrinalawfirm.com

Abstract. The use of AI-Decision Making by directors is not a new phenomenon, particularly in light of the rapid technological advancements occuring each year. The legal Issues arising from this development concern, first the regulatory status of AI- based Decision-Making within Indonesia's regulatory framework, as well as the application of the Business Judgment Rule doctrine resulting from losses to the company resulting from the use of AI-Decision Making by directors. This study uses a normative legal research method that integrates a comparative study approach with an analysis of the legal and regulatory framework. The results show that Indonesia currently lacks specific and comprehensive regulations governing the use of Artificial Intelligence (AI) in corporate governance or decision-making by directors. The use of AI in business decision-making by directors is not fundamentally contrary to corporate law and does not eliminate the directors' responsibilities as the company's governing body. AI should be viewed as a decision-support tool that provides information, analysis, and recommendations to directors, not as a substitute for the business judgment and discretion inherent in the director's position. Therefore, the limits of the Business Judgment Rule's application to decisions based on AI recommendations lie not in the use of AI itself, but rather in the extent to which directors maintain independent judgment and adequate oversight of the AI system used.

Keywords: Artificial Intellegence, Decision-Making, Directors, Business Judgement Rule

Abstrak. *Penggunaan AI-Decision Making oleh seorang direksi bukan merupakan hal yang baru dengan pergerakan teknologi yang pesat disetiap tahunnya. Permasalahan yang kemudian muncul berkaitan dengan kedudukan pengaturan penggunaan AI-Decision Making dalam kerangka regulasi di Indonesia, serta penerapan doktrin business judgement rule akibat dari kerugian perseroan dengan penggunaan AI-Decision Making oleh Direksi. Penelitian ini menggunakan metode penelitian hukum normatif yang mengintegrasikan pendekatan studi komparatif dengan analisis kerangka hukum dan peraturan. Hasil penelitian menunjukkan bahwa hingga saat ini Indonesia belum memiliki pengaturan yang secara khusus dan komprehensif mengatur penggunaan Artificial Intelligence (AI) dalam tata kelola perusahaan maupun pengambilan keputusan oleh direksi. Penggunaan AI dalam pengambilan keputusan bisnis oleh direksi pada dasarnya tidak bertentangan dengan hukum perseroan dan tidak menghilangkan tanggung jawab direksi sebagai organ pengurus perseroan. AI harus dipandang sebagai alat bantu (decision-support tool) yang berfungsi menyediakan informasi, analisis, dan rekomendasi bagi direksi, bukan sebagai pengganti penilaian dan diskresi bisnis yang melekat pada jabatan direksi. Dengan demikian, batas penerapan Business Judgment Rule terhadap keputusan yang didasarkan pada rekomendasi AI tidak terletak pada penggunaan AI itu sendiri, melainkan pada sejauh mana direksi tetap menjalankan penilaian independen dan pengawasan yang memadai terhadap sistem AI yang digunakan.*

Kata Kunci: *Artificial Intellegence, Pengambilan Keputusan, Direksi, Business Judgement Rule*

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INTRODUCTION

Artificial Intelligence (AI) is an emerging technological phenomenon that is currently developing within society. AI refers to a technology that enables computers and machines to simulate human cognitive processes. [1] The idea of this technology originated in 1950 when a renowned mathematician, Alan Turing, published an article entitled *"Computing Machinery and Intelligence."* In this article, Turing raised a profound question, "Can Machines Think?" This question later became the foundation that encouraged scientists to conduct further research into this technology. [2] Subsequently, in 1956, the term "Artificial Intelligence" was first introduced at the Dartmouth College Conference. This conference is widely regarded as the starting point of the development of AI worldwide.[3]

According to the World Economic Forum, AI is predicted to replace approximately 85 million jobs by 2025. However, the report also highlights that AI will create around 97 million new jobs. This indicates that the emergence of AI does not necessarily eliminate employment opportunities altogether, but rather transforms the types of skills required by the labor market.[4] The use of AI can provide various benefits in human life, including:

1. Speed and Efficiency in Data Analysis Processes.
2. Improved Accuracy and Objectivity.
3. Superior Predictive Capabilities.
4. Decision-Making.[5]

The benefits of AI have significantly transformed modern corporate governance. One of its most common business applications is predictive analytics, enabling companies to forecast product demand, market trends, and consumer behavior, thereby

[1] https://portal.itbvinusbogor.ac.id/berita/mengenal-kecerdasan-buatan-ai-pengertian-manfaat-dan-penerapannya-dalam-kehidupan-sehari-hari diakses pada 14 Juni 2026.

[2] https://lspartificialintelligence.id/sejarah-artificial-intelligence-dari-perkembangan-hingga-dampaknya/ diakses pada 12 Juni 2026.

[3] https://www.ruangguru.com/blog/apa-itu-artificial-intelligence diakses pada 12 Mei 2026.

[4] https://csirt.unair.ac.id/ai-dan-masa-depan-pekerjaan-revolusi-atau-ancaman/ diakses pada 14 Juni 2026.

[5] https://portal.itbvinusbogor.ac.id/berita/mengenal-kecerdasan-buatan-ai-pengertian-manfaat-dan-penerapannya-dalam-kehidupan-sehari-hari diakses pada 14 Juni 2026.

supporting proactive business strategies. AI is also widely used to analyze customer data and optimize business operations. As a result, AI is no longer merely an administrative support tool but has become an integral part of strategic corporate decision-making.[6]

The Board of Directors is a primary corporate organ responsible for managing the company. Article 92 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies provides that the Board of Directors is responsible for the management and operational activities of the company.[7] In managing the company's operational activities, the Board of Directors is responsible for various aspects, ranging from managerial affairs, financial matters, to corporate governance.[8] Within a competitive business ecosystem, the Board of Directors is required to make decisions in the best interests of the company. This is further emphasized in Article 92 paragraph (2) of the Company Law, which provides that the Board of Directors may make decisions deemed appropriate for the benefit of the company.[9]

Due to time constraints and the complexity of corporate governance, directors may utilize AI to support decision-making by providing relevant information and analysis. However, reliance on AI does not eliminate the risk of decisions that may ultimately cause losses to the company. In such cases, directors may invoke the Business Judgment Rule (BJR), which protects them from personal liability for business decisions made in good faith, with due care, and based on adequate information.[10]

Based on the background description as previously elaborated, the development and utilization of AI within the corporate ecosystem provide opportunities for the Board of Directors to employ such technology as a supporting tool in the decision-making process. This condition raises an intriguing legal issue that requires further examination, particularly concerning the extent to which the business judgment rule

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[6] https://binus.ac.id/malang/computer-science/2024/12/03/kecerdasan-buatan-dalam-pengambilan-keputusan-bisnis/ diakes pada 14 Juni 2026.

[7] Pasal 92 ayat (1) Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas.

[8] https://mgpartners.id/tanggung-jawab-hukum-direksi-dalam-manajemen-perusahaan/ diakses pada 14 Juni 2026.

[9] Pasal 92 ayat (2) Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas.

[10] Sudarna "Penerapan *Business Judgment Rule* Terkait dengan Keputusan Direksi PT BUMN". Stricta Jurnal Ilmu Hukum dan Vol.3 No.3, April 2025, hal. 195.

doctrine can provide legal protection for directors against losses arising from decisions made through the utilization of AI. Therefore, this journal aims to analyze the regulation of AI utilization in Indonesia and examine the application of the business judgment rule doctrine to directors’ decision-making processes involving the use of AI. This journal is entitled “Regulation of AI Utilization in Indonesia (Business Judgment Rule Protection: Directors’ Decision-Making)”.

METHODOLOGY

This research employs a normative legal research method that incorporates a comparative study approach with an analysis of legal frameworks and regulations. The primary legal instruments referred to in this research include Law Number 40 of 2007 concerning Limited Liability Companies; Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions; Law Number 27 of 2022 concerning Personal Data Protection; and the Circular Letter of the Minister of Communication and Informatics Number 9 of 2023 concerning Artificial Intelligence Ethics. The research materials are derived from various sources, including academic books, peer-reviewed journals, scientific articles, legislation, and its implementing regulations. To formulate the discussion and arrive at well-founded conclusions, each source is systematically analyzed and evaluated, then synthesized with additional materials to ensure a comprehensive and coherent examination of the research subject. Delaware and Singapore were selected based on functional comparability rather than legal-family similarity. Both jurisdictions have well-established statutory and case law governing directors' fiduciary duties, the Business Judgment Rule, and directors' reliance on expert information, making them suitable benchmarks for examining AI-assisted corporate decision-making.

RESULT AND DISCUSSION

LEGAL REGULATION ON THE USE OF ARTIFICIAL INTELLIGENCE (AI) IN INDONESIA

The OECD Expert Group defines Artificial Intelligence as:

"a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments. Different AI systems vary in their levels of autonomy and adaptive- ness after deployment." [11] AI enables computer systems to simulate human intelligence, including learning, reasoning, pattern recognition, and decision-making. In the business context, AI supports strategic decision-making by analyzing large volumes of data, predicting market trends, and assisting managers in responding to changing business conditions.[12]

The use of AI has expanded beyond assisting managers to supporting corporate decision-making, making its adoption increasingly common among companies. According to OECD data, the percentage of companies using AI increased from 8.7% in 2023 to 20.2% in 2025. One example is Warner Bros. Pictures International (WBPI), which adopted the AI-based Cinelytic platform to provide predictive analytics and support faster, more informed business decisions.[13]

The adoption of Cinelytic by WBPI demonstrates that AI has become an important tool in corporate decision-making. However, unlike rule-based decisions, decisions made by corporate boards require judgment, business acumen, and the balancing of various considerations, meaning AI can support but not replace the directors' decision-making function.[14] A similar trend can be observed in Indonesia. For example, in February 2026, Bank Central Asia Tbk (BCA) obtained ISO 27701:2019 for

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[11] Mertens, *The Use Of Artificial Intelligence In Corporate Decision-Making At Board Level: A Preliminary Legal Analysis Wp 2023-01 Working Paper Series The Use of Artificial Intelligence in Corporate Decision-Making at Board Level: A Preliminary Legal Analysis*.

[12] Vasilj and Torbica, "AI in Management Decision-Making: Benefits, Challenges, and Future Perspectives."

[13] Business Wire, "Data Driver Cinelytic Engages Warner Bros. Pictures International to Utilize Their Revolutionary AI-Driven Content and Talent Valuation System."

[14] Langenbucher, *Ownership and Trust-A Corporate Law Framework for Board Decision-Making in the Age of AI.*

data privacy management and ISO 42001:2023 for artificial intelligence management, demonstrating its commitment to responsible AI governance.[15]

The adoption of AI utilization by companies in Indonesia requires a deeper examination, particularly in relation to Indonesia's existing regulatory framework. The regulation concerning the use of AI can be indirectly identified in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as the Electronic Information and Transactions Law). As stipulated in Article 1 paragraph (8), it provides that:

> *"An electronic agent is a device within an electronic system that is created to perform actions on specific electronic information automatically, which is operated by a Person."* [16]

Furthermore, Law Number 27 of 2022 concerning Personal Data Protection (hereinafter referred to as the Personal Data Protection Law) indirectly relates to the use of AI by regulating the processing of personal data, including its collection, processing, storage, disclosure, and deletion. In addition, the Circular Letter of the Minister of Communication and Informatics Number 9 of 2023 concerning Artificial Intelligence Ethics provides ethical guidance for AI governance and encourages organizations to adopt responsible AI practices.

Based on the aforementioned regulations, the use of AI as a decision-making tool within a company has not yet been specifically regulated in a manner that establishes clear limitations on its utilization and the extent of responsibility borne by corporate organs that employ such technology. This issue is important to regulate, considering that the authority to make decisions within a company fundamentally belongs to the corporate organ, namely the Board of Directors. Article 92 paragraph (2) of the Company Law stipulates:

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[15] Ocean By BCA, "Mengelola AI Secara Bertanggung Jawab: Langkah BCA Menuju Keberlanjutan Digital."

[16] Pasal 1 ayat (8) Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik.

"The Board of Directors is authorized to carry out management as referred to in paragraph (1) in accordance with policies deemed appropriate, within the limits stipulated under this Law and/or the articles of association." [17]

These provisions demonstrate that the position of the Board of Directors holds a strategic role within a company, particularly in the process of decision-making.. In this context, ethical considerations and regulations governing the use of AI are essential in determining the scope of responsibility of directors who utilize AI. Where a decision is made based on AI-generated analysis, the responsibility arising from the failure of such a decision must be clearly established through a specific legal norm.

Article 97 of the Company Law requires the Board of Directors to manage the company in good faith and imposes personal liability for losses resulting from fault or negligence. This raises the question of whether reliance on AI in decision-making may constitute fault or negligence, highlighting the need for specific regulations governing AI in the corporate sector. In this regard, the OECD has introduced value-based principles to promote the development and use of trustworthy AI while respecting human rights and democratic values.These value-based principles include:[18]

1. *Inclusive growth, suistainable development and well-being;*
2. *Human Rights and democratic values, including fairness and privacy;*
3. *Transparency and explainability;*
4. *Robustness, security and safety;*
5. *Accountability.*

These principles provide guidance for directors in using AI as a decision-making tool. However, the Indonesian Company Law does not yet expressly regulate directors' reliance on AI-generated information. By contrast, Section 189 of the Australian Corporations Act 2001 permits directors to rely on information or advice provided by competent employees, professional advisers, or experts, provided they reasonably

[17] Pasal 92 ayat (2) Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas.
[18] Organisation for Economic Co-operation and Development, "Artificial Intellegence."

believe such persons are reliable, act in good faith, and independently assess the information before relying on it.

A similar approach can be found in Section 141(e) of the Delaware General Corporation Law, which provides:

> *"A member of the board of directors, or a member of any committee designated by the board of directors, shall, in the performance of such member's duties, be fully protected in relying in good faith upon the records of the corporation and upon such information, opinions, reports or statements presented to the corporation by any of the corporation's officers or employees, or committees of the board of directors, or by any other person as to matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the corporation."*

Similarly, Delaware law protects directors who, in good faith, rely on information, opinions, or reports provided by professionals or experts possessing relevant competence. However, such protection is not absolute, as directors must independently evaluate the information and may not rely blindly on expert recommendations. Likewise, Section 157C of the Singapore Companies Act 1967 permits directors to rely on information or advice provided by competent employees, professional advisers, experts, or other directors acting within delegated authority. Such reliance is permitted only where directors act in good faith, make appropriate inquiries where necessary, and have no knowledge that the reliance is unwarranted.

These three jurisdictions permit directors to rely on professionals and experts, provided they act in good faith and satisfy the applicable legal requirements. However, these reliance frameworks do not expressly accommodate AI, as they are limited to reliance on natural persons. Consequently, the legal status of AI-assisted decision-making remains uncertain, particularly because the Indonesian Company Law has not yet expressly regulated the use of AI in corporate decision-making.

LIMITATIONS ON THE APPLICATION OF THE BUSINESS JUDGMENT RULE IN ARTIFICIAL INTELLIGENCE-BASED DECISION-MAKING BY THE BOARD OF DIRECTORS

This article argues that the Board of Directors' use of AI should not be viewed merely as technological assistance, but as a development that may affect the duty of care and the application of the Business Judgment Rule (BJR). It therefore examines whether reliance on AI satisfies the duty of care and how BJR protection applies to AI-assisted business decisions. Under Article 109 point 1 of Law Number 6 of 2023, which amended Article 1 point 5 of Law Number 40 of 2007, the Board of Directors is the company organ responsible for managing and representing the company. These functions are not vested in the General Meeting of Shareholders (GMS) because of the company's status as a separate legal entity. Accordingly, under agency theory, shareholders appoint directors to manage the company, creating a fiduciary relationship that gives rise to directors' fiduciary duties.

Conceptually, the principle of fiduciary duty consists of the duty of care and the duty of loyalty. [19] The duty of care requires directors to act with due diligence and prudence in making decisions and establishing policies, based on adequate and reasonable information.[20] Meanwhile, under the duty of loyalty, decisions made by directors must be solely directed toward the interests of the company and not for their personal benefit.[21] The standards for implementing the duty of care principle applicable to directors require that decisions be made in good faith, carried out for a proper purpose, exercised with responsible discretion, and free from any conflict of interest.[22]

Therefore, the duties of directors are not simple, as they are required to prioritize the interests of the company and its shareholders above their personal interests. [23]

[19] Haicel Muhammad et all, "Tanggung Jawab Direksi Perseroan Terbatas Atas Kerugian Perusahaan Ditinjau Dari Prinsip Fiduciary Duty", *Jurnal Multidisiplin Inovatif*, Vol 10 No. 1, hlm. 480-486, 2026

[20] Wihelmus Jemarut, "Mewujudkan Doktrin Duty Of Care Dan Business Judgment Rule Dalam Hukum Perseroan Terbatas Di Indonesia", *Jurnal Hukum Agama Hindu*, Volume 2 Nomor 2, hlm. 81-90, 2019

[21] *Ibid.*

[22] Ridwan Khairandy, *Pokok-Pokok Hukum Dagang Indonesia*, Cetakan Ketiga Revisi Kedua (Yogyakarta: FH UII Press, 2017).

[23] Bunga Dita Rahma Cesaria, "Memahami Fiduciary Duty Direksi Berdasarkan Hukum Indonesia: Studi Perbandingan dengan Hukum Inggris", *Begawan Abioso*, Volume 16 Nomor 1, hlm. 11-22, 2025

Furthermore, every decision made by the Board of Directors carries legal consequences. Decisions made by directors do not always result in benefits for the company, as business risks that lead to losses are an inevitable possibility. This condition forms the basis for the application of the business judgment rule doctrine, which provides protection to directors for decisions that are deemed detrimental to the company.[24]

Failure to comply with the prudential standards under Article 97 of the Company Law may result in directors being held personally liable. Article 97 paragraph (5) letter b further requires directors to prove that they managed the company in good faith and with due care in the company's interests and in accordance with its purposes and objectives, reflecting their fiduciary obligations under agency theory. The business judgment rule is a doctrine that is no longer unfamiliar in Indonesia, particularly in legal matters concerning the Board of Directors of a company.[25] This doctrine is a legal principle originating from the common law system of corporate law in the United States. In the United States, this doctrine prevents courts from second-guessing business decisions made by directors, provided that such decisions are made in good faith.[26] Furthermore, *Black's Law Dictionary* explains that the business judgment rule is a doctrine that protects directors from liability arising from business decisions concerning corporate transactions, as long as such decisions are made within the scope of their authority, with due care, and in good faith.[27] Sutan Remy Sjahdeini, a prominent Indonesian legal scholar, stated that the business judgment rule is a principle designed to protect directors from the duties and responsibilities imposed upon them, provided that their actions are carried out based on good faith.[28] Therefore, the application of the business judgment rule doctrine essentially requires the existence of good faith in the decision-making process, allowing legal protection

[24] Purnama Hadi Kusuma, Usnadi, Abdul Rahman Salman Faris, "Business Judgment Rule: Prinsip Perlindungan Bagi Direksi dalam Pengambilan Keputusan Bisnis Perusahaan", *Aliansi : Jurnal Hukum, Pendidikan dan Sosial Humaniora*, Volume. 3, Nomor. 1, hlm.82-87, 2026

[25] https://www.hukumonline.com/berita/a/business-judgement-rule--doktrin-fundamental-bagi-direksi-agar-tidak-terjerat-kasus-lt666c79037ddd4/ diakses pada 13 Juni 2026.

[26] Robin Panjaitan dkk, "Penerapan Prinsip Business Judgment Rule terhadap Direksi yang Melakukan Kebijakan yang Merugikan Perusahaan", *PATIK : Jurnal Hukum*, Vol.10 No.1, (April 2021), hal. 5.

[27] *Ibid.*

[28] Sutan Remi Syahdeni, *Tanggung Jawab Direksi dan Komisaris* (Jakarta: Pustaka Yustisia, 2011), hal. 78.

to be granted for actions undertaken honestly, carefully, and solely in the interests of the company.

In managing the company, the Board of Directors must make informed decisions to avoid potential losses. Given the breadth of its responsibilities, it is reasonable for directors to delegate certain managerial functions to management or other non-Board executives and rely on them to perform their respective duties.[29] Nevertheless, the liability of the Board of Directors cannot be automatically delegated to management. Therefore, the relationship between the Board of Directors and management is based on both an agency relationship and an employment relationship.[30]

The emergence of AI within the corporate ecosystem has created an intriguing phenomenon. In practice, AI can assist in conducting research by gathering information and filtering large volumes of data.[31] The integration of AI into decision-making processes by the Board of Directors demonstrates a significant advancement in the way businesses operate. AI offers faster decision-making processes, data-driven insights, and more strategic outcomes. Numerous companies worldwide have utilized AI to support directors' decision-making processes due to the efficiency it provides. Therefore, AI is considered capable of delivering information that may exceed human expertise.[32]

Decision-making requires data, which is often available in large quantities. The more complex a problem or decision is, the greater the amount of data required to ensure that decisions are made based on adequate information.[33] Computers, algorithms, and artificial intelligence are highly suitable for processing such "big data," enabling them to contribute to improving decision-making processes. More specifically, artificial

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[29] Antonius Alijoyo, "GOVERNANCE and MANAGEMENT: In the context of a two-board system," Indonesia Risk Management Professional Association, 29 April 2022, https://irmapa.org/governance-and-management-in-the-context-of-a-two-board-system/.

[30] Limrogate Immanuel dan Jamalum Sinambela, "Directors' Legal Responsibility in Protecting Workers' Rights," *Jurnal Ilmu Hukum Prima* 8, no. 2 (2025).

[31] https://dqlab.id/peran-ai-sebagai-alat-bantu-utama-riset-jurnalistik-berbasis-data diakses pada 14 Juni 2026.

[32] Jovi Antares, Buyung Solihin Hasugian, Welnof Satria, "Integrasi Artificial Intelligence dalam Sistem Informasi: Meningkatkan Efisiensi dan Otomatisasi", *Device : Journal Of Information System, Computer Science And Information Technology*, Volume 6 Nomor 1, Hlm. 256 – 265, 2025

[33] Florian Möslein, "Robots in the Boardroom: Artificial Intelligence and Corporate Law," dalam *Research Handbook on the Law of Artificial Intelligence* (United Kingdom: Edward Elgar, 2018), https://ssrn.com/abstract=3037403.

intelligence can reduce uncertainty in various forms by generating predictions. In other words, AI is capable of transforming vast amounts of data into smaller, manageable components.

One of the market leaders in the American film industry, Warner Bros. Pictures International (WBPI), has collaborated with Cinelytic Inc., an AI platform designed to provide information and support decision-making processes related to content.[34] The developments that have taken place in the United States have significant potential to be adopted in Indonesia. Another example is Coca-Cola, which has enhanced its marketing strategies through the utilization of data and AI.[35] In its marketing strategy, Coca-Cola targets consumers of carbonated beverages (Coke) worldwide by utilizing big data analytics, image recognition, and AI technologies. As a result, the company's sales increased by up to 189%.

Given the growing global use of AI in corporate activities, it is likely that companies in Indonesia will increasingly employ AI in decision-making processes. However, this development raises important legal issues, particularly the extent to which directors may rely on AI and whether such reliance can be justified under the Business Judgment Rule (BJR). A further issue arises when AI-assisted decisions result in losses to the company, namely whether directors may still obtain protection under the BJR.

Although the use of AI in corporate governance can enhance the quality of business judgment and strengthen the capabilities of the Board of Directors, reliance on AI may become problematic if directors do not fully understand the complexity of AI algorithms or the potential biases contained in the data utilized.[36] This situation may result in decisions that are not based on adequate information, thereby weakening the protection provided by the business judgment rule. It is important to understand that the operation of AI is highly influenced by the algorithms and training models

[34] Business Wire, "Data Driver Cinelytic Engages Warner Bros. Pictures International to Utilize Their Revolutionary AI-Driven Content and Talent Valuation System."

[35] Ade Parlaungan Nasution, "Transformasi Strategi Pemasaran Media Sosial Melalui Kecerdasan Buatan (Ai): Tinjauan Holistik Dan Prospek Masa Depan.", *JIMPAS: Jurnal Ilmu Manajemen Pascasarja,* Volume 1 Nomor 1, hlm.1-12, 2025

[36] Angella Ruth Nyasulu, "Directors and AIAssisted DecisionMaking: Assessing AI's Potential Interaction with Corporate Decision-Making Regulation Regarding Delegation, Reliance, and the Business Judgment Rule," *Speculum Juris* 39, no. 1 (2025).

employed[37] Furthermore, other issues such as "AI hallucinations" further emphasize the duty of directors to limit their reliance on AI, while enhancing their oversight and independent assessment.[38]

The use of AI is not always synonymous with the fulfillment of the duty of care. When directors accept and implement AI-generated recommendations without conducting a critical evaluation of the underlying assumptions, methodologies, or risks contained in such outputs, the Board of Directors has essentially transferred its decision-making assessment process to an algorithmic system.[39] Under such circumstances, the actions of the Board of Directors are inconsistent with their obligation to apply the principle of prudence in managing the company.[40] The practice of using AI in directors' decision-making processes must be assessed against the elements of the business judgment rule (BJR), particularly as stipulated in Article 97 paragraph (5) of the Company Law. Based on Article 97 paragraph (5) of the Company Law, the elements of the BJR are as follows:

1. The loss suffered by the company did not occur ue to the director's fault or negligence;
2. The director has carried out the management of the company in good faith and with due care for the interests of the company and in accordance with its purposes and objectives;
3. The director does not have any direct or indirect conflict of interest in relation to the management actions that resulted in the loss; and
4. The director has taken actions to prevent the occurrence or continuation of such loss.

The first and second elements are essentially interconnected because, in determining whether there is any fault or negligence, the Board of Directors must also demonstrate

[37] Binus University, "Artificial Intelligence: Pengertian, Cara Kerja dan Manfaatnya," Binus University, t.t., diakses 16 Juni 2026, https://binus.ac.id/bandung/2024/02/artificial-intelligence-pengertian-cara-kerja-dan-manfaatnya/.

[38] "AI & the Business Judgment Rule: Heightened Information Duty," *The University of Chicago Law Review*, 15 Januari 2025.

[39] Ibid.

[40] Fransisko Pasaribu, Roida Nababan, Samuel Situmorang, "Tanggung Jawab Direksi Terhadap Keputusan Investasi dan Pengelolaan Keuangan Berbasis Artificial Intelligence dalam Perseroan Terbatas di Indonesia", *Jurnal Ilmu Hukum*, Volume. 15 Nomor. 1, 58-70, 2026.

that the management of the company has been conducted based on good faith and due care. Unfortunately, there are no specific criteria or limitations regarding the interpretation of "good faith" and "due care," particularly under the Company Law. *Black's Law Dictionary* defines good faith as honesty in belief or purpose; faithfulness to one's duties or obligations; compliance with generally accepted commercial standards of fair dealing in a particular transaction or business; and the absence of any intention to deceive or seek an unreasonable advantage.[41] Good faith is therefore understood as honesty in conducting transactions.[42]

In the context of corporate law, good faith is not merely interpreted as the absence of an intention to harm the company, but also as the existence of a belief, based on the values of honesty, that the actions undertaken are directed toward the best interests of the company. The use of AI in directors' decision-making processes does not, in principle, eliminate the element of good faith, as long as AI is utilized as a means or tool to improve the quality of decision-making, enhance the accuracy of analysis, and serve the best interests of the company.[43]

The next element of the business judgment rule (BJR) is the absence of a conflict of interest. Traditionally, a conflict of interest is understood as a condition in which directors have personal, familial, or business affiliation interests that may affect the objectivity of decision-making.[44] However, the use of AI expands the dimension of conflicts of interest, as such conflicts do not necessarily arise from the personal relationships of directors but may also originate from the AI systems being utilized.

For instance, a company may utilize an AI system developed by a vendor that has an affiliation with a particular director or shareholder.[45] Under such circumstances, the recommendations generated by the AI may not be entirely neutral, as they may be

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[41] Bryan A. Garner, *Black's Law Dictionary*, 8th ed. (USA: West Publishing Co, 2004).

[42] Ariyanto, "Perbandingan Asas Iktikad Baik: Dalam Perjanjian Menurut Sistem Hukum Civil Law (Eropa continental) dan Common Law (Anglosaxon)," *Jurnal Komunikasi Hukum* 2, no. 2 (2016).

[43] Fransisko Pasaribu, et all, *Loc. Cit.*

[44] Munazar Umar, "Business Judgment Rule Dalam Uu Bumn 2025: Antara Perlindungan Direksi Dan Celah Impunitas," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 4, no. 2 (2026), https://doi.org/https://doi.org/10.61104/alz.v4i2.4820.

[45] Benjamin Liu dan John Selby, "Directors' defence of reliance on recommendations made by artificial intelligence systems: Comparing the approaches in Delaware, New Zealand and Australia," *Australian Journal of Corporate Law* 34, no. 141 (2019), https://ssrn.com/abstract=4541180.

influenced by the algorithm design, data sources, or business objectives of the system developer. A conflict of interest may also arise when directors choose to use a particular AI system not based on its quality or accuracy, but due to certain economic benefits or business relationships with the technology provider.

Furthermore, the use of generative AI trained on specific datasets also has the potential to produce algorithmic bias, which may indirectly benefit certain groups while disadvantaging others.[46] Therefore, in the context of AI utilization, the element of the absence of conflict of interest does not merely require directors to be free from personal interests, but also requires directors to ensure that the AI systems being utilized are free from external influences that may undermine the objectivity of the decision-making process.

The last element is that the Board of Directors has taken actions to prevent the occurrence or continuation of such losses. This element emphasizes that directors are not merely required to demonstrate that a decision was made in good faith, but must also prove the existence of active measures taken to prevent or minimize potential losses. In the context of AI utilization, this obligation becomes increasingly important because AI systems are inherently not free from the risks of errors, biases, or prediction failures.[47]

The use of AI is often promoted as a means to improve the accuracy and efficiency of decision-making processes. However, various studies have shown that AI systems may generate hallucinations, prediction errors, or recommendations that do not correspond with the company's actual conditions.[48] Therefore, directors who utilize AI cannot simply argue that losses occurred due to system errors. Instead, directors must demonstrate that they have taken reasonable measures to identify, monitor, and control the risks associated with AI utilization.[49]

[46] Ch. Mahmood Anwar, "The Algorithmic Boardroom: AI-Driven Governance and Strategic Decision Making," *AIB Insights*, advance online publication, 2026, https://doi.org/https://doi.org/10.46697/001c.157710.

[47] Ibid.

[48] Ibid.

[49] Matti Mäntymäki dkk., "Putting AI Ethics into Practice: The Hourglass Model of Organizational AI Governance," *ArXiv.org*, advance online publication, 2023, https://doi.org/https://doi.org/10.48550/arXiv.2206.00335.

Such preventive measures may include selecting AI systems that have undergone testing and validation processes, implementing human oversight mechanisms, verifying AI outputs before using them as a basis for decision-making, and continuously monitoring the performance of the systems utilized.[50] Furthermore, if indications are found that AI-generated recommendations may potentially cause losses to the company, directors are required to conduct a reassessment and take relevant measures to prevent greater losses.

In this context, the principles of human review, verification, and oversight become highly relevant.[51] The protection provided by the business judgment rule (BJR) should not automatically be granted to directors who passively accept and implement AI-generated recommendations without conducting independent assessments. Conversely, BJR protection is more appropriately granted when directors are able to demonstrate that they have exercised adequate oversight over the use of AI and taken the necessary measures to prevent the occurrence or continuation of losses.

Under the Business Judgment Rule, directors must base their decisions on adequate information as part of their duty of care; otherwise, they may lose BJR protection. Although AI can provide sophisticated information, its use does not automatically satisfy the requirements of good faith or the duty of care. Directors must still independently assess AI-generated information before making decisions. In the use of AI, directors are expected to compare their business strategies with AI-generated predictions and utilize AI-assisted risk and benefit assessments. In the case of Smith v. Van Gorkom (Delaware, 1985), directors could not rely on the protection of the business judgment rule (BJR), not because of the outcome of their decision, but because of their lack of preparation in the decision-making process.[52] The court

[50] Yao Xie dan Walter Cullen, "Beyond Procedural Compliance: Human Oversight as a Dimension of Well-being Efficacy in AI Governance," *ArXiv.org*, advance online publication, 2025, https://doi.org/DOI:10.48550/arXiv.2512.13768.

[51] Mohammad Khairul Islam Juman dkk., "Artificial Intelligence in Business Decision Making: Legal, Ethical, & Strategic Implications," *International Journal Of Academic Research In Economics And Management Sciences* (2025) 14, no. 4 (t.t.), https://doi.org/http://dx.doi.org/10.6007/IJAREMS/v14-i4/26905.

[52] Legal Clarity, "Smith v. Van Gorkom and the Business Judgment Rule", 12 Juli 2025, https://legalclarity.org/smith-v-van-gorkom-and-the-business-judgment-rule/, diakses 20 Juni 2026

emphasized that decisions must be based on adequate information.[53] This means that losses suffered by the company should not automatically be attributed to directors; rather, an assessment must be conducted regarding the actions and considerations undertaken by directors prior to making the decision.

As emphasized in In re Caremark International Inc. Derivative Litigation (1996) and Marchand v. Barnhill (2019), directors must make good faith efforts to establish systems that provide adequate information for managing corporate risks. In this context, the use of AI to support strategic decision-making may demonstrate directors' efforts to fulfill their fiduciary duties. However, AI governance also requires directors to exercise adequate oversight, assess AI-generated recommendations critically, and manage the risks associated with AI systems. Accordingly, good faith in AI-assisted decision-making extends beyond acting in the company's best interests to ensuring effective human oversight of AI.

Passador and Montagnani argue that the fiduciary duty standard should evolve to accommodate the use of AI, one aspect of which is the transformation of the "duty of care" into the "duty of AI due care".[54] This concept emphasizes that the use of AI requires directors to possess sufficient cognitive capacity to question, understand, and oversee technological tools that may influence corporate choices.[55]

As previously discussed, directors cannot fully delegate their duties to AI; directors may only rely on AI when it is utilized as a tool for gathering information by experts. As long as directors use AI within the limits permitted under the Company Law, their actions may be justified under the business judgment rule (BJR), even if such actions ultimately result in losses.[56] In fact, the use of AI may strengthen the possibility for directors to seek protection under the business judgment rule (BJR), as AI can enhance the quality of business judgment and assist directors in making appropriate decisions.

[53] Möslein, "Robots in the Boardroom: Artificial Intelligence and Corporate Law."

[54] Maria Lillà Montagnani dan Maria Lucia Passador, *Fiduciary Duties and Business Judgment Rule 2.0 in the AI Act Age*, 9 Juni 2025, https://ssrn.com/abstract=5714102.

[55] Gavin Hinks, "Directors should be liable' for AI boardroom use," 29 Januari 2026, https://boardagenda.com/2026/01/29/directors-should-be-liable-for-ai-boardroom-use/.

[56] Nyasulu, "Directors and AIAssisted DecisionMaking: Assessing AI's Potential Interaction with Corporate Decision-Making Regulation Regarding Delegation, Reliance, and the Business Judgment Rule."

However, if directors fail to properly assess and monitor the use of AI through AI experts, their reliance on AI may be considered negligence, resulting in the loss of protection under the BJR.[57]

Although the arguments supporting the application of the business judgment rule (BJR) to AI-assisted decision-making are relatively strong, there are several criticisms, one of which was presented by Cowger. According to Cowger, the BJR should not be applied to directors as a form of fiduciary duty implementation. Cowger argues that directors' decisions based on their reliance on AI cannot be considered judgments made based on adequate information.[58] n the United States case of Smith v. Van Gorkom, the court held that directors who make decisions based on an "unintelligent or unadvised judgment" are not entitled to the protection of the BJR.

Based on this decision, Cowger argues that directors may fail to consider all material information because they do not fully understand how AI algorithms process data or the potential biases contained within such data.[59] Consequently, the decisions made may not reflect adequate information and may therefore be inconsistent with the provisions of the Company Law. Although Cowger's concerns are valid, directors may still reasonably rely on AI by collaborating with AI experts to ensure the accuracy and reliability of the information used in the decision-making process. This approach effectively addresses the concerns raised by Cowger.

Several organizations, such as the Australian Institute of Company Directors (AICD) and the Human Technology Institute (HTI) at the University of Sydney, have issued recommendations or guidelines for AI governance in decision-making processes, as presented in the following table.[60]

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[57] Ibid.

[58] Alfred R. Cowger Jr, "Corporate Fiduciary Duty in the Age of Algorithms," *Journal of Law, Technology, and Internet* 14, no. 2 (2023), https://scholarlycommons.law.case.edu/jolti/vol14/iss2/1.

[59] Ibid.

[60] Australian Institute of Company Directors, "AI use by directors and boards Early insights," Australian Institute of Company Directors, Desember 2025, https://www.aicd.com.au/content/dam/aicd/pdf/tools-resources/director-resources/ai-use-by-directors-and-boards.pdf.

Table 1: Practical guidance for directors and boards using AI

Area Guidance	**Description**
Put board AI use on the agenda	Boards should add the board's own AI use to the board's agenda and have a dedicated discussion to gauge the board's appetite for collective or individual director use.
Confidentiality, privacy and privilege	Directors should not input board papers or other information subject to confidentiality, privacy obligations, or legal professional privilege into public or open AI systems that have not been vetted by the organisation. Doing so can give rise to a range of risks, including breaching confidentiality and privacy obligations and waiving privilege, particularly where the AI provider can use inputs for training or developing the AI. Directors should not attempt to obtain legal advice from an AI system; such systems cannot provide reliable legal advice and sharing sensitive information with the AI system supposedly for the purpose of seeking legal advice will not be privileged and may be discoverable.
Data security	Boards looking to use non-public information with AI should ensure the relevant AI system is confirmed by the organisation as secure, with appropriate cybersecurity controls.
Document retention and destruction	Boards should ensure their document retention, archival and disposal policies are expanded to account for board and director AI use. For example, consider how a director's prompts to an enterprise generative AI platform, and its responses, are managed.
Role-based access	Consider enterprise-grade AI tools with role-based access controls, including access to organisational data and records. This can help ensure directors have access to the right level of information and capabilities they need to perform their role. It

	also safeguards board information against those in the organisation who are not entitled to access it.
Human review and verification	Just as with organisational AI use, directors using AI need to challenge and verify its output. Company secretaries should also implement appropriate risk mitigations and controls, in particular human review if using AI for use cases related to board minutes.
Internal policies, processes and controls	Boards should require the organisation's policies, processes and controls (such as acceptable use policies and its AI register or inventory) to be updated to account for any board, director and management use of AI and the handling of associated records.
Training and support	Consider any training and support needed for directors to proficiently and safely use AI and whether there are opportunities for collective experimentation among the board.

Source: AICD's and HTI's A Director's Guide to AI Governance.

Accordance to that guidance, the use of AI is permissible and consistent with the business judgment rule provided that it complies with the Company Law and that directors continue to actively assess and supervise the recommendations provided by AI. The protection offered by the business judgment rule remains relevant in the context of AI utilization; however, the standard of directors' duty of care in its implementation becomes higher. Directors must apply the duty of AI due care and AI oversight in order to ensure that the use of AI demonstrates the application of due care by ensuring that AI systems have undergone professional feasibility testing and data validation processes. If such obligations are disregarded by directors, the decisions made may be considered irrational, and in such circumstances, the protection provided by the business judgment rule becomes weakened.[61]

[61] Fransiko Pasaribu dkk, op. cit. hlm 66.

CONCLUSION

Based on the findings, Indonesia currently lacks a specific and comprehensive legal framework governing the use of Artificial Intelligence (AI) in corporate governance and directors' decision-making. Existing regulations remain fragmented and sectoral, creating legal uncertainty regarding directors' liability for AI-assisted decisions. Although no dedicated regulation exists, internationally recognized AI governance principles, particularly those developed by the OECD, provide useful guidance by emphasizing transparency, accountability, security, and meaningful human oversight. Accordingly, AI should be regarded as a decision-support tool rather than a substitute for directors' business judgment, meaning that directors remain legally responsible for decisions made with AI assistance.

The Business Judgment Rule continues to apply to AI-assisted decisions, provided directors act in good faith, on an informed basis, without conflicts of interest, and with due care. However, the use of AI raises the standard of directors' duty of care by requiring AI due care and oversight, including system validation, data verification, monitoring of AI outputs, and meaningful human review before relying on AI-generated recommendations. Consequently, Business Judgment Rule protection depends not on the use of AI itself, but on whether directors exercise independent judgment and maintain effective oversight. Protection may therefore be denied where directors blindly rely on AI, ignore foreseeable technological risks, or fail to verify AI-generated recommendations.

COMPETING INTEREST

The author declares that this research was conducted independently and that there are no potential conflicts of interest related to the research, writing, and/or publication process.

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