

## *ESG Integration in SOE Directors' Duties: Comparing Indonesian and Malaysian Corporate Law*

### **Integrasi ESG dalam Tanggung Jawab Direksi BUMN: Komparasi Hukum Indonesia dan Malaysia**

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#### **Abstract**


*This article comparatively analyzes the integration of Environmental, Social, and Governance (ESG) mandates into the fiduciary duties of State-Owned Enterprise (SOE) directors in Indonesia and Government-Linked Companies (GLC) in Malaysia. Utilizing a normative doctrinal approach, this study addresses the systemic tension between ESG transition risks and directors' personal liability. In Indonesia, the rigid state finance doctrine often criminalizes SOE business losses, creating a chilling effect on sustainable investments. Conversely, Malaysia treats GLCs as private entities, evaluating failures through civil mechanisms unless decisions are "plainly wrong". To resolve these specific jurisdictional asymmetries, this research actively proposes the novel concept of an "ESG-linked BJR Safe Harbor". The study concludes that courts must definitively elevate ESG compliance from a mere administrative reporting obligation into a highly objective judicial standard, successfully validating it as material evidence of good faith to formally activate the Business Judgment Rule protections for corporate fiduciaries globally and domestically today.*

#### **Abstrak**

Artikel ini menganalisis secara komparatif integrasi mandat Environmental, Social, and Governance (ESG) ke dalam tanggung jawab fiduciaris direksi Badan Usaha Milik Negara (BUMN) di Indonesia dan Government-Linked Companies (GLC) Malaysia. Melalui pendekatan doktrinal normatif, studi ini menyoroti ketegangan sistemik antara risiko transisi ESG dan kewajiban pribadi direksi. Di Indonesia, doktrin keuangan negara yang kaku sering mengkriminalisasi kerugian bisnis BUMN, menciptakan efek jera terhadap investasi berkelanjutan. Sebaliknya, Malaysia memperlakukan GLC sebagai entitas privat, mengevaluasi kegagalan melalui mekanisme perdata kecuali jika keputusan tersebut bersifat "plainly wrong". Untuk mengatasi asimetri yurisdiksional tersebut, penelitian ini mengusulkan konsep inovatif berupa "ESG-linked BJR Safe Harbor". Penelitian menyimpulkan bahwa pengadilan harus secara definitif meningkatkan kepatuhan ESG dari sekadar kewajiban pelaporan administratif menjadi sebuah standar peradilan objektif, guna memvalidasinya sebagai bukti material iktikad baik untuk mengaktifkan perlindungan Business Judgment Rule secara formal bagi seluruh fiduciaris perusahaan di tingkat global maupun di dalam negeri pada masa yang akan datang.



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## A. INTRODUCTION

### 1. Background

In the third decade of the twenty-first century, the global corporate governance landscape is undergoing a fundamental tectonic shift, transitioning inexorably from the classical doctrine of shareholder primacy—exclusively predicated upon profit maximization—toward a paradigm of stakeholder capitalism that positions sustainability at the epicenter of corporate enterprise. Amidst an escalating global climate crisis, post-pandemic supply chain vulnerabilities, pervasive environmental degradation, and intensifying demands for social equity, the integration of Environmental, Social, and Governance (ESG) principles has transcended its historical confines as a mere philanthropic instrument, a performative corporate social responsibility initiative (greenwashing), or a supplementary ethical framework. Instead, ESG has crystallized into an imperative legal norm that directly binds corporate fiduciaries.<sup>1</sup>

This normative acceleration imposes an affirmative obligation on corporate boards to evaluate and quantify non-financial risks—including the transition to net-zero emissions, ethical supply chain governance, data privacy, and cyber resilience—as inextricable components of long-term corporate strategy and the mitigation of risks to going-concern viability.<sup>2</sup> Within the context of modern corporate law, the parameters of the "best interests of the company" standard have undergone a teleological expansion. The phrase can no longer be construed merely as the maximization of short-term quarterly shareholder dividends; rather, it comprehensively encompasses corporate resilience in confronting the systemic and structural risks engendered by global ESG dynamics.<sup>3</sup>

The phenomenon of this expanded fiduciary mandate engenders significantly more acute governance complexities and jurisprudential challenges when transposed onto entities of a hybrid character, such as Indonesian State-Owned Enterprises (SOEs) or

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<sup>1</sup> Geby Khusi Manuella, Jennifer Christina Junyucia, and Yeremia Haganta Kaban, "Legal Framework ESG Sebagai Penguatan Prinsip Good Corporate Governance Dalam Hukum Perusahaan Indonesia," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 6, no. 2 (December 2025): 1586–97, <https://doi.org/10.38035/jihhp.v6i2.6902>.

<sup>2</sup> Mahmut Aydoğmuş, Güzhan Gülay, and Korkmaz Ergun, "Impact of ESG Performance on Firm Value and Profitability," *Borsa Istanbul Review* 22 (December 2022): S119–27, <https://doi.org/10.1016/j.bir.2022.11.006>.

<sup>3</sup> Hariati Mansor, Rezashah Mohd Salleh, and Noraziah Abu Bakar, "Directors' Duties in Managing AI and ESG Under Malaysian Law: A Doctrinal Analysis," *International Journal of Research and Innovation in Social Science* 9, no. 10 (November 2025): 8987–98, <https://doi.org/10.47772/IJRISS.2025.910000732>.

Government-Linked Companies (GLCs) in Malaysia. These hybrid entities inherently bear a dual mandate that frequently precipitates a structural clash of mandates. On one hand, these state-backed firms are compelled to operate with the structural efficiency of purely commercial enterprises—tasked with maximizing profitability, navigating global competition, and adhering to the foundational tenets of general, profit-oriented corporate law.

Conversely, these entities function as instrumentalities of the state, charged with public service obligations, serving as agents of socio-economic development, and operating as mechanisms of state intervention to safeguard macroeconomic stability.<sup>4</sup> This normative friction reaches its apex when the boards of SOEs or GLCs are confronted with the obligation to accommodate ESG mandates—such as directives for wholesale divestment from lucrative fossil fuel assets (stranded assets), or the compulsion to deploy monumental capital expenditures toward commercially unproven renewable energy technologies.<sup>5</sup> Such sustainability-driven business decisions, while vital to the realization of national climate targets, possess the short-term potential to precipitously erode profit margins or even precipitate significant corporate financial losses.

This tension marks the epicenter of an urgent legal inquiry that demands deconstruction: when corporate actions motivated by ESG compliance culminate in financial detriment, to what extent can the positive law within civil law jurisdictions like Indonesia and common law systems like Malaysia shield directors from personal liability, or—more drastically and increasingly prevalent—criminalization through the apparatus of anti-corruption law?

Prior legal scholarship has sought to dissect the intersection of corporate governance, ESG disclosure, and the boundaries of directorial discretion; yet, the preponderance of this literature remains fragmented and compartmentalized. A mapping of the contemporary state of the art reveals that the discourse can be bifurcated into two primary paradigms. The first paradigm centers on the imperative of integrating ESG reporting. Suci and Meliaila (2024), for instance, examine the exigency of embedding ESG

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<sup>4</sup> Muhammad Zahid Alim, "Juridical Review of the Comparative Law on the Regulation of Indonesian State-Owned Enterprises (BUMN) and Singapore's Government-Linked Companies (GLCs)," *Administrative Law* 1, no. 1 (2025): 1–30, <https://jurnal.sshpublikasi.com/index.php/LJAL/article/view/48>.

<sup>5</sup> Rinzia Revy Restyasih et al., "Pengaruh Good Corporate Governance Terhadap Pengungkapan ESG Pada Perusahaan Pertambangan Yang Terdaftar Di BEI Tahun 2023-2024," *Jurnal Riset Akuntansi & Keuangan* 11, no. 2 (September 2025): 211–22, <https://ejournal.ust.ac.id/index.php/JRAK/article/view/5506>.

frameworks within Indonesian SOE operations post-COP26. However, their inquiry remains confined to the conceptual dimension of regulatory disclosure obligations, failing to address the downstream implications of fiduciary liability for any attendant corporate losses.<sup>6</sup>

Yulita and Munandar (2025) adduce empirical evidence demonstrating that ESG compliance among GLCs positively correlates with enhanced governance efficiency broadly construed; yet, their study failed to establish a comparable correlation within the distinct environmental and social pillars. This asymmetry underscores the functional limitations of mere formalistic compliance absent a binding enforcement framework anchored in corporate law.<sup>7</sup> Corroborating these insights, Mansor et al. (2024) highlight a statutory lacuna within Malaysia's Companies Act 2016 (CA 2016), wherein the absence of explicit provisions governing ESG imperatives compels the judiciary and legal practitioners to tentatively anchor sustainability obligations upon the generalized fiduciary duty of care—a doctrinal approach widely criticized as overly susceptible to interpretive ambiguity and subjective construction.<sup>8</sup>

Conversely, the second paradigm within the literature interrogates mechanisms of directorial protection in isolation from the sustainability discourse. Specifically, Hasiholan et al. (2023) critique judicial inconsistency in Indonesia regarding the application of the Business Judgment Rule (BJR) as a protective shield for SOE directors facing allegations of causing state financial losses (*kerugian keuangan negara*). These scholars contend that the hegemony of the public law paradigm has marginalized the protections afforded by the BJR, culminating in a pervasive "chilling effect" that paralyzes directorial discretion in strategic decision-making.<sup>9</sup>

A thematic synthesis that contrastingly juxtaposes these two analytical camps delineates a stark, unresolved doctrinal impasse. While the first paradigm exhorts SOE fiduciaries to aggressively spearhead ESG transitions, the second paradigm cautions that

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<sup>6</sup> Diva Nur Amarta Suci and Aurora Jilena Meliaila, "ESG Integration In SOEs: Transformation of Environmental Protection and Embodiment of Sustainable Business in SOEs," *Unram Law Review* 8, no. 1 (July 2024): 131–44, <https://doi.org/10.29303/ulrev.v8i1.358>.

<sup>7</sup> Wita Yulita and Agus Munandar, "Analisis Kepatuhan Pengungkapan ESG Pada Perusahaan BUMN Sektor Transportasi Tahun 2023," *El-Mal: Jurnal Kajian Ekonomi & Bisnis Islam* 6, no. 5 (May 2025): 1466–72, <https://doi.org/10.47467/elmal.v6i5.6726>.

<sup>8</sup> Mansor, Salleh, and Bakar, "Directors' Duties in Managing AI and ESG Under Malaysian Law: A Doctrinal Analysis."

<sup>9</sup> Tohom Hasiholan et al., "Urgency of Regulation of Business Judgment Rule As A Reason For Criminal Deletion In Criminal Acts of Corruption," *YURISDIKSI: Jurnal Wacana Hukum Dan Sains* 19, no. 2 (October 2023): 147–68, <https://doi.org/10.55173/yurisdiksi.v19i2.186>.

these very directors remain perpetually stalked by the specter of criminal anti-corruption liability for assuming even the most negligible business risks, should their sustainability-driven investments ultimately fail.

Serving as the arbiter of this discourse, the preceding thematic synthesis exposes a critical blind spot: existing literature lacks a comparative inquiry into how ESG compliance mandates may be instrumentalized as a substantive threshold to activate directorial immunity under the auspices of the Business Judgment Rule. Prior scholarship suffers from a profound theoretical gap, treating ESG strictly as an onerous corporate compliance burden rather than an informed decision-making methodology capable of exculpating directors from both civil and criminal liability. Consequently, a cross-jurisdictional regulatory and interpretive vacuum persists regarding the evidentiary weight of ESG instruments—such as climate impact assessments or supply chain audits—when judicially evaluating a director's *bona fides*.

Predicated upon these identified lacunae, this manuscript explicitly delineates its underlying novelty and scholastic value-add. Diverging from extant literature—which predominantly confines itself either to a pure doctrinal exposition of the BJR within criminal anti-corruption frameworks or to isolated assessments of sustainability reporting efficacy—this study advances a novel paradigm by systematically intertwining procedural ESG obligations with the dogmatic operationalization of the Business Judgment Rule.

This integration is examined within the unique context of SOEs and GLCs across two jurisdictions representing the dominant legal traditions of Southeast Asia: Indonesia (Civil Law) and Malaysia (Common Law). This comparative novelty provides an authentic testament to the manuscript's contribution of a novel legal construct: the "ESG-linked BJR Safe Harbor." Under this conceptual framework, compliance with sustainability metrics is redefined; it ceases to be a passive regulatory reporting mechanism and is instead elevated into the ultimate legal shield—a definitive evidentiary presumption of *bona fides*—for corporate fiduciaries facing judicial scrutiny.

In concluding the foundational background framework, this article advances its central thesis statement: the absence of dogmatic harmonization between rapidly evolving ESG mandates and a BJR doctrine anchored in classical statutory frameworks—such as Indonesia's Limited Liability Company Law and Malaysia's Companies Act 2016—has engendered a legal liability asymmetry that systemically threatens the resilience of

state corporate enterprises.

Academia, law enforcement authorities, and policymakers must urgently confront these findings; the persistent ambiguity surrounding the judicial standard of review for business discretion disincentivizes SOE boards from pursuing innovative yet inherently risky sustainability initiatives, thereby imperiling the realization of national green transition commitments. To resolve this impasse, this study proposes a doctrinal reconstruction of the judicial framework governing the application of the BJR. Compliance parameters hitherto relegated to soft-law instruments—such as the guidelines of the Malaysian Code on Corporate Governance or the decarbonization metrics of Indonesia's BPKP—must be elevated into an objective judicial test standard to determine whether a breach of the fiduciary duty of care has occurred. Consequently, corporate fiduciaries who proactively execute sustainability strategies will be afforded robust and predictable legal certainty.

## **2. Research Questions**

Proceeding from the normative friction and the comprehensive contextual framework delineated above, the analysis within this article is calibrated to untangle, dissect, and resolve the fundamental legal issues framed within the following research questions:

First, how do the positive law frameworks and corporate governance regulatory architectures within the jurisdictions of Indonesia and Malaysia construe the fiduciary duties of SOE and GLC directors in accommodating, integrating, and mitigating sustainability (ESG) mandates amidst the functional dualism inherent to state-backed entities?

Second, how are the legal protections afforded under the aegis of the Business Judgment Rule (BJR) doctrine judicially operationalized in practice across both jurisdictions to shield SOE and GLC directors from personal liability and criminal exposure arising from commercial business losses, and to what extent can ESG disclosure compliance be leveraged as a doctrinal mechanism to substantiate the commercial rationality and *bona fides* of such business decisions?

## **3. Research Methodology**

This study is structured as a doctrinal legal research project, utilizing an analytical, explanatory, and prescriptive framework to resolve the legal friction between sustainability mandates and the doctrine of directorial protection. The invocation of a

doctrinal methodology is justified by the imperative to ascertain normative coherence within the hierarchy of statutory instruments, as opposed to evaluating societal behavior through an empirical lens.<sup>10</sup>

The research design integrates a tripartite analytical framework: first, a statutory approach deployed to dissect the textual anatomy and *ratio legis* of the positive law governing corporate organs; second, a conceptual approach utilized to juxtapose and reconstruct fundamental corporate law doctrines—specifically the duty of loyalty, the duty of care, the *Caremark* doctrine, and the shareholder primacy principle—as they clash with modern corporate governance paradigms; and third, a comparative approach applied to functionally map the points of convergence, divergence, and legal transplantation within the institutional architecture of Indonesian SOEs and Malaysian GLCs. This comparative inquiry is critical; while both nations share a homogenous ASEAN geopolitical and economic milieu, they operate under diametrically opposed legal traditions—Indonesia being anchored in a codified civil law system inherited from Dutch colonial rule, and Malaysia being governed by a common law jurisprudence born of British legacy.<sup>11</sup>

The corpus of legal materials undergirding this study centers upon authoritative sources, categorized systematically into primary and secondary legal materials. Within the Indonesian jurisdiction, the primary legal materials specifically encompass Law No. 40 of 2007 on Limited Liability Companies (UU PT), Law No. 19 of 2003 on State-Owned Enterprises along with its subsequent amendments, Law No. 31 of 1999 *in conjunction with* Law No. 20 of 2001 on the Eradication of Criminal Acts of Corruption (the Anti-Corruption Law), and Law No. 27 of 2022 on Personal Data Protection (UU PDP)<sup>12</sup>, Regulation of the Minister of State-Owned Enterprises No. PER-1/MBU/03/2023 concerning Special Assignments and Corporate Social and Environmental Responsibility

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<sup>10</sup> Diah Puji Lestari, “Analisis Yuridis Normatif Pemberian Kompensasi Perjanjian Kerja Waktu Tertentu (PKWT) Berdasarkan Undang-Undang Cipta Kerja,” *Jurnal Hukum Lex Generalis* 3, no. 5 (May 2022): 339–49, <https://doi.org/10.56370/jhlg.v3i5.160>.

<sup>11</sup> Mansor, Salleh, and Bakar, “Directors’ Duties in Managing AI and ESG Under Malaysian Law: A Doctrinal Analysis.”

<sup>12</sup> Muhammad Dzar Imran and Sri Wahyu Jatmikowati, “Analisis Yuridis Undang-Undang Pelindungan Data Pribadi Terhadap Keamanan Data Pribadi Dalam Akta Notaris: Studi Kasus Putusan Mahkamah Agung Republik Indonesia Nomor 1209 K/Pid/2022,” *UNES Law Review* 8, no. 2 (December 2025): 385–92, <https://doi.org/10.31933/xnj7re05>.

(TJSL)<sup>13</sup>, as well as the jurisprudence of the Supreme Court in the PT Pertamina corruption case (the Karen Agustiawan case).<sup>14</sup>

Within the Malaysian jurisdiction, the primary legal materials encompass the statutory framework of the Companies Act 2016 (Act 777), the Bursa Malaysia Listing Requirements, and judicial precedents of the Federal Court, notably the landmark case of *Tengku Dato' Ibrahim Petra v Petra Perdana Berhad*.<sup>15</sup> Concurrently, secondary legal materials are derived from a synthesis of reputable scholarly literature indexed within the Scopus Q1 database, the guidelines of the Malaysian Code on Corporate Governance 2021 (MCCG 2021), and the 2023 State-Owned Enterprise ESG Assessment Guidelines issued by Indonesia's Financial and Development Supervisory Agency (BPKP).

The entire corpus of legal materials is compiled through systematic documentary analysis and library research techniques. The applied method of legal analysis operates through a deductive syllogistic framework, wherein the major premise—comprising statutory norms and fiduciary principles—is juxtaposed against the minor premise—consisting of the jurisprudential facts of SOE business failures—to yield a cohesive legal conclusion (*ratio decidendi*). This analysis is further sharpened by the deployment of teleological statutory interpretation (unearthing the ultimate legislative purpose regarding national prosperity) and systematic interpretation (interlinking the Limited Liability Company Law with the Anti-Corruption Law and environmental regulations). Consequently, the resulting prescriptive recommendations are not only dogmatically coherent but also highly operational within corporate practice.

## B. DISCUSSION

### 1. The Dialectic of Fiduciary Duties and ESG Mandate Integration: The Friction Between Statutory and Soft-Law Approaches

Dogmatically situated within corporate law doctrine, the board of directors occupies a fiduciary position as entrusted agents charged with managing assets and directing institutional strategy to achieve the entity's objectives. This plenary responsibility is

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<sup>13</sup> Keisyha Amanda Putri and Sri Bakti Yunari, "Pengaturan Tanggung Jawab Sosial Dan Lingkungan Badan Usaha Milik Negara (TJSL BUMN) Pada PT Timah Tbk," *AMICUS CURIAE* 2, no. 2 (June 2025): 876–87, <https://doi.org/10.25105/amicus.v2i2.22002>.

<sup>14</sup> Rachmat A Abdoellah, "Analisis Yuridis Aksi Korporasi Badan Usaha Milik Negara (BUMN): Kasus Ex-Dirut Pertamina," *Jurnal Hukum Lex Generalis* 6, no. 7 (2025): 1–19, <https://ojs.rewangrencang.com/index.php/JHLG/article/view/2584>.

<sup>15</sup> Usharani Balasingam, "Malaysian Companies Act 2016: Impact of the Rule of Law on Fiduciary Duties of Directors," *International Journal of Engineering and Technology* 7, no. 3.25 (April 2026): 329–32, <https://doi.org/10.14419/ijet.v7i3.25.17591>.

universally framed by the overarching concept of fiduciary duty, which rests upon two essential pillars: the duty of care, skill, and diligence, and the duty of loyalty and good faith.<sup>16</sup> While the global ubiquity of this construct is reinforced by the *G20/OECD Principles of Corporate Governance*, the respective responses of the Indonesian and Malaysian corporate law regimes to the mounting pressures of sustainability (ESG) discourse exhibit a stark methodological dichotomy. Indonesia predominantly operates via a sectoral, statutory-hybrid compliance approach, whereas Malaysia relies on a market-driven regulatory paradigm orchestrated through soft-law instruments.<sup>17</sup>

Within the architecture of Indonesian corporate law, the phrase "fiduciary duty" is textually absent from Law No. 40 of 2007 on Limited Liability Companies (UU PT). Rather, this common law doctrine was transplanted into the civil law system through the statutory formulation of management conducted in "good faith" and with "full responsibility," as explicitly codified under Article 92, paragraph (1) and Article 97, paragraph (2) of the UU PT.<sup>18</sup> Historically, the interpretation of directorial authority was reduced to the paradigm of shareholder primacy.

However, in response to market failures stemming from negative corporate externalities, the Indonesian legislature carved out a distinct path, institutionalizing it within the Corporate Social and Environmental Responsibility (TJSL) regime. Pursuant to Article 74 of the UU PT, companies whose business activities impact natural resources are imperatively mandated to allocate budgets for and execute TJSL initiatives. Within the more specific landscape of State-Owned Enterprises (SOEs), this ESG architecture is further reinforced by administrative regulatory interventions. The Ministry of SOEs issued Ministerial Regulation No. PER-1/MBU/03/2023, which explicitly dictates that SOE corporate responsibility programs must be aligned with the Sustainable Development Goals (SDGs) in accordance with the ISO 26000 guidance, while implementing the framework of Creating Shared Value (CSV).<sup>19</sup>

The integration of these instruments expands beyond mere environmental stewardship to encompass the core governance pillar. This trajectory is evidenced by the

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<sup>16</sup> Kenny Obriga Jeremia, "Prinsip Fiduciary Duty Direksi Dan Dewan Komisaris," *Hukum Online*, 2023, <https://www.hukumonline.com/klinik/a/fiduciary-duty-cl4058/>.

<sup>17</sup> Manuella, Junyia, and Kaban, "Legal Framework ESG Sebagai Penguatan Prinsip Good Corporate Governance Dalam Hukum Perusahaan Indonesia."

<sup>18</sup> Devi Taurisa, "Quo Vadis Iktikad Baik Direksi Dalam Pengurusan Perseroan Terbatas," *Jurnal Hukum & Pembangunan* 2, no. 1 (February 2023): 232–48, <https://doi.org/10.21143/TELJ.vol2.no1.1033>.

<sup>19</sup> Diva Nur Amarta Suci and Meliaila, "ESG Integration In SOEs: Transformation of Environmental Protection and Embodiment of Sustainable Business in SOEs."

inception of the State-Owned Enterprise ESG Assessment Guidelines, formulated in 2023 by the Financial and Development Supervisory Agency (BPKP) in collaboration with international experts. These guidelines exhort SOEs—which cumulatively account for more than half of the nation's total emissions across the electricity, oil and gas, and aviation sectors—to internalize decarbonization pathways aligned with the Task Force on Climate-related Financial Disclosures (TCFD) framework to undergird the US\$20 billion Just Energy Transition Partnership (JETP) targets.<sup>20</sup>

Equally indispensable within the governance pillar is the mitigation of cyber resilience risks. The enactment of the Personal Data Protection Law (UU PDP) alongside regulations issued by the Financial Services Authority (OJK) introduces a stringent layer to directors' fiduciary obligations, specifically invoking the duty of oversight as articulated under the *Caremark* doctrine. Consequently, the failure of SOE directors to establish a robust cybersecurity posture—such as adhering to ISO/IEC 27001 standards—is now jurisprudentially construed not merely as an isolated technological incident, but as a direct breach of the duty of care. This doctrinal shift effectively exposes directors to the potential piercing of the corporate veil and the subsequent imposition of personal liability.<sup>21</sup> From an analytical standpoint, the Indonesian legal architecture conceptualizes ESG considerations as a framework of rigid, hard legal compliance obligations.

Conversely, a contrasting spectrum emerges within the Malaysian jurisdiction. The Companies Act 2016 (CA 2016) explicitly codifies common law-derived doctrines of fiduciary duties under Sections 210 and 213. Specifically, Section 213(1) mandates that every director exercise their powers for a proper purpose, in good faith, and in the "best interest of the company." However, a critical conundrum surfaces from a glaring statutory gap: the CA 2016 remains entirely silent, failing to reference ESG terminology, sustainability, or corporate social responsibility in any capacity. This stands in sharp contrast to the United Kingdom, which successfully conceptualized the "Enlightened Shareholder Value" approach under Section 172 of the Companies Act 2006 by textually integrating environmental and social factors into the statutory scope of directorial duties

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<sup>20</sup> Climateworks Centre, "BPKP Launches ESG Assessment Guidelines for Indonesian State-Owned Enterprises," Climateworks Centre, 2022, <https://climateworkscentre.org/news/bpkp-launches-esg-assessment-guidelines-for-indonesian-state-owned-enterprises/>.

<sup>21</sup> Ananda Rizky Suharto, "Prinsip Piercing The Corporate Veil Pada Perseroan Terbatas Sebagai Badan Hukum," *YUSTISIA MERDEKA: Jurnal Ilmiah Hukum* 6, no. 2 (September 29, 2020): 95–105, <https://doi.org/10.33319/yume.v6i2.52>.

<sup>22</sup>, Consequently, Malaysia has left the CA 2016 insulated within its classical orthodoxy.

To rectify this statutory deficiency, the Malaysian corporate governance ecosystem pivots toward highly influential soft-law instruments issued by capital market authorities—namely, the promulgation of the Malaysian Code on Corporate Governance 2021 (MCCG 2021) by the Securities Commission (SC) and the disclosure frameworks of Bursa Malaysia. The MCCG 2021 executes a pronounced conceptual leap through Practices 4.1 to 4.5. This instrument vests plenary authority in the board of directors to integrate sustainability considerations into corporate strategy, governance, and business decision-making, given that ESG factors are now deemed determinative of the enterprise's capacity to generate resilient value and maintain stakeholder trust.<sup>23</sup>

Furthermore, the MCCG 2021 goes so far as to encourage listed issuers to adopt progressive "Step Up" practices, specifically by appointing a dedicated Chief Sustainability Officer (CSO) within the senior management tier.<sup>24</sup> Concurrently, Bursa Malaysia introduced the National Sustainability Reporting Framework (NSRF), which imposes a mandatory sustainability disclosure regime anchored upon the International Sustainability Standards Board (ISSB) standards, implemented through a phased approach commencing in 2025.<sup>25</sup>

The analytical consequence of this institutional approach is that the Malaysian judiciary is progressively interpreting a corporation's negligence in managing its carbon footprint, or its failure to detect corporate bribery under the purview of the Malaysian Anti-Corruption Commission Act 2009 (MACC Act), as an objective indicator of a breach of the duty of care under Section 213 of the CA 2016, despite being textually absent from the statute itself.<sup>26</sup>

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<sup>22</sup> Mansor, Salleh, and Bakar, "Directors' Duties in Managing AI and ESG Under Malaysian Law: A Doctrinal Analysis."

<sup>23</sup> Patrizia Gazzola, Stefano Amelio, and Vincenza Vota, "When Does ESG Create Value? A Literature Review on Benefits, Credibility, and Enabling Factors," *Journal of Risk and Financial Management* 19, no. 5 (May 2026): 360, <https://doi.org/10.3390/jrfm19050360>.

<sup>24</sup> Effiezal A. Abdul Wahab, Janice C.Y. How, and Peter Verhoeven, "The Impact of the Malaysian Code on Corporate Governance: Compliance, Institutional Investors and Stock Performance," *Journal of Contemporary Accounting & Economics* 3, no. 2 (December 2007): 106–29, [https://doi.org/10.1016/S1815-5669\(10\)70025-4](https://doi.org/10.1016/S1815-5669(10)70025-4).

<sup>25</sup> Tabitha Ow, "National Sustainability Reporting Framework (NSRF)," Crowe Malaysia, 2025, <https://www.crowe.com/my/insights/national-sustainability-reporting-framework>.

<sup>26</sup> Mansor, Salleh, and Bakar, "Directors' Duties in Managing AI and ESG Under Malaysian Law: A Doctrinal Analysis."

**Table 1. Structural Comparison of the Fiduciary Duty Legal Framework and ESG Integration**

<b>Evaluative Metrics for Corporate Governance</b>	<b>The Indonesian Jurisdiction: The State-Owned Enterprise (SOE) Context</b>	<b>The Malaysian Jurisdiction: The Government-Linked Company (GLC) Context</b>
<b>The Jurisprudential Foundations of Fiduciary Duties</b>	Articles 92 and 97 of Law No. 40 of 2007 (Statutory Mandate for Management in Good Faith)	Section 213 of the Companies Act 2016 (Statutory Duty to Act in Good Faith in the Best Interest of the Company)
<b>The Modalities of ESG Codification</b>	Anchored upon a Prescriptive Statutory Mandate (Article 74 UU PT & Sector-Specific Legislation)	Anchored upon a Soft-Law Paradigm to Fill the Statutory Void of Primary Legislation
<b>Operational Instruments for ESG Implementation</b>	<b>SOE Ministerial Regulation No. PER-1/MBU/03/2023</b> (Mandating SDG, ISO 26000, and CSV frameworks)	<b>Malaysian Code on Corporate Governance 2021 (MCCG 2021)</b> (Implementing "Step Up" practices for GLCs)
<b>Enforcement Paradigms</b>	Sanction-Backed Administrative Compliance	The "Comply or Explain" Principle and the Adoption of "Step Up" Best Practices

**2. The Institutional Clash of Norms: Indonesian SOE Dualism versus Malaysian GLC Pragmatism**

Any theoretical discourse regarding directorial duties inevitably loses its analytical purchase if divorced from the institutional anomalies distinguishing Indonesian State-Owned Enterprises (SOEs) from Malaysian Government-Linked Companies (GLCs). Moving from a macro-normative analysis to micro-institutional vulnerabilities, an acute clash of norms emerges concerning the core philosophy of sovereign capital investment. Within the Indonesian constitutional framework, Article 33 of the 1945 Constitution mandates that branches of production vital to the state and affecting the livelihoods of the masses must be under state control.<sup>27</sup>

<sup>27</sup> Elli Ruslina, "Makna Pasal 33 Undang-Undang Dasar 1945 Dalam Pembangunan Hukum Ekonomi Indonesia," *Jurnal Konstitusi* 9, no. 1 (May 2016): 49–82, <https://doi.org/10.31078/jk913>.

This constitutional interpretation is crystallized in Law No. 19 of 2003 on State-Owned Enterprises, which subjects state-owned corporations to a schizophrenic position: they must simultaneously serve as commercial profit-generating agents and act as economic safety nets for the masses through the implementation of Public Service Obligations (PSOs).<sup>28</sup> The principal legal obstacle to the operational autonomy of Indonesian SOE directors stems from the hegemonic doctrine of 'State Finance,' as codified under Law No. 17 of 2003 on State Finance. This doctrine legitimizes an interpretative framework whereby state assets, once segregated and injected as capital into SOEs, effectively retain their status as public funds subject to the state's financial jurisdiction.<sup>29</sup>

This rigid *civil law* construct, underpinned by a strictly positivist legal tradition, effectively erodes the foundational principle of separate legal personality—the *corporate veil*. The implications for the ESG discourse are profound: if directors undertake high-risk investments in sustainable technologies—for instance, acquiring immature solar panel technologies to meet PLN's climate mandates—they operate under the perpetual shadow of potential state-financial liability should such an investment falter due to global market volatility,<sup>30</sup> SOE directors are not shielded by the standard protections of commercial or corporate litigation. Instead, law enforcement agencies—notably the Public Prosecution Service and the Corruption Eradication Commission (KPK)—frequently reduce these corporate losses to 'state financial losses' (*kerugian keuangan negara*). Consequently, directors are dragged into the vortex of criminal litigation, facing charges under Articles 2 and 3 of the Anti-Corruption Law.<sup>31</sup>

Academically, this enforcement practice fosters what is known as the 'criminalization of business judgment,' which systemically stifles managerial innovation. This paradox reduces ESG compliance to a mere exercise in performative reporting,

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<sup>28</sup> Syafana Hanifah de Vries and Ratih Damayanti, "Implikasi Dualitas Kedudukan BUMN Terhadap Kemandirian Korporasi Dan Fungsi Pelayanan Publik," *Kertha Semaya: Journal Ilmu Hukum* 13, no. 10 (November 7, 2025): 2226–40, <https://doi.org/10.24843/KS.2025.v13.i10.p05>.

<sup>29</sup> Firli Syarifah and Wahyudi Wahyudi, "Application of The Business Judgment Rule in Decision-Making by The Board of Directors of State-Owned Enterprises," *Journal of Progressive Law and Legal Studies* 4, no. 01 (February 2026): 70–83, <https://doi.org/10.59653/jplls.v4i01.2245>.

<sup>30</sup> Monash University, "The Importance of ESG Implementation in State-Owned Enterprises (SOEs): PT PLN Case Study," Monash University, 2024, <https://www.monash.edu/indonesia/news/the-importance-of-esg-implementation-in-state-owned-enterprises-pln-case-study>.

<sup>31</sup> Amalia Solikha, Peni Nurmaliza, and Rahayu Sri Utami, "Kejahatan Korporasi Dan Kerugian Negara Dalam Analisis Yuridis Korupsi Dalam Tata Niaga PT Timah Tbk," *Jurnal Hukum, Administrasi Publik Dan Negara* 3, no. 1 (January 2026): 30–40, <https://doi.org/10.62383/hukum.v3i1.862>.

effectively discouraging the bold, risk-taking affirmative actions essential for long-term environmental sustainability.<sup>32</sup>

In stark contrast, the Malaysian corporate regime operates under a contradictory yet significantly more flexible governance framework. Although the Malaysian government—exercising control directly via the Ministry of Finance or indirectly through sovereign wealth vehicles such as *Khazanah Nasional*, the *Employees Provident Fund*, or *Permodalan Nasional Berhad*—holds majority stakes or prerogative voting rights in GLCs that dominate the Bursa Malaysia market capitalization, these entities are jurisprudentially respected and positioned strictly as private limited companies subject, without reservation, to the Companies Act 2016. The Malaysian government has meticulously engineered the 'GLC Transformation Programme,' an initiative designed to attenuate state intervention, professionalize independent boards of directors, and elevate operational efficiency and reporting standards to the benchmark of multinational corporations.<sup>33</sup>

In Malaysia, commercial losses suffered by a GLC due to business strategy failure—exemplified by the massive quarterly financial deficits incurred by *Sapura Energy Berhad*—are treated purely as matters of corporate governance and fiduciary accountability, rather than a precursor to criminal prosecution<sup>34</sup> are not summarily classified as the 'misappropriation of state assets.' Accountability for such losses—even in instances where directors are proven negligent in managing ESG transitions, resulting in a precipitous decline in shareholder value—is processed proportionally through two distinct governance channels.

The first channel entails the enforcement of corporate governance and administrative sanctions by the Securities Commission, or potentially, a *delisting* mandate by the Exchange. The second channel is reserved for criminal liability, which specifically targets fraudulent conduct or cases of *actual corruption*, such as those prosecuted under Section 17A of the Malaysian Anti-Corruption Commission (MACC) Act 2009 regarding

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<sup>32</sup> Tohom Hasiholan et al., "The Business Judgment Rule as a Criminal Defense for State-Owned Enterprise Directors in Indonesian Corruption Cases," *International Review of Social Sciences Research* 5, no. 3 (September 30, 2025): 79–94, <https://doi.org/10.53378/irssr.353236>.

<sup>33</sup> Marziana Madah Marzuki and Khalid Abdul Wahid, "The Effect of Government Transformation Programme on Government Investment: Evidence from Malaysia," *Asian Journal of Empirical Research* 12, no. 1 (January 2022): 1–10, <https://doi.org/10.18488/5004.v12i1.4403>.

<sup>34</sup> Ikmal Arif Mohamad Amin and Abdul Razak Abdul Hadi, "Assessing Business and Financial Risks: A Case Study of Sapura Energy Bhd in the Oil and Gas Industry," *Indonesian Journal of Business, Accounting and Management* 6, no. 1 (March 2023): 1–10, [https://doi.org/10.36406/ijbam.v6i01.884\\_rec](https://doi.org/10.36406/ijbam.v6i01.884_rec).

corporate liability for bribery.<sup>35</sup> The absence of an omnibus intersection with the state treasury regime ensures that the discourse surrounding the decarbonization strategy failures of GLC directors is strictly confined to the domain of civil fiduciary breaches (*civil wrongs*), rather than escalating into the threat of life imprisonment—a pervasive risk currently faced by Indonesian SOE directors.

### **3. Operationalizing the Business Judgment Rule (BJR) in Adjudicating ESG Transition Risks: A Comparative Jurisprudential Analysis**

To mitigate the inherent high probability of failure in ESG transitions—such as technological obsolescence, unpredictable regulatory shifts, and volatile consumer preferences—corporate law in both Indonesia and Malaysia provides a fundamental safeguard in the form of the Business Judgment Rule (BJR). Drawing upon the foundational theoretical framework of the Delaware courts—widely embraced as a global standard—the BJR functions as an *abstention doctrine*. This doctrine posits that corporate management is inherently a risk-laden venture; consequently, judges lack the managerial expertise and are fundamentally ill-equipped to act as 'super directors' by second-guessing the commercial rationale of business decisions through the lens of hindsight bias. Provided that decisions are reached absent any conflict of interest, based on adequate investigation (*informed basis*), and motivated by good faith, the judiciary is precluded from imposing liability for commercial failures.<sup>36</sup>

Within the Indonesian legal order, the BJR shield is positively codified under Article 97(5) of the Limited Liability Company Law (UU PT). This provision stipulates that directors shall not be held jointly and severally liable for corporate losses, provided they can cumulatively demonstrate that: (a) the loss did not arise from their fault or negligence; (b) the management of the company was conducted in good faith and with due care; (c) there was an absence of conflicts of interest; and (d) proactive measures were taken to prevent or mitigate the resulting losses.

Nevertheless, as critically mapped by Art and Lie (2025) and Hasiholan (2023), the implementation of the BJR within the Indonesian legal landscape suffers from a pervasive 'decadence'—a decline precipitated by the persistent inconsistency of the Anti-

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<sup>35</sup> selvi; Ivans Januardy; Rizki Setyobowo Sangalang, "Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Korupsi Di Indonesia: Analisis Yuridis Dan Kriminologis Berdasarkan KUHP," *Al-Zayn: Jurnal Ilmu Sosial, Hukum & Politik* 4, no. 1 (2026): 3938–55, <https://ejournal.yayasanpendidikandzurriyatulquran.id/index.php/AlZayn/article/view/3697>.

<sup>36</sup> Mansor, Salleh, and Bakar, "Directors' Duties in Managing AI and ESG Under Malaysian Law: A Doctrinal Analysis."

Corruption (Tipikor) courts.<sup>37</sup> The seminal case serving as a monumental jurisprudential precedent—significantly constraining the scope of managerial discretion—is the corruption trial of Karen Agustiawan, former CEO of PT Pertamina, concerning the equity investment (Participating Interest) in Australia's BMG Block. This case has become a *locus classicus* for the contentious intersection between commercial judgment and criminal liability.<sup>38</sup>

In the aforementioned case, the court dismissed the defendant's BJR-based defense. A forensic analysis of the judgment reveals that the rejection was not predicated solely on the fact that the investment incurred monetary losses. Rather, the court found that the managerial *due diligence* process was marred by fatal procedural defects amounting to *gross negligence*. The judiciary held that the defendant failed to demonstrate rational judgment, bypassed necessary transparency, executed the acquisition without a comprehensive risk assessment, and exceeded the authority delegated by the General Meeting of Shareholders (GMS).<sup>39</sup>

The Pertamina case serves as an essential legal analogy for dissecting the prospects of ESG-driven investments: if SOE directors pursue aggressive green energy initiatives that subsequently result in commercial failure, they will be unable to shield themselves behind the protection of the BJR should they be found to have bypassed established Governance, Risk, and Compliance (GRC) procedures.<sup>40</sup> Proactive ESG implementation—encompassing environmental risk identification, social impact assessment, and the establishment of material indicators—has effectively mutated into an absolute prerequisite, legally equivalent to the requirement of 'taking preventive measures' under Article 97(5)(d) of the Indonesian Limited Liability Company Law (UU PT).<sup>41</sup>

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<sup>37</sup> Syarifah and Wahyudi, "Application of The Business Judgment Rule in Decision-Making by The Board of Directors of State-Owned Enterprises."

<sup>38</sup> Siti Nur Intihani, "Penerapan Doktrin Business Judgement Rule Pada Tindak Pidana Korupsi Perkara Direktur PT. Pertamina- Karen Agustiawan," *Jurnal Hukum Jurisdictie* 5, no. 2 (September 2023): 26–50, <https://doi.org/10.34005/jhj.v5i2.134>.

<sup>39</sup> Agnes Sri Fortuna Nainggolan and Ariawan Gunadi, "Implikasi Hukum Ketidadaan Pengaturan Due Diligence Dalam Akuisisi Perseroan Terbatas Di Indonesia," *Kertha Semaya : Journal Ilmu Hukum* 13, no. 11 (November 2025): 2431–43, <https://doi.org/10.24843/KS.2025.v13.i11.p01>.

<sup>40</sup> Hamalatul Qurani, "Tafsir Hakim Soal Batasan Doktrin BJR Dalam Berbagai Kasus," *Hukum Online*, 2021, <https://www.hukumonline.com/stories/article/lt61139ae292033/tafsir-hakim-soal-batasan-doktrin-bjr-dalam-berbagai-kasus/>.

<sup>41</sup> Gita Lestari and Dewi Pebriyani, "Pengaruh Environmental, Social, Governance (ESG) Risk Terhadap Kinerja Keuangan Perusahaan: Studi Empiris Pada Perusahaan Yang Terdaftar Di Bursa Efek Indonesia Tahun 2023," *Jurnal Nuansa Karya Akuntansi* 3, no. 1 (April 2025): 62–73, <https://doi.org/10.24036/jnka.v3i1.130>.

Conversely, within the *common law* sphere, the Malaysian judiciary offers a BJR evaluative architecture that is significantly more precise and statutorily crystallized through Section 214 of the Companies Act 2016. This provision explicitly stipulates that a director satisfies their duty of care and diligence if they make a business judgment in good faith, possess no material personal interest, are sufficiently informed, and reasonably believe that the decision serves the best interests of the company. This construct warrants a comparative juxtaposition with Section 180 of the Australian Corporations Act 2001, which mandates a more subjective standard centered on the requirement to 'rationally believe'.<sup>42</sup>

The Malaysian judicial approach can be holistically validated through an analysis of the Federal Court's precedent in *Tengku Dato' Ibrahim Petra bin Tengku Indra Petra v Petra Perdana Berhad*. This derivative suit originated from the Petra Perdana board's actions, which allegedly contravened shareholder mandates by executing a rapid divestment of their stake in *Petra Energy* to address acute corporate cash flow deficiencies.<sup>43</sup>

The Malaysian Federal Court has established a highly calibrated doctrinal test. The court maintains that the BJR does not grant absolute immunity; however, it explicitly holds that the standard for directorial negligence is not governed by the Caparo three-fold test typically applied in common law tort claims. Instead, the court employs a hybrid subjective-objective test. It asserts that business decisions resulting in losses do not breach fiduciary duties unless they constitute a 'plainly wrong decision.' This parameter refers to decisions so fundamentally flawed that they reflect a lack of judicial appreciation for existing material evidence or a profound misapplication of legal principles.

When this jurisprudential precedent is contextualized within Malaysia's ESG governance landscape, its implications are profound. Directives under the MCCG 2021 and the Bursa Malaysia Listing Requirements regarding ESG are no longer merely normative guidelines. Should GLC directors consciously disregard climate risk metrics threatening the corporate business model, ignore instances of modern slavery within their supply chains, or engage in the presentation of manipulative decarbonization data

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<sup>42</sup> Mansor, Salleh, and Bakar, "Directors' Duties in Managing AI and ESG Under Malaysian Law: A Doctrinal Analysis."

<sup>43</sup> Lee Shih, "Case Update: Federal Court Decides on Extent of Directors' Duties – Key Lessons for Directors," *The Malaysian Lawyer*, 2018, <https://themalaysianlawyer.com/2018/01/04/case-update-federal-court-extent-of-directors-duties/>.

(greenwashing), such willful disregard will be classified by the court as a 'plainly wrong decision.' This 'strategic blindness' negates the 'reasonably believed' element under Section 214 of the Companies Act 2016, effectively stripping away the BJR protection and exposing GLC directors to substantial civil sanctions enforced by the Securities Commission.<sup>44</sup>

#### **4. Reconstructing Corporate Governance: The 'ESG-Linked BJR Safe Harbor' as a Fiduciary Shield**

Epistemologically, this comparative study across legal systems reveals a monumental blind spot systemically overlooked in extant corporate literature and jurisprudence: ESG compliance has traditionally been conceptualized exclusively as a burden for mitigating corporate externalities, rather than being reconstructed as the foundational evidentiary methodology for establishing the justification reasons required to activate BJR immunity in court. This article offers a concrete doctrinal resolution through the formulation of an 'ESG-linked BJR Safe Harbor' framework.

To dismantle and reverse the *chilling effect* that has stifled the innovative resolve of SOE directors in exercising their sustainability-linked business discretion, this framework elevates compliance with non-financial reporting pillars—including the 2023 BPKP ESG assessment guidelines, international cybersecurity standards, and the board-level sustainability architecture mandated by the MCGG 2021—from mere technical procedures into vital legal exculpatory instruments.<sup>45</sup> Consequently, these standards must be elevated in their judicial significance. Judges in both commercial and Anti-Corruption (Tipikor) courts must institutionalize this compliance as an objective 'material safe harbor threshold,' serving as a definitive demarcation line to exonerate directors from liability.

For the Indonesian judiciary, judges must abandon the archaic standard of retrospective adjudication—perpetuated by *hindsight bias*—which evaluates the losses of State-Owned Enterprises (SOEs) solely through the lens of *ex-post* investigative audit calculations. This narrow focus inevitably disregards the critical importance of 'process dossiers,' which document the deliberative governance and risk-mitigation efforts

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<sup>44</sup> Mansor, Salleh, and Bakar, "Directors' Duties in Managing AI and ESG Under Malaysian Law: A Doctrinal Analysis."

<sup>45</sup> Lei Gao and Thomas G. Calderon, "Cybersecurity Risk Governance and Companies' Cybersecurity Risk Disclosures in Their 10-K Filings," *Journal of Accounting and Public Policy* 54 (November 2025): 107376, <https://doi.org/10.1016/j.jaccpubpol.2025.107376>.

undertaken at the time of the decision. Judicial scrutiny must shift from purely outcome-based assessment to a process-oriented review, acknowledging that the legitimacy of a business judgment is tethered to the integrity of the procedural framework, not merely the financial outcome.<sup>46</sup>

The fulfillment of a comprehensive ESG governance infrastructure—encompassing the existence of a structural board-level ESG committee, independent validation of sustainability reports, transparent board insurance mechanisms, and carbon transition scenario simulations aligned with national baselines—must be categorically accepted as a jurisprudential proxy for satisfying the statutory requirements of 'informed basis,' 'good faith,' and 'proactive risk mitigation' as prescribed under Article 97(5) of the Indonesian Limited Liability Company Law (UU PT).<sup>47</sup>

Within the comparative landscape, the Malaysian parliament and monetary authorities must adopt a more affirmative stance. Corporate reform can no longer rely on sustainability frameworks scattered across fragmented exchange guidelines, which lack the imperative force of statutory law. This study advocates for a radical amendment to the Companies Act 2016 (Act 777), explicitly enshrining social, environmental, and climate governance interests into the statutory definition of the 'best interests of the company.' Such a legislative intervention should not only emulate but aim to surpass the boldness of Section 172 of the UK Companies Act 2006.<sup>48</sup>

Through this legislative reformulation, the Business Judgment Rule and Section 214 of the Companies Act cease to be mere defensive ramparts against ordinary managerial errors that merely erode dividends. Instead, they dogmatically evolve to encompass dimensions of environmental sustainability and communal equity, thereby aligning with the true ethos of *stakeholder capitalism*.<sup>49</sup> Ultimately, this legal protection will cultivate systemic certainty, fortify national economic resilience, and reassure the global business community that the green transition is not a pathway to criminal liability, but a

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<sup>46</sup> Alicia Andromeda; Lie Sanyoto Gunardi, "The Business Judgment Rule in the Context of Directors' Liability: A Comparative Study of the United States, Canada, and Indonesia," *Indonesian Journal of Law and Economics Review* 20, no. 4 (2025): 1–13, <https://doi.org/10.21070/ijler.v20i4.1387>.

<sup>47</sup> Climateworks Centre, "BPKP Launches ESG Assessment Guidelines for Indonesian State-Owned Enterprises."

<sup>48</sup> Mansor, Salleh, and Bakar, "Directors' Duties in Managing AI and ESG Under Malaysian Law: A Doctrinal Analysis."

<sup>49</sup> Purnama Hadi Kusuma, Usnadi Usnadi, and Abdul Rahman Salman Faris, "Business Judgment Rule: Prinsip Perlindungan Bagi Direksi Dalam Pengambilan Keputusan Bisnis Perusahaan," *Aliansi: Jurnal Hukum, Pendidikan Dan Sosial Humaniora* 3, no. 1 (January 2026): 82–87, <https://doi.org/10.62383/aliansi.v3i1.1530>.

foundational step toward the dignity and long-term viability of the modern corporate entity.

### **C. CONCLUSION**

The disparate corporate law frameworks of Indonesia and Malaysia expose a critical normative friction, wherein the integration of ESG mandates into the fiduciary duties of state-backed directors frequently conflicts with archaic liability regimes, precipitating a profound chilling effect on sustainable managerial innovation. While Malaysia's market-driven paradigm evaluates corporate transition failures through a deferential civil mechanism unless decisions are deemed "plainly wrong," Indonesia's rigid state finance doctrine continually threatens corporate fiduciaries with the specter of criminal anti-corruption liability for comparable commercial losses. To rectify this jurisdictional asymmetry and adequately insulate directors navigating inherent transition risks, jurisdictions must jurisprudentially construct an "ESG-linked BJR Safe Harbor" that systematically intertwines sustainability compliance with the dogmatic operationalization of the Business Judgment Rule. By definitively elevating non-financial reporting mechanisms from mere administrative obligations into an objective judicial standard of review, courts can legally validate ESG compliance as material evidentiary support of good faith, thereby formally activating robust legal immunity for proactive corporate leaders.

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