

Conceptual Reconstruction of Directors' Responsibilities in Limited Liability Company Bankruptcy Based on Fiduciary Duty and Business Judgment Rule

Hendro Widodo*, Evita Isretno Israhadi

Universitas Borobudur, Jakarta, Indonesia, hendrowidodoedo@gmail.com

Universitas Borobudur, Jakarta, Indonesia, evita_isretno@borobudur.ac.id

DOI:

<https://doi.org/10.47134/jcl.v3i3.1.5870>

*Correspondence: Hendro Widodo

Email: hendrowidodoedo@gmail.com

Received: 29/05/2026

Accepted: 30/06/2026

Published: 30/06/2026



Copyright: © 2026 by the authors. Submitted for open access publication under the terms and conditions of the Creative Commons Attribution (CC BY) license (<http://creativecommons.org/licenses/by/4.0/>).

Abstract: *The dynamics of directors' responsibilities in the bankruptcy of limited liability companies present complex normative problems due to the disharmony between the corporate law regime and bankruptcy law. Corporate law emphasizes managerial discretion through the principles of fiduciary duty and the business judgment rule, while bankruptcy law is more oriented towards protecting the collective interests of creditors. This paradigm difference gives rise to ambiguity in determining the limits of directors' responsibilities, especially when the company is in a phase of financial distress or approaching insolvency. This study aims to analyze the doctrinal conflict that occurs between fiduciary duty, the business judgment rule, and the bankruptcy regime, and to formulate a conceptual reconstruction that can create a balance between director protection and legal accountability. The research method used is normative legal research with a statutory, conceptual, and analytical approach, through a study of Law Number 40 of 2007 concerning Limited Liability Companies and Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, as well as an analysis of legal doctrine and the development of corporate governance theory. The research findings identify normative disharmony as the root cause of uncertainty in the standards for assessing directors' responsibilities. The proposed conceptual reconstruction includes a reinterpretation of fiduciary duty toward a stakeholder-sensitive approach through the concept of dual fiduciary obligation, a repositioning of the business judgment rule as a process-based evaluation, and the development of an integrative model for corporate governance and insolvency governance. The formulation of new standards, such as threshold liability, a safe harbor for restructuring decisions, and an early warning governance mechanism, is expected to provide more balanced legal certainty. This research provides theoretical contributions to the development of the doctrine of directors' responsibilities and normative recommendations for future regulatory harmonization.*

Keywords: *Directors' Responsibilities; Limited Liability Company Bankruptcy; Fiduciary Duty; Business Judgment Rule; Corporate Governance; Insolvency Law.*

Introduction

The transformation of directors' responsibilities is a growing phenomenon alongside the shifting paradigm of modern corporate governance (Nima, 2024). Previously, directors were often understood simply as implementers of shareholders' wishes, with a primary focus on increasing economic profits (De Valerie, 2024). Developments in corporate governance theory have brought about a shift in the understanding of the role of directors

as managers, assuming more complex fiduciary responsibilities (Arifin, 2025). Accountability standards have increased along with growing expectations for transparency, risk management, and regulatory compliance. This evolution has created a need to reassess the limits of directors' responsibilities when companies face serious financial pressures (Rachman, 2025).

The tension between business discretion and legal accountability has become a central issue in regulating directors' responsibilities. Directors are required to make strategic decisions that often involve high risks, while the legal system assesses these decisions through specific prudential standards (Budhiyono, 2025). The reality of the business world does not always align with the legal approach, which tends to be retrospective. Assessments of business decisions are often made after the results are apparent, creating the risk of judgment bias. This situation creates a dilemma between providing freedom for directors and ensuring an effective oversight mechanism.

The shift in the board's position becomes more apparent when a company enters a phase of financial distress. At this stage, decisions made impact not only shareholders but also creditors, employees, and other stakeholders (Mondayri, 2022). Directors are under pressure to maintain business continuity while avoiding further losses for related parties. Ambiguity arises regarding the standard of action considered reasonable when a company approaches insolvency. This shift in responsibility dynamics requires a legal approach capable of bridging competing interests.

The paradigm differences between corporate law and bankruptcy law add to the complexity of the problem. Corporate law generally emphasizes the principle of managerial discretion and the protection of rational business decisions (Wardani, 2023). Bankruptcy law, on the other hand, emphasizes the protection of creditors and the equitable distribution of assets (Idris, 2026). These differing orientations can trigger conflicting interpretations regarding the standard of directors' responsibility. When a company fails, previously protected decisions may be deemed negligence or managerial error.

The lack of clarity in the standards for assessing directors' decisions prior to bankruptcy is a frequently discussed issue in legal practice. Many legal systems struggle to define the line between legitimate business risks and actions deemed to violate fiduciary duty. Inconsistent parameters create uncertainty for both directors and creditors (Ababil, 2025). This uncertainty may hinder directors' courage in making strategic decisions necessary to save the company. A clearer evaluation framework is needed to achieve a balance between director protection and accountability.

The relevance of fiduciary duty and the business judgment rule is becoming increasingly important in assessing directors' responsibilities. Fiduciary duty underscores the obligation of directors to act with loyalty and prudence in the best interests of the company (Prakasa, 2025). The business judgment rule protects decisions made honestly and based on adequate information (Khairiyyah, 2025). These two concepts are often viewed as the foundation for maintaining a balance between managerial independence and legal oversight. Integrating these two principles is key to understanding how directors' responsibilities should be assessed.

The problem of hindsight bias poses a serious challenge in evaluating business decisions that lead to failure. Judges or other parties evaluating decisions often view them

from the perspective of the final outcome, rather than the state of the information at the time the decision was made (Alifya, 2024). This perspective can result in unfair assessments of directors. Initially, rational decisions can appear erroneous after the outcome is known. Awareness of this bias is crucial to prevent the legal system from stifling innovation and healthy risk-taking.

The evolution of fiduciary duty in corporate governance has not occurred statically, but rather through a long process of doctrinal development. The duty of care emphasizes the importance of prudence in decision-making, including the use of adequate information and rational risk analysis (Arafat, 2026). The duty of loyalty requires directors to avoid conflicts of interest and prioritize the company's interests (Ibrahim, 2023). The principle of good faith serves as a moral foundation that strengthens the integrity of corporate management (Agustina, 2025). This development demonstrates the legal system's efforts to maintain a balance between business efficiency and protecting stakeholder interests.

Differences between common law and civil law systems also influence how fiduciary duty is applied. The common law tradition typically develops doctrine through court decisions and precedent, allowing for flexibility in interpretation (Judijanto, 2025). Civil law systems tend to emphasize codification and written norms as the basis for assessing responsibility (Suhartanto, 2024). These differing approaches result in variations in the standard of proof and the scope of directors' obligations. A comparison of the two systems illustrates how the fiduciary principle can be adapted to the characteristics of each legal system.

The business judgment rule exists as a protective mechanism for directors who make business decisions in good faith. Economic rationality is the primary basis of this doctrine because the business world demands the courage to take risks. Elements of the BJR typically include independence, adequate information, and a legitimate purpose (Sihombing, 2025). Criticism of the implementation of the BJR arises when this doctrine is deemed too protective of directors or difficult to apply consistently.

The concept of bankruptcy brings a paradigm shift in the responsibilities of directors, particularly regarding the focus on the collective interests of creditors. The primary objective of bankruptcy law relates to the fair and efficient distribution of assets (Fatahillah, 2023). When a company is on the verge of insolvency, a phase often referred to as the twilight zone of insolvency emerges (Kiemas, 2023). During this phase, directors face a dilemma: whether to continue operating or cease operations to minimize losses. The shift in focus of fiduciary duty from shareholders to creditors remains a persistently debated issue.

The theoretical relationship between corporate law and insolvency law demonstrates the conflict between discretionary governance and stricter creditor protection. Business discretion is necessary for companies to adapt to market dynamics. Accountability mechanisms are needed to prevent abuse of authority and unnecessary losses. Balancing interest theory attempts to combine these two orientations through a more balanced approach. This effort to harmonize these two legal fields provides an important foundation for a conceptual reconstruction of directors' responsibilities that is more adaptive and responsive to the realities of modern business.

Method

This study employs a normative legal research method with a conceptual approach, a statutory approach, and an analytical approach to legal doctrines relevant to the responsibilities of directors in the bankruptcy of limited liability companies. The statutory approach is conducted through a systematic review of legal norms governing the responsibilities of directors and the bankruptcy regime, specifically Law Number 40 of 2007 concerning Limited Liability Companies and Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, to identify potential regulatory disharmony and normative gaps that trigger interpretation ambiguity. The conceptual approach analyzes the theoretical construction of the fiduciary duty and business judgment rule, including their doctrinal developments in the literature on corporate law and modern corporate governance. The analysis is conducted qualitatively through a systematic and argumentative interpretation of legal concepts, so that a conceptual reconstruction model can be formulated to bridge the conflict between business discretion and creditor protection. This research utilizes a limited comparative approach through a study of practices and doctrines in several other jurisdictions as material for critical reflection to formulate more adaptive normative standards, while also recommending that they have practical relevance and theoretical contributions to the development of bankruptcy law and corporate law.

Result and Discussion

Analysis of Normative Problems and Doctrinal Disharmony

The ambiguity of the standard for directors' liability in bankruptcy is one of the most frequently encountered normative issues in corporate law practice. Directors are principally responsible for managing the company, as stipulated in Article 92 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies (PT Law), which stipulates that directors carry out management for the interests and purposes of the company. This norm appears clear in text, but becomes problematic when a company experiences financial failure that leads to bankruptcy. The legal system does not provide consistent parameters for determining when a business decision becomes a legal error. This ambiguity creates the risk of differing interpretations among judges, curators, and creditors.

The parameters for directors' fault are also closely related to Article 97 paragraph (3) of the PT Law, which states that each member of the board of directors is fully and personally liable for the company's losses if they are guilty or negligent in carrying out their duties. The term "guilty or negligent" has a broad scope for interpretation and is often debated. Prudential standards cannot always be measured objectively because business decisions are always subject to uncertainty. Courts often struggle to distinguish between reasonable business risks and negligence that violates fiduciary duties. It creates a gray area that increases the potential for legal disputes against directors after a company is declared bankrupt.

The debate between outcome-based and process-based judgments is at the heart of the issue in assessing directors' liability. Outcome-based judgments tend to assess decisions based on adverse outcomes, while process-based judgments focus on the decision-making process and the quality of directors' judgment. Many bankruptcy cases demonstrate a tendency to view business failure as an indication of mismanagement. This approach potentially overlooks the fact that business failure is not always synonymous with legal

violations. Process-based assessments should be more relevant to the business judgment rule principle, which protects directors' discretion.

The conflict between fiduciary duty and creditor interests becomes more apparent when a company enters the insolvency phase. Fiduciary duty was initially understood as the directors' obligation to the company and shareholders. When a company experiences serious financial difficulties, questions arise as to whether this obligation shifts to creditors, the parties most affected. The Limited Liability Company Law does not explicitly regulate this shift in the object of fiduciary duty. This situation creates tension between the principle of shareholder primacy and the need to protect creditors.

Shareholder primacy places shareholder interests as the primary orientation of corporate management. This model aligns with the classic principles of corporate law, which view directors as managers of company assets for the benefit of shareholders. Bankruptcy law has a different orientation, emphasizing the collective protection of creditors. Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law) regulates the mechanism for asset distribution and the role of the curator to represent the interests of creditors. This difference in orientation creates doctrinal conflict regarding the priority of directors' obligations when a company is on the verge of failure.

The shift in fiduciary duty is a crucial issue because there is no clear time limit for this shift in responsibility. Some theories suggest a twilight zone of insolvency, which lies between a company's health and bankruptcy. Directors often face the dilemma of continuing company operations or taking conservative measures to protect creditors. Legal risk increases when decisions taken are later deemed detrimental to one of the parties. The lack of norms regarding this transitional phase leads to inconsistent legal interpretation.

The limitations of the business judgment rule in bankruptcy cases are a topic of much debate in corporate law literature. The business judgment rule essentially protects directors who act in good faith, with adequate information, and without conflicts of interest. Article 97, paragraph (5) of the Limited Liability Company Law provides directors with a defense if they can prove that management was carried out in good faith and with prudence. This protection often becomes blurred when a company is insolvent. Courts can tend to be more critical of directors' decisions due to the potential harm to creditors.

The question of whether the business judgment rule remains applicable during insolvency does not yet have a fully consistent answer. Some viewpoints argue that the BJR should remain in place to maintain directors' independence in making high-risk restructuring decisions. Others argue that the standard of protection should be narrowed when creditors' interests become dominant. Judicial practice can display varying approaches depending on judges' interpretations of fiduciary obligations. This situation highlights the need for doctrinal harmonization to prevent the arbitrary application of the BJR.

Judicial intervention into directors' discretion often increases in bankruptcy cases. Judges can reassess business decisions previously within the realm of managerial discretion. Such intervention is sometimes necessary to prevent abuse of authority or actions detrimental to creditors. Excessive intervention has the potential to create a chilling effect

on directors' ability to make strategic decisions. Striking a balance between judicial oversight and discretionary protection is a challenge the legal system must address.

Regulatory disharmony between corporate law and bankruptcy law is a major cause of legal uncertainty. The Limited Liability Company Law regulates the responsibilities of directors based on the principles of good management and good faith, while the Bankruptcy Law focuses on creditor protection and the transfer of authority to a curator, as stipulated in Article 24 of the Bankruptcy Law. These differing orientations can lead to conflicts in determining the standards of directors' liability. Differing norms create interpretations that are not always consistent in practice.

The differences in liability standards also relate to the burden of proof in cases involving directors. Article 97, paragraph (5) of the Limited Liability Company Law provides a reverse burden of proof mechanism, requiring directors to prove that their management actions were performed in good faith and with due care. In bankruptcy cases, this burden of proof can be influenced by the curator's position as the party representing the interests of creditors. This situation can burden directors, who must face retrospective evaluation of business decisions. This imbalance in the burden of proof can affect the perception of fairness in the legal process.

The construction of directors' personal liability is a sensitive issue because it relates to the risk of personal liability for the company's debts. The principle of limited liability in a limited liability company aims to protect individuals from excessive responsibility. Article 104, paragraph (2) of the Limited Liability Company Law opens up the possibility of personal liability for directors if bankruptcy occurs due to the directors' errors or negligence. Implementation of this norm requires clear standards to prevent over-penalization of otherwise rational business decisions. A conceptual reconstruction of directors' liability is necessary to ensure a balance between legal protection for creditors and legal certainty for company managers.

Conceptual Reconstruction of Directors' Responsibilities

The conceptual reconstruction of directors' responsibilities stems from the need to update the understanding of fiduciary duty when a company enters the insolvency phase. The classic model, which places shareholder interests as the primary focus, is no longer adequate when a company's risk structure changes drastically. Deteriorating financial conditions shift the position of creditors to parties with a significant stake in the company's survival. Directors face a dilemma between maintaining company value for shareholders and protecting the value of assets pledged as collateral by creditors. Reconstructing the concept of fiduciary duty needs to adapt to this dynamic to avoid a vacuum in responsibility standards.

The shift from a shareholder-centric approach to a stakeholder-sensitive model is a crucial step in understanding the role of directors when a company approaches failure. The company's interests are no longer limited to increasing shareholder profits but also encompass the stability of relationships with creditors, employees, and other affected parties. A stakeholder-sensitive perspective allows directors to make decisions that are more oriented toward long-term business continuity. This approach also helps mitigate conflicts between corporate law and bankruptcy law, which often have different

orientations. This paradigm shift does not eliminate the role of shareholders but rather broadens the scope of fiduciary responsibility.

The concept of dual fiduciary obligation is a key concept in this reconstruction. Directors are understood to have dual obligations that change depending on the company's financial condition. Under normal circumstances, the primary obligation remains to the company and shareholders. When a company enters the realm of insolvency, this obligation evolves to more seriously consider the interests of creditors. The dual obligation model allows for a more flexible assessment of responsibility without diminishing legal certainty.

Repositioning the business judgment rule is a necessary next step to ensure a balance between director protection and accountability. The business judgment rule should not be understood as absolute protection for all director decisions. The primary focus of this doctrine is on the quality of the decision-making process, not the final outcome, which may be influenced by external factors. Process-based evaluation allows directors to continue taking rational business risks. This approach can reduce the tendency for outcome-based evaluations, which often disadvantage directors after a company fails.

BJR, as a process-based evaluation, requires clearer indicators when a company is in distress. Prudential standards cannot be equated with the financial health of a company. Directors are often faced with difficult choices such as debt restructuring, asset sales, or high-risk changes in business strategy. The assessment of these actions should consider the information available at the time the decision is made. Protection of managerial discretion remains crucial to ensure directors are not afraid to take necessary rescue measures.

Prudential standards in distress situations require adjustments to higher levels of risk. Directors need to ensure transparent documentation of decisions and adequate risk analysis. Good faith practices are key in assessing whether decisions qualify for BJR protection. The legal system can develop additional indicators relevant to insolvency situations, such as consultation with independent experts or creditor involvement in the restructuring process. This adjustment of standards helps maintain a balance between legal protection and moral responsibility.

An integrative model of corporate governance and insolvency governance offers a more comprehensive approach. Corporate governance emphasizes efficient corporate management and internal accountability, while insolvency governance focuses on creditor protection and asset distribution. The integration of these two approaches allows for a more adaptive framework to changing corporate conditions. Directors are no longer viewed solely as internal management actors, but also as actors with social responsibilities to broader stakeholders. This model encourages harmonization between two legal fields that previously often operated in parallel without conceptual coordination.

The hybrid liability framework is a key element of this integrative model. This hybrid approach combines protection of business discretion with clearer accountability mechanisms. Directors retain the freedom to make strategic decisions, but with stricter transparency and documentation requirements when risks increase. Balanced risk governance positions risk as a factor that must be systematically managed, not simply avoided. A safe harbor for restructuring decisions can be an instrument that provides legal certainty for directors acting in good faith.

The formulation of new standards for assessing directors' liability requires the concept of threshold liability as a clear minimum limit. Threshold liability helps distinguish between normal business failures and actions that violate fiduciary duties. The determination of this threshold can be based on indicators such as breaches of information obligations, conflicts of interest, or neglect of risk analysis. This standard provides guidance for judges in assessing directors' liability more objectively. Certain parameters also help directors understand the limits of legally acceptable actions.

Good-faith restructuring decisions and early warning governance are crucial components in reconstructing the concept of directors' liability. Restructuring decisions made in good faith need to be protected so that directors are not afraid to take steps to rescue the company. Early warning governance encourages directors to detect financial problems early through an effective internal oversight system. The mechanism allows for corrective action before the company reaches the point of failure. This reconstructive approach leads to a more preventative legal system while balancing the interests of directors, shareholders, and creditors.

Conclusion

The normative disharmony between corporate law and bankruptcy law is a major factor fueling uncertainty in determining the limits of directors' liability when a company experiences financial failure. The corporate legal structure, which emphasizes managerial discretion and protection of business decisions, often clashes with the orientation of bankruptcy law, which focuses on creditor protection and the equitable distribution of assets. This difference in orientation creates ambiguity in assessing whether a director's decision constitutes a legitimate business risk or a form of negligence that gives rise to legal liability. The concept of fiduciary duty, which has historically focused on the interests of the company and its shareholders, requires reinterpretation to accommodate the dynamic shift in interests when a company enters the insolvency phase. The business judgment rule also requires conceptual reconstruction, so that it is understood not as absolute protection but as a process-based evaluation mechanism that considers the actual conditions at the time of the decision, including financial pressures and limited information.

Normative recommendations address the need for a reformulation of directors' liability standards that are more adaptive to changing company conditions from the solvency phase to insolvency. Harmonizing corporate law and bankruptcy law is a crucial step in creating a consistent legal framework, providing directors with clear guidance on their fiduciary obligations and the limits of their business discretion. Developing judicial guidelines on the application of the business judgment rule in bankruptcy cases could help reduce inconsistencies in decisions and minimize bias in outcome-based judgments. New standards based on the quality of the decision-making process, good faith, and rational risk management can provide a balance between protecting directors and the interests of creditors. This approach is expected to strengthen legal certainty while encouraging more responsible corporate governance practices that are responsive to the dynamics of modern business risks.

References

- Ababil, M. A. (2025). Perlindungan kreditur dalam sistem kepailitan Indonesia: Antara norma hukum dan kenyataan. *Juris Humanity: Jurnal Riset dan Kajian Hukum Hak Asasi Manusia*, 4(1), 38–53.
- Agustina, L. W. (2025). *Prinsip-prinsip etika bisnis dan penerapannya*. CV Eureka Media Aksara.
- Alifya, A. R. (2024). Pengaruh cognitive bias dalam pengambilan keputusan terhadap dunia bisnis. *Jurnal Humaniora dan Sosial Sains*, 1(3), 329–335.
- Arafat, M., & (penulis tidak lengkap). (2026). Tanggung jawab direksi–komisaris pasca serangan siber: Fiduciary duty dan business judgment rule. *Equality: Journal of Law and Justice*, 3(1), 26–49.
- Arifin, A. P. (2025). Penerapan prinsip fiduciary duty untuk mewujudkan good corporate governance dalam perseroan terbatas. *Journal of Contemporary Law Studies*, 2(2), 173–184.
- Budhiyono, B. S. (2025). Penerapan business judgment rule sebagai perlindungan hukum direksi dalam pengambilan keputusan berbasis manajemen risiko. *UNES Law Review*, 8(1), 304–316.
- De Valerie, A., & (penulis tidak lengkap). (2024). Penerapan asas fiduciary duty dalam tanggung jawab direksi pada perseroan terbatas. *Journal of Law, Education and Business*, 2(1), 373–379.
- Fatahillah, F., & (penulis tidak lengkap). (2023). Perbandingan konsep hukum kepailitan Amerika (Chapter 11) dan hukum kepailitan Indonesia. *Jurnal USM Law Review*, 6(3), 1262–1278.
- Ibrahim, M. A. (2023). Analisis hukum atas peran dan tanggung jawab direktur nominee dalam perseroan terbatas. *Jurnal Hukum Statuta*, 3(1), 44–52.
- Idris, F. A. (2026). Kepailitan sebagai instrumen pengembalian kekayaan: Studi literatur terhadap hukum kepailitan di Indonesia. *JOSH: Journal of Sharia*, 5(1), 103–119.
- Judijanto, L. T. (2025). Perbandingan sistem hukum perdata dan common law dalam perlindungan data pribadi di Indonesia. *Sanskara Hukum dan HAM*, 4(1), 161–170.
- Khairiyyah, L. H. (2025). Kepastian hukum business judgment rule dalam memberikan perlindungan hukum bagi direksi perseroan. *Jurnal USM Law Review*, 8(3), 2038–2055.
- Kiemas, A. M. (2023). Redefining bankruptcy law: Incorporating the principle of business continuity for fair debt resolution. *Rechtsidee*, 11(2), 10–21.
- Mondayri, S., & (penulis tidak lengkap). (2022). Analisis pengaruh good corporate governance, intellectual capital, dan arus kas operasi terhadap financial distress. *Jurnalku*, 2(1), 25–43.
- Nima, I. M. (2024). Tanggung jawab direksi dalam perseroan terbatas: Implementasi prinsip good corporate governance (GCG). *Indonesian Journal of Law and Justice*, 1(4), 9.
- Prakasa, A. W. (2025). Doktrin fiduciary duty: Peranannya sebagai pedoman pengurusan perseroan terbatas oleh direksi. *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, 3(2), 241–247.
- Rachman, A. R. (2025). *Pengantar good corporate governance*. Tohar Media.

-
- Sihombing, A. R. (2025). Analisis komparatif business judgment rule Indonesia dan Malaysia dalam melindungi direksi dari gugatan pertanggungjawaban keputusan bisnis. *Jurnal Media Akademik (JMA)*, 3(12).
- Suhartanto, F. P., & (penulis tidak lengkap). (2024). Perbandingan sistem hukum civil law dan common law. *Konsensus: Jurnal Ilmu Pertahanan, Hukum dan Ilmu Komunikasi*, 1(3), 72–83.
- Wardani, D. S. (2023). Perlindungan direksi terhadap keputusan bisnis melalui penerapan prinsip business judgment rule di Amerika Serikat, Jepang, dan Indonesia. *Dharmasiswa: Jurnal Program Magister Hukum FHUI*, 2(3), 8.