



Employee Company Share Owner Layoff in Indonesia: Problem and Solution from the Business Judgment Rule Perspective

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ABSTRACT

Indonesia protects workers who experience layoffs by providing severance pay, award money, or resolving industrial relations disputes through litigation. This study aims to map the problem and the legal solution regarding the termination of employment for employees who are also shareholders in the company where they work. The research in this article employed the Normative Juridical approach, and the problem approach used in writing this research consists of two approaches: the statute approach and the conceptual approach. Share ownership by employees through the Employee Stock Option Program will give employees a dual status, namely as workers and owners of the company. Termination of employment carried out by the company against shareholders is problematic. On the one hand, there is an employment relationship between the employee and the company; on the other hand, there is also a relationship between the employee as a shareholder and the company. As a civil law country, Indonesia has also adopted the business judgment rule as implemented in the limited liability company law, which emphasises the role and responsibilities of the company's organs and is valid until now. Business judgment rule as a guideline and instruction for the Board of Directors in making business decisions, where the Board of Directors must always uphold the principles of prudence, good faith, solely for the interests of the company, subject to the provisions of the articles of association and laws and regulations.

Keywords: Business Judgment Rule; Business Law; Employee Stock Option Program; Indonesia; Manpower.

Citation: Musimin Suyono, Adnan Hamid, Irwansyah, Agung Iriantoro, Irfan Benjamin, nd. 2025. "Employee Company Share Owner Layoff in Indonesia: Problem and Solution from Business Judgement Rule Perspective". *Mulawarman Law Review* 10 (1), 1-18

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INTRODUCTION

Layoffs have become a global phenomenon and have increased in recent years. This condition is caused, among other factors, by economic uncertainty, technological disruption, and shifts in market demand.¹ Large countries such as the USA, China, and countries in the European Union have contributed significantly to the large number of worker layoffs in industries such as retail, manufacturing, and automotive, which are increasingly relying on automation to downsize the workforce. Layoffs are one of the phenomena that can be reviewed from many aspects, including legal, economic, and social. Economically, the loss of income affects consumer spending and slows economic growth. Socially, the absence of income widens the gap between the lower, middle, and upper classes. Legally and politically, layoffs have sparked debates about labour rights and corporate accountability, especially in labour-intensive sectors.

Data from the Indonesian Ministry of Manpower in 2024 shows that 77,965 people experienced layoffs.² The impact of this layoff extends not only to economic aspects but also to various other aspects, including social, psychological, and legal.³ Indonesia protects workers who experience layoffs by providing severance pay, award money, or resolving industrial relations disputes through litigation.⁴ The employer's decision to conduct a layoff must be made through reasonable and strategic consideration.⁵

One of the legal discourses that can explain strategic decisions in business carried out by company leaders is the Business Judgment Rule (BJR). Historically, this understanding originated in the United States and was adopted by countries that adopted the Common Law system. The BJR is known in company law as immunity for a director in taking actions or decisions on the company's management.⁶ Decisions to conduct layoffs, especially on a large scale, must also be made based on the Business Judgment Rule (BJR). However, problems arise if the workers laid off are part of the shareholders, known as employee stock ownership plans (ESOPs). This condition raises legal issues; on the one hand, the company's leadership decides based on the BJR, and on the other hand, the employees laid off are shareholders. Therefore, this article

¹ Organisation internationale du travail, ed., *World Employment and Social Outlook: Trends 2024* (Geneva: International labour office, 2024).

² Kementerian Ketenagakerjaan Republik Indonesia, 'Tenaga Kerja Ter-PHK Tahun 2024', 20 January 2025, [https://satudata.kemnaker.go.id/data/kumpulan-data/2342#:~:text=Satudata%20Kemnaker%20%7C%20Portal%20Data%20Ketenagakerjaan%20RI&text=Pada%20periode%20Januari%20Desember%202024,PHK%20\(Pemutusan%20Hubungan%20Kerja\)](https://satudata.kemnaker.go.id/data/kumpulan-data/2342#:~:text=Satudata%20Kemnaker%20%7C%20Portal%20Data%20Ketenagakerjaan%20RI&text=Pada%20periode%20Januari%20Desember%202024,PHK%20(Pemutusan%20Hubungan%20Kerja)).

³ Sholahuddin Al-Fatih, Asrul Ibrahim Nur, and Nilasari Nilasari, 'Workers Layoffs Caused from the COVID-19 Pandemic in Indonesia and the European Union', *Jurnal Kajian Pembaruan Hukum* 3, no. 1 (30 April 2023): 1, <https://doi.org/10.19184/jkph.v3i1.33378>.

⁴ Mustika Prabaningrum Kusumawati and Ahmad Khairun Hamrany, 'Legal Protection for Workers Affected by Layoffs in Indonesian Laws and Regulations', *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 56, no. 2 (15 December 2021): 311, <https://doi.org/10.14421/ajish.v56i2.954>.

⁵ Nita Chhinzer, 'Are Layoffs an Industry Norm? Exploring How Industry-level Job Decline or Growth Impacts Firm-level Layoff Implementation', *Human Resource Management Journal* 34, no. 4 (November 2024): 1042–62, <https://doi.org/10.1111/1748-8583.12543>.

⁶ Munir Fuady, *Doktrin-Doktrin Modern Dalam Corporate Law Dan Eksistensinya Dalam Hukum Indonesia* (Bandung: Citra Aditya Bakti, 2002).

will discuss and analyse these legal problems, provide solutions, and offer recommendations.

Some research results on layoffs, BJR, and ESOP have been published by several scholars. Santiago conducted studies on BJR and ESOP, which discussed BJR from the comparative aspect of several countries: Indonesia, England, Canada, the USA, and Australia. This study shows that the BJR application in Indonesia has applied several principles, such as good faith, prudence, usefulness, and legal certainty. However, the BJR application in Indonesia has not provided room for court decisions to develop these principles.⁷ Another study was conducted by Irawan et. al., who also researched the BJR application in Indonesia and concluded that the BJR application can provide legal protection for directors of limited liability companies in the event of business losses.⁸ Such legal protection can be provided if prudence, good faith, scope of authority and responsibility are correctly implemented. Wijaya conducted a further study focusing on applying BJR to bankruptcy law in Indonesia.⁹ This study recommends reforming Indonesia's bankruptcy law to align with the BJR principle.

The previous three studies mentioned earlier focused on examining the BJR from different aspects. The first study focuses on comparative studies, the second study focuses on the issue of legal protection for the leaders of limited liability companies, and the third study focuses on the issue of BJR in bankruptcy law. The article that the author compiled offers a novelty of topics that discuss the application of BJR in the context of the Indonesian legal system. One of the BJR applications in the company is for terminating employees. An interesting legal issue is whether the employee who was terminated is a shareholder employee. Therefore, this article will discuss the BJR application in terminating company shareholders' employees.

This study aims to map the problem and the legal solution regarding the termination of employment for employees who are also shareholders in the company where they work. This issue is significant to discuss because of the increasing trend of employees being shareholders in the company. Furthermore, the study can also mitigate legal risks if there is a case of termination of employment against a shareholder employee.

METHOD

The research in this article employed Normative jurisprudence. Normative Juridical Research is legal research conducted by researching library materials or secondary data. Normative legal research is also called doctrinal legal research or document study, because this research is conducted or aimed only at written regulations or other legal

⁷ Faisal Santiago, 'Reconstruction of the Business Judgment Rule Doctrine in Indonesia: Legal Comparison with England, Canada, the United States, and Australia', *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 1 (29 April 2024): 107–21, <https://doi.org/10.29303/ius.v12i1.1371>.

⁸ Chandra Noviardy Irawan, Pujiyono Pujiyono, and Irma Cahyaningtyas, 'Implementation of Business Judgement Rules in Indonesia: Theories, Practices, and Contemporary Cases', *Indonesian Journal of Advocacy and Legal Services* 4, no. 1 (26 April 2022): 1–24, <https://doi.org/10.15294/ijals.v4i1.53335>.

⁹ Andika Wijaya, 'Implementation of the Doctrine of the Business Judgment Rule on Bankruptcy Law in Indonesia', *Yuridika* 35, no. 1 (21 October 2019): 1, <https://doi.org/10.20473/ydk.v35i1.12436>.

materials.¹⁰ The problem approach used in writing this research consists of two approaches: the statistical approach and the conceptual approach. The statutory approach examines all relevant laws and regulations related to the legal problems faced. This approach is a research method that prioritises legal materials in the form of laws and rules as an essential reference material in conducting research. This approach examines the relevant laws and regulations in line with the legal issues faced.

Conceptual approach is a type of approach in legal research that provides an analytical perspective on problem solving in legal research, seen from the aspects of the legal concepts behind it, or can even be seen from the values contained in the normation of a regulation concerning the concepts used. This approach is used to understand concepts and theories related to the Doctrine of Business Judgement Rule on Termination of Employment Relations of Employees of the Company's Shareholders.

DISCUSSION

The Role of the Business Judgment Rule in Worker Layoffs

Business Judgement Rule in Indonesian Limited Liability Company Law

Labour reduction is carried out by simultaneously or quickly disconnecting labour relations between the company's organisation and employees, individually and massively.¹¹ Therefore, any decision to reduce employees, especially en masse, must be based on the decision of the company's leadership organ. BJR adheres to the principle that a decision of the board of directors on the company's business activities cannot be challenged by anyone even if in the end the decision turns out to be wrong or detrimental to the company, provided that the decision meets the requirements, that the decision is under the applicable law, good faith, proper purpose, the decision has rational grounds, done with caution as done by a person who is cautious enough in a similar position, and done in a way that he can trust as the best for the company.¹²

The Board of Directors is an organ of a limited liability company with the authority to carry out the management or business activities of a limited liability company. The general definition of management includes the duties and functions of exercising the power of administration and maintenance of the company's assets, following the company's aims and objectives and activities within the limits of power or capabilities granted by law and the articles of association to the board of directors.¹³

¹⁰ Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 2012), 54.

¹¹ Chhinzer, 'Are Layoffs an Industry Norm?'

¹² Shigeko Hadi, Aam Suryamah, and Anita Afriana, 'Prinsip Business Judgement Rule Dalam Pertanggungjawaban Hukum Direksi BUMN Yang Melakukan Tindakan Investasi Yang Mengakibatkan Kerugian', *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan Dan Ke-PPAT-An* 4, no. 2 (30 June 2021), <https://doi.org/10.23920/acta.v4i2.553>.

¹³ Paolo Tomassetti, 'Between Stakeholders and Shareholders: Pension Funds and Labour Solidarity in the Age of Sustainability', *European Labour Law Journal* 14, no. 1 (March 2023): 73–91, <https://doi.org/10.1177/20319525221140422>.

The Board of Directors has the right and obligation to decide what is essential for the company. The Board of Directors also has the authority and freedom to determine whether a legal action is in the company's best interests, not just the interests of its shareholders. Every decision made by the Board of Directors in a company can have significant consequences for those interested in the company, such as shareholders and employees, as well as the wider community. Given the provisions of limited liability company law that allow directors to be sued for losses incurred due to errors and omissions of directors in managing the company, shareholders representing at least 1/10 (one-tenth) of the total number of shares with voting rights can file a lawsuit for compensation through the district court against the directors.

Based on the Indonesian Limited Liability Company Law, the conditions for the Board of Directors to be personally liable are that they are guilty or negligent in carrying out their management duties in bad faith and without full responsibility. Thus, BJR can be applied as long as the decision of the board of directors fulfils the conditions as long as it is under the decision following applicable law, carried out in good faith, carried out with a proper purpose, the decision has a rational basis, carried out with due care as done by a reasonably prudent person in a similar position, carried out in a manner worthy of his trust (reasonable belief), and as the best interest for the company.

The argument also answers the scope of BJR limitations in the event of termination of employment of employees, namely as long as the decision to terminate employment taken by the Board of Directors has been made under the principles of BJR and is carried out solely for the benefit of the Company, the Board of Directors cannot be held personally liable, as well as the case of termination of employment of employees of the Company's shareholders, as long as all rights under labour law and rights under the Stock Option Agreement are fulfilled, the Board of Directors is free from personal liability.

The Black Law Dictionary mentions the BJR Doctrine, which is an understanding that explains that a board of directors in making business decisions, where the directors do not involve their interests, are in good faith, and are honest that what they do is solely for and on behalf of the interests of the company, then if their decision causes losses to the company, this BJR doctrine is a protector for a director from personal liability, as long as he can prove that the decision was taken on good faith and prudence, and remains within the scope of the board of directors' authority as regulated in the Law and/or the Articles of Association of the Company.¹⁴

As a civil law country, Indonesia has also adopted BJR as implemented in the Indonesian Limited Liability Company Law, which emphasises the role and responsibilities of the company's organs and is valid until now. Doctrine is closely related to judges' decisions (jurisprudence) because judges often refer to the opinions of legal experts (doctrine) when making decisions. The application of the BJR doctrine has been practised in Indonesian courts through several choices. One of them is Supreme Court Decision Number 121 K/Pid.Sus/2020 dated 9 March 2020 with the defendant Karen Agustiawan, former CEO of an Indonesian state-owned company. Therefore, although a country's

¹⁴ Wilda Shafira et al., 'The Business Judgment Rule in a Progressive Legal Perspective: Essence and Implications in Indonesia', *Rechtsidee* 10, no. 2 (12 December 2022), <https://doi.org/10.21070/jihr.v11i0.790>.

legal system is different, doctrine is still considered a source of law. Unsurprisingly, the BJR Doctrine in corporate law developed not only in countries adhering to the Common Law legal system, but also in countries adhering to the Non-Common Law legal system.¹⁵ The adoption of the BJR doctrine by non-common law legal systems is evidence that law can cope with economic and industrial developments. The existence of the BJR doctrine is an attempt to legally protect directors from the risks that may arise in corporate decision-making.

The BJR arises due to a director's failure to exercise their fiduciary duty, which includes the duty of skill and care, specifically the obligation of skill and prudence.¹⁶ As such, if these principles have been appropriately applied, the Board of Directors (BOD) will be relieved from personal liability for any errors in its decisions. The doctrine of BJR reflects the freedom of the BOD in making business decisions and also protects some BOD members who perform their duties in good faith. Directors cannot be held fully liable for mere errors of judgment and honest mistakes.¹⁷

The BJR can be accepted if it fulfils several conditions, namely that the decisions taken by the board of directors must follow applicable law, be carried out with motivation or good faith, have the right objectives based on rational considerations, and be carried out prudently and through reliable means, which are the best decisions for the Company.¹⁸ BJR has at least three fundamental aspects. First, BJR is intended to support corporate managers' actions or provide a safe harbour for directors' actions so that they are not dismissed as unqualified. Second, in litigation, BJR serves as a means of preserving judicial resources, thereby preventing courts from being mired in rehashing inherently subjective and unsuitable decisions, as judges are not businesspeople. Third, BJR implements the law of broad economic policy, which is built on financial freedom and the encouragement of informed risk-taking. Recently, BJR has also been used to assess director' actions related to corporate takeovers that go to court, and companies and their lawyers use BJR to evaluate and recommend that the court reject derivative suits.¹⁹

The USA has extensive experience in implementing BJR. In several judgments, USA courts have held that courts are less qualified to adjudicate business decisions than businesspeople, who are more experienced and educated to make business decisions. The USA courts have recognised that BJR is intended to encourage business risk-taking

¹⁵ D. Gordon Smith, 'The Modern Business Judgment Rule', in *Research Handbook on Mergers and Acquisitions*, ed. Claire A. Hill and Steven Davidoff Solomon (Edward Elgar Publishing, 2016), <https://doi.org/10.4337/9781784711481.00013>.

¹⁶ Marika Turava, 'The Scope of the Business Judgment Rule and Its Relation to the Fiduciary Duties of Company Directors', *Journal of Law*, no. 1 (30 June 2023), <https://doi.org/10.60131/jlaw.1.2023.7073>.

¹⁷ Juan Kasma and Christian Andersen, 'Business Judgment Rule and Corporate Governance as the Strategic Imperative of Indonesian State-Owned Enterprise', *European Journal of Law and Political Science* 3, no. 4 (2 August 2024): 51–58, <https://doi.org/10.24018/ejpolitics.2024.3.4.151>.

¹⁸ Jason Crawford and Mirna Jabbour, 'The Relationship between Enterprise Risk Management and Managerial Judgement in Decision-making: A Systematic Literature Review', *International Journal of Management Reviews* 26, no. 1 (January 2024): 110–36, <https://doi.org/10.1111/ijmr.12337>.

¹⁹ Melissa Seenacherry, 'Liability of Company Directors: The Business Judgment Rule as Developed in The US and Adopted by Germany Compared to The Netherlands' Approach', *Amsterdam Law Forum* 12, no. 1 (20 March 2020): 75, <https://doi.org/10.37974/ALF.345>.

while considering the legal aspects. Furthermore, the USA Courts have decided that for efficiency reasons, the judiciary should not use its resources to assess and determine business decisions that are the right and authority of the board of directors in the corporation. The court also needs to respect the business structure that has been established to run the company's business.²⁰

In terms of the economic argument, allowing the corporate governance machinery to function as it should, even if it sometimes makes mistakes, is far more efficient than interrupting and disrupting the internal team's functioning. Regarding the legal structure argument, respecting the decisions of the board of directors requires respecting the corporate structure, which grants the board the power to make decisions. Therefore, BJR is often a rule that protects directors from being held liable for not taking certain business decisions.²¹ In other words, BJR protects directors from personal liability. Thus, in the view of this study, BJR is a doctrine produced by the courts in the common law tradition, which is then used as a rule or parameter to test directors' business decisions. Therefore, it can be understood that, between Business Judgement as a Doctrine and as a Rule, some experts and parties view it as something different. Still, few also think the two have similarities, so it is generally referred to as the Business Judgement Rule or BJR.²²

Legal Responsibility of the Board of Directors of a Limited Liability Company

The Indonesian Limited Liability Company Law regulates that the organs of the Company are the General Meeting of Shareholders, the Board of Directors (BOD), and the Board of Commissioners. According to Article 1, number 5 of the law, the Board of Directors is an organ of the company that is authorised and entirely responsible for managing the Company for the benefit of the Company, under its aims and objectives. It represents the Company, both within and outside the court, in accordance with the provisions of the Articles of Association. In the management of the company, the responsibility of the board of directors means that the board of directors should carry out the management of the company as their duties, both based on the provisions of laws and regulations and the company's Articles of Association.²³

In the Indonesian Limited Liability Company Law, it is stated that the Board of Directors is an organ of the company that is authorised and fully responsible for the management of the company for the interests and purposes of the company. This authority reflects

²⁰ Yafet Yosafet Wilben Rissy, 'Business Judgement Rule: Ketentuan Dan Pelaksanaannya Oleh Pengadilan Di Inggris, Kanada Dan Indonesia', *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 32, no. 2 (15 October 2020): 275, <https://doi.org/10.22146/jmh.56117>.

²¹ Nadhifa Putri Eriana and Iwan Erar Joesoef, 'Application of The Business Judgement Rule Doctrine and Responsibilities of The President Director of PT Pertamina', *Syah Kuala Law Journal* 8, no. 3 (2024), <https://doi.org/10.24815/sklj.v8i3.42755>.

²² Lucie Josková, 'The Business Judgment Rule in the Czech Republic', *AUC IURIDICA* 68, no. 3 (14 September 2022): 37–47, <https://doi.org/10.14712/23366478.2022.34>.

²³ Pamonaran Manahaar, Isis Ikhwanyah, and R. Kartikasari, 'Kedudukan Peraturan Dewan Komisaris Dalam Pengelolaan Perusahaan Dihubungkan Dengan Tanggung Jawab Direksi Dan Dewan Komisaris Berdasarkan Prinsip-Prinsip Pengelolaan Perusahaan', *Jurnal Poros Hukum Padjadjaran* 3, no. 1 (1 December 2021): 1–18, <https://doi.org/10.23920/jphp.v3i1.552>.

the legal trust to the Board of Directors in carrying out the day-to-day operations of the company. In this context, the BJR doctrine also applies, which provides legal protection to the BOD from lawsuits for business decisions taken in good faith, without conflict of interest, and based on rational considerations.

The meaning of the BOD's authority concerning the BJR doctrine is that the BOD cannot be held liable for a loss arising from a business decision that does not result in profit, as long as the decision is taken following the principles of prudence and professional responsibility. As such, the BJR doctrine serves as an objective restriction for the court not to interfere with managerial judgment as long as the decision-making process meets the elements of reasonableness. This is important to ensure the flexibility and independence of the Board of Directors in making strategic decisions without fear of excessive legal risks.

In carrying out their duties and authorities, the BOD must start from the basis that the responsibilities and positions obtained are based on three principles, namely the trust given to them by the company (Fiduciary Duty). These principles show the ability and prudence of the BODs' actions (Duty Skill and Care), and duties based on the provisions of the Law (Statutory Duties). Therefore, the BOD is required to always act carefully and in good faith, solely for the interests and objectives of the company.²⁴

In carrying out the duties and legal position granted by the Indonesian limited liability company law, the Board of Directors is authorised to represent the company inside and outside the court. Such authority according to the provisions of Article 98 paragraph 3 of the Indonesian Limited Liability Company Law is unlimited and unconditional, unless otherwise specified in the law, the Articles of Association or a resolution of the General Meeting of Shareholders, in which case the resolution of the General Meeting of Shareholders must not conflict with the Indonesian limited liability company law and the Articles of Association of the limited liability company concerned.

The authority of the BOD as the leader and manager of the company's business includes all legal actions that are covered by the aims and objectives and business activities of the company as stated in its articles of association, thus the BOD is an organ of the company by using or on behalf of the company to take action in legal traffic following the aims and objectives of the company. This is the source and authority of the BOD for and on behalf of the company to perform legal acts with third parties or represent the company in and out of court.

One way to limit the authority of the BOD is to include the aims and objectives in the articles of association of a limited liability company. Still, there is another way, which is non-statutory (*buiten-statutair*). What is meant by statutory limitation is the limitation of the authority of the BOD of a limited liability company, which is regulated in the articles of association or the decision of the General Meeting of Shareholders (Article 98, paragraph 3 of the Indonesian limited liability company law). In contrast, the nonstatutory limitation of authority (*buitenstatutair*) is carried out based on a work

²⁴ Rutger Claassen, 'Wealth Creation without Domination. The Fiduciary Duties of Corporations', *Critical Review of International Social and Political Philosophy* 27, no. 3 (15 April 2024): 317–38, <https://doi.org/10.1080/13698230.2022.2113224>.

agreement. In Indonesian limited liability company law, if read carefully, at least 9 (nine) articles can be found that expressly regulate the personal responsibility of each member of the BOD and the joint and several responsibility of all members of the BOD of the company.

The provision regarding the obligation of the BOD to guarantee that the company's share buyback transaction is contained in Article 37, paragraph 3 of the Indonesian Limited Liability Company Law. This guarantee by the board of directors is associated with the company; the BOD is obliged to ensure that the purchase is carried out in the prescribed manner and process.²⁵ Furthermore, in Article 69, paragraph 3 of the Indonesian Limited Liability Company Law, if the financial statements provided are untrue and/or misleading, members of the BOD (and members of the Board of Commissioners) are jointly and severally liable to the injured party. This provision reflects the disclosure of information in the context of implementing the principle of fiduciary duty by the BOD towards the Company.²⁶

The Indonesian limited liability company law, specifically Article 72, paragraph 6, pertains to the distribution of interim dividends made by the Board of Directors with the approval of the Board of Commissioners before the end of the company's financial year. However, it is noted that the distribution of interim dividends is not finalised until after the end of the financial year. In this case, the company is proven to have suffered losses. At the same time, the shareholders cannot return the interim dividends that have been distributed to the company, so in this case, the element of prudence is emphasised to avoid mistakes.

In the event of cancellation of the appointment of a member of the Board of Directors due to failure to meet the requirements of the appointment, Article 95 paragraph 5 of the Indonesian Limited Liability Company Law stipulates that even though the existing legal acts that have been carried out for and on behalf of the company by the Board of Directors before the appointment is cancelled, remain binding and become the responsibility of the company, however, the member of the Board of Directors concerned is still responsible for the company's losses. In this case, the person concerned did not act in good faith, even before being appointed a member of the company's Board of Directors. Furthermore, the Board of Directors member can be categorised as having committed an unlawful act by stating the facts or circumstances.

Furthermore, Article 97 paragraph 3 of the Indonesian Limited Liability Company Law regulates the full responsibility of each member of the Board of Directors personally, if in carrying out their management duties towards the company, the company has incurred losses, as a result of errors or negligence of the Board of Directors in carrying out their duties. This responsibility changes to joint and several responsibility when the

²⁵ Edi Wahjuningati, 'Pertanggungjawaban Perseroan Terbatas Sehubungan Doktrin Ultra Vires Terkait Tindakan Organ Perseroan Terbatas Di Luar Ketentuan Anggaran Dasar', *JURNAL RECHTENS* 13, no. 2 (20 December 2024): 167–80, <https://doi.org/10.56013/rechtens.v13i2.3196>.

²⁶ Anwarul Muarif, 'Applying the Limited Liability Principles: Fiduciary Duties and Accountability of Limited Liability Company Director', *Yustisia Tirtayasa: Jurnal Tugas Akhir* 4, no. 3 (1 September 2024): 1, <https://doi.org/10.51825/yta.v4i3.25936>.

Board of Directors consists of two or more members.²⁷ Article 101 of the Indonesian Limited Liability Company Law sanctions responsibility for disclosure with possible conflicts of interest. Article 102, paragraph 4 of the Indonesian limited liability company law relates to neglecting the obligation to seek approval or assistance from the General Meeting of Shareholders. By analogy interpretation with the provision given in the explanation of Article 117 paragraph 2 of the Indonesian limited liability company law, it is clear that although the law states that legal acts remain binding on the company as long as the other party to the legal act is in good faith, gross negligence and misconduct on the part of the Board of Directors do not provide it with the protection of the business judgment rule.²⁸ In such a case, the Board of Directors may be personally liable in the event of a loss to the company.

In the case of bankruptcy, Article 104 paragraph 2 of the Indonesian Limited Liability Company Law stipulates that whether due to the request of the company or the request of a third party, due to the fault or negligence of the Board of Directors and the bankruptcy assets are not sufficient to pay all the obligations of the company in bankruptcy, each member of the Board of Directors is jointly and severally liable for all duties that are not paid from the bankruptcy assets. The following paragraph stipulates that such responsibility also applies to the wrongful or negligent members of the Board of Directors who have served as members of the Board of Directors within five years before the declaration of bankruptcy is pronounced. It should be remembered and noted that in the event of bankruptcy, the fiduciary duty of the Board of Directors is towards creditors, no longer solely for the company or the Company's shareholders.

Explanation of Article 117 paragraph 2 of the Indonesian Limited Liability Company Law relates to neglecting the obligation to seek approval or assistance from the Board of Commissioners before the Board of Directors takes specific legal actions. If the Board of Directors does this, it may result in personal liability for the member of the Board of Directors who did not seek such approval. Although the Indonesian limited liability company law states that legal acts remain binding on the company as long as the other party to the legal act is in good faith, it can still result in personal liability of the members of the Board of Directors when there is a loss to the company. Gross negligence or misconduct on the part of the Board of Directors does not afford them the protection of the business judgment rule. Regarding joint and several liability of members of the Board of Directors, Article 69 paragraph 4 of the Indonesian Limited Liability Company Law states that members of the Board of Directors and members of the Board of Commissioners are exempted from liability as a result of the financial statements provided turning out to be untrue and or misleading if it is proven that the situation is not due to their fault.

The matters stated in these articles indicate that each member of the Board of Directors can be released from personal, collegial responsibility, in the form of joint and several liability, if they can prove that they have shown and had good faith, acted prudently,

²⁷ Orin Gusta Andini, Nilasari Nilasari, and Andreas Avelino Eurian, 'Restorative Justice in Indonesia Corruption Crime: A Utopia', *Legality: Jurnal Ilmiah Hukum* 31, no. 1 (13 April 2023): 72–90, <https://doi.org/10.22219/ljih.v31i1.24247>.

²⁸ Wijaya, 'Implementation of the Doctrine of the Business Judgment Rule on Bankruptcy Law in Indonesia'.

was not negligent, did not commit a mistake, or did not act fraudulently or commit an unlawful act or have taken precautions or have provided advice or input in terms of or on matters that could cause losses to the limited liability company concerned.²⁹

The Board of Directors is tasked with managing the Company, and the Board of Directors must be accountable for the implementation of its duties to the shareholders through the general meeting of shareholders. Under the established procedures, the Board of Directors may utilise the services of independent professionals as advisors to assist in executing its duties.³⁰ Each member of the Board of Directors must be of good character and have experience in their position. The Board of Directors must perform its duties properly for the benefit of the Company. The Board of Directors must ensure that the Company carries out its social responsibilities and considers the interests of various stakeholders. The Board of Directors shall always endeavour to comply with this Code.

In performing its duties, the Board of Directors must comply with the Company's Articles of Association and prevailing laws and regulations. Therefore, each member of the Board of Directors must understand the Company's Articles of Association and the laws and regulations relating to the duties and authorities of the Board of Directors that apply from time to time, members of the Board of Directors are prohibited from taking personal advantage of the Company's activities other than salaries, allowances and other facilities/benefits received as members of the Board of Directors based on the decision of the general meeting of shareholders. Meetings of the Board of Directors must be held periodically, depending on the specific nature of the Company. The Board of Directors must determine the rules of the Board of Directors Meeting and include them clearly in the minutes of the Board of Directors Meeting in which the rules are defined. Minutes of the Board of Directors meeting must be made for each meeting of the Board of Directors. Suppose there is a difference of opinion in the meeting of the Board of Directors. In that case, the difference of opinion must be stated in the meeting minutes to understand the decision-making process. Each member of the Board of Directors is entitled to a copy of the meeting minutes of the Board of Directors, even if they are not present at the meeting.³¹

Within fourteen days from the date of dispatch of the minutes of the meeting, each member of the Board of Directors present and/or represented at the relevant Board of Directors Meeting must submit their approval or objection and/or proposed corrections, if any, to what is stated in the minutes of the Board of Directors Meeting to the chairperson of the Board of Directors Meeting. Suppose objections and/or suggestions for corrections to the meeting minutes are not received within such period. In that case, it can be concluded that there are no objections and/or corrections to the minutes of the relevant Board of Directors Meeting. The original minutes of each Board of Directors

²⁹ Athalia De Valerie and Moody Rizqy Syailendra Putra, 'Penerapan Asas Fiduciary Duty Dalam Tanggung Jawab Direksi Pada Perseroan Terbatas', *JLEB: Journal of Law, Education and Business* 2, no. 1 (1 April 2024): 373–79, <https://doi.org/10.57235/jleb.v2i1.1670>.

³⁰ Seenacherry, 'LIABILITY OF COMPANY DIRECTORS'.

³¹ Maria Isabel Sáez and Damaso Riaño, 'Corporate Governance and the Shareholders' Meeting: Voting and Litigation', *European Business Organization Law Review* 14, no. 3 (September 2013): 343–99, <https://doi.org/10.1017/S156675291200119X>.

Meeting shall be bound in an annual collection and kept by the Company. They shall be available upon request by any member of the Board of Commissioners and the Board of Directors. The Board of Directors shall establish an effective internal control system to safeguard the Company's investments and assets, and the Board of Directors shall also establish an internal information control system to protect the Company's information that is important to related parties.³²

The implementation of the role of the Board of Directors based on trust (fiduciary duty), in carrying out the management of the company requires the Board of Directors to rely on the basis that the responsibilities and positions obtained are based on two fundamental principles, namely the trust given by the company (fiduciary duty) and actions based on skill and care (duty of skill and care). These principles require directors to carry out the company's management based on good faith and caution and solely for the interests and objectives of the company.³³

Regarding the duties and responsibilities of the Board of Directors, Indonesian limited liability company law stipulates that 'the Board of Directors carries out the management of the company for the benefit of the company and under the aims and objectives of the company'. Indonesian limited liability company law also stipulates that the board of directors is authorised to carry out management following appropriate policies, within the limits set out in the law and/or articles of association. The Explanation of the Indonesian limited liability company law states that such provision 'assigns the board of directors to manage the company, which, among others, includes the day-to-day management of the company'. Meanwhile, a policy deemed appropriate is explained as one that, among other things, is based on expertise, available opportunities and prevalence in the similar business world.³⁴

The provisions of Indonesian limited liability company law regarding the duties of the Board of Directors mention, among other things, the company's day-to-day management. The word 'among other things' indicates that the day-to-day management is only part of the company's management, which means there is also a 'non-day-to-day' management. Concerning the law, the act of managing the company is regulated by legal norms through *beheer van daden* and *beschikking van daden*. *Beschikking van daden* is a rule that contains prohibitions in the articles of association and Indonesian limited liability company law. The prohibition rule in Indonesian limited liability company law, for example, requires the board of directors to seek approval from the general meeting of shareholders. This means a prohibition for the board of directors from making its own decisions in transferring assets and using the company's assets as collateral for debt. In a contrario, the rules that are not formulated must be approved by the general meeting of shareholders or the board of commissioners, both in the articles of association and Indonesian limited liability company law, are included in the

³² Anak Agung Ngurah Bagus Wiradhanta Adipratama, 'Pengaturan Rapat Umum Pemegang Saham Dalam Anggaran Dasar Perseroan Terbatas', *Jurnal Hukum Sasana* 8, no. 2 (5 April 2024), <https://doi.org/10.31599/sasana.v8i2.1280>.

³³ Claassen, 'Wealth Creation without Domination. The Fiduciary Duties of Corporations'.

³⁴ Muhammad Yusron Yuwono, 'Perkembangan Kewenangan Rapat Umum Pemegang Saham (RUPS) Perseroan Terbatas Di Indonesia', *Notarius* 8, no. 2 (2015): 207–35.

scope of ordinary daily actions carried out by the board of directors in managing the company.³⁵

The company's management is based on good faith and prudence, and solely for the interests and objectives of the company, the directors must be aware of carrying out their duties, roles, and obligations. In carrying out their role, directors also have the freedom to carry out management based on policies that they deem appropriate, among others, referring to considerations of prevalence in the business world. This freedom does have its limits, namely on particular management based on the provisions of Indonesian limited liability company law or the company's articles of association, which require whether the approval of the general meeting of shareholders or the Board of Commissioners is required. However, for management based on Indonesian limited liability company law and the articles of association that do not require the approval of other company organs, especially in day-to-day management, the board of directors has complete freedom, even though policy considerations must accompany this freedom. In its current development, which sees the importance of implementing good corporate governance, because the interests of the company are not limited to the company's interests or in the previous classic view of the interests of shareholders, but also the interests of employees, the interests of third parties or creditors, the interests of the state, and so on. which is considered appropriate and prevalent. This means that the freedom of the board of directors must also be exercised under expertise or ability, good faith, and prudence. With such awareness and freedom, directors can be burdened with responsibility.³⁶

The existence of the authority possessed by the board of directors follows or creates responsibility for it. Suppose that, with authority, the board of directors has the power to carry out management, with the imposition of responsibility. In that case, the directors must exercise this power based on applicable laws. Indonesian limited liability company law states, 'the board of directors is fully responsible for the management of the company'. Each board of directors member must carry out their management in good faith and with full responsibility. If the company suffers a loss, then each board of directors member is entirely personally liable if the person concerned is guilty or negligent in carrying out their duties. If the board of directors consists of two or more people, the responsibility applies jointly and severally to each member.

Reconstruction of the Business Judgment Rule in the Termination of Employment of Employees of Shareholders of the Company

³⁵ Doni Damara Eko Prasetyo, Muhammad Badrus Salam Robieth As Syadili, and Yulianingsih Yulianingsih, 'Perlindungan Hukum Terhadap Direksi Atas Keputusan Bisnisnya Sesuai Prinsip Business Judgement Rule', *Yurispruden: Jurnal Fakultas Hukum Universitas Islam Malang* 6, no. 2 (20 June 2023): 203–23, <https://doi.org/10.33474/yur.v6i2.19654>.

³⁶ Manahaar, Ikhwanasyah, and Kartikasari, 'Kedudukan Peraturan Dewan Komisaris Dalam Pengelolaan Perusahaan Dihubungkan Dengan Tanggung Jawab Direksi Dan Dewan Komisaris Berdasarkan Prinsip-Prinsip Pengelolaan Perusahaan'.

Worker Layoff for Employees Shareholders' Ownership Plans

The relationship between worker and employer is unique since there is a labour relations as well as a strategic partnership in the context of shareholders. The relationship between employers and employees, known as industrial relations, is expected to be harmonious, dynamic and equitable. Therefore, employers and workers must feel that the company is a shared future. Workers have human rights as workers, but workers also have human obligations as workers. Likewise, employers have their human rights and responsibilities as employers.³⁷

Share ownership by employees through the Employee Stock Option Program (ESOP) will give employees a dual status, namely as workers and owners of the company.³⁸ Indonesian limited liability company law turns out to be very supportive of share ownership by employees, as stated in Article 43 paragraph (3) letter (a) of Indonesian limited liability company law, which explains that 'The offer as referred to in paragraph (1) shall not apply if the issuance of shares is addressed to employees of the Company' which is confirmed in its Explanation that 'What is meant by "shares addressed to employees of the Company", among others, shares issued in the framework of the Company's ESOP with all the rights and obligations attached thereto.'

ESOP is also a way to treat employees as work partners to increase Employee productivity/performance. Providing non-financial rewards, when combined with financial rewards, is a very effective strategy to motivate employees. Because it does not rule out the possibility that in the future employees can get the opportunity to own shares, even if in a small portion/percentage, in the company where they work. The implementation of share ownership is, of course, distributed pro rata to all permanent employees with its arrangements, whether as compensation for the burden and position, length of service, achievement and added value of an employee, or other measures that can be mutually agreed upon with several alternative share ownership by employees.³⁹

The company's share ownership programme through the ESOP Programme is carried out in several ways, including the company giving its shares free of charge (stock grant) to employees, selling company shares to employees (generally at a discount), and giving options to employees to buy company shares at a certain period and a specific price. The employee share ownership agreement in the ESOP programme will determine the rights and obligations of the Parties; therefore, employees who take part in the Stock Option through ESOP must understand the clauses in the Agreement.⁴⁰

³⁷ Francesco Bova, Yiwei Dou, and Ole-Kristian Hope, 'Employee Ownership and Firm Disclosure', *Contemporary Accounting Research* 32, no. 2 (June 2015): 639–73, <https://doi.org/10.1111/1911-3846.12084>.

³⁸ Patrick P. Mchugh, Joel Cutcher-Gershenfeld, and Michael Polzin, 'Employee Stock Ownership Plans: Union Influence and Stakeholder Interests', *Economic and Industrial Democracy* 20, no. 4 (November 1999): 535–60, <https://doi.org/10.1177/0143831X99204003>.

³⁹ Douglas Kruse et al., 'Do Employee Share Owners Face Too Much Financial Risk?', *ILR Review* 75, no. 3 (May 2022): 716–40, <https://doi.org/10.1177/00197939211007394>.

⁴⁰ Sarwenda Biduri, Anik Maulidiya, and Wiwit Hariyanto, 'Navigating Governance: ESOP, Regulations, and Corporate Governance Quality', *Procedia of Social Sciences and Humanities* 1 (n.d.): 2021, <https://doi.org/10.21070/pssh.v1i.444>.

Employee Stock Ownership Programmes, commonly referred to as employee stock option programmes, are currently widely implemented in several companies. However, most of those who have consistently run this programme are large companies and/or Go Public companies. Some private companies also run this programme in an effort to attract and retain prospective employees. Ownership of company shares with an ESOP aims to retain employees (minimising employee turnover). Employees who own company shares tend to have a sense of belonging, creating enthusiasm at work. However, it should be recognised that employee share ownership is not directly related to employee loyalty and turnover.⁴¹

Eventhough the basis for Share Ownership by Employees has been provided by the as contained in Article 43 paragraph (3) Indonesian Limited Liability Company Law, the protection of Employee Rights as Shareholders has not been regulated in sufficient detail, even the regulations also do not give these Employees the right to fight for their Rights as owned by Shareholders in general because a stringent Stock Option Agreement requirements bind these Employees.

The rights of employees as company shareholders, specifically in the Indonesian Labour Law, do not exist or are not mentioned, nor are they in the event of layoffs. What distinguishes them from ordinary employees (non-shareholders) is that they are entitled to several benefits/rights/benefits as stipulated in the Stock Option Agreement. Likewise, Indonesian limited liability company law also does not provide detailed regulations on the position of Employees who become shareholders of the Company through ESOP.⁴²

In the context of Indonesian law, especially based on the Indonesian Labour Law, there are no explicit provisions governing the treatment of employee rights as shareholders in the ESOP scheme in the event of worker layoff. The absence of this regulation creates a normative vacuum that has an impact on legal uncertainty for employees.

The legal impact of this lacuna is that the status and rights of employees as shareholders after layoffs can be determined entirely by the company's internal provisions, such as the ESOP agreement, the company's articles of association, or other corporate policies. In practice, some companies may require that shares must be sold back to the company or certain parties after layoffs, often at a price that does not necessarily reflect the actual market value.

In addition, the absence of such an arrangement may lead to potential disputes between the terminated employee and the company, especially if the employee feels financially disadvantaged due to the restriction of his/her share rights. Therefore, it is important for ESOP agreements to expressly regulate the rights of shareholders who experience layoffs in order to provide legal certainty and protection to employees.

⁴¹ Andari Yuriko Sari et al., 'Quo Vadis Employee Participation Concerning Share Ownership in Companies in Indonesia', *Devotion: Journal of Research and Community Service* 4, no. 4 (30 April 2023): 1017–25, <https://doi.org/10.36418/devotion.v4i4.460>.

⁴² Niels Mygind and Thomas Poulsen, 'Employee Ownership – Pros and Cons – a Review', *Journal of Participation and Employee Ownership* 4, no. 2 (26 November 2021): 136–73, <https://doi.org/10.1108/JPEO-08-2021-0003>.

Eventhough the rights of Employees in the Labour Law have been regulated and given protection if the Company violates the rights of Workers, even Indonesian labour law has also explicitly stated that the Rights (wages) of Workers are included/included as debts that take precedence in payment so that Workers can file for Company Bankruptcy, as origin 95 paragraph (4) of Indonesian labour law which states 'If the company is declared bankrupt or liquidated based on applicable laws and regulations, the wages and other rights of workers/labourers are debts that take precedence in payment'.

This is also reinforced by Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations which in Article 2 states 'Debtors who have two or more Creditors and do not pay in full at least one debt that has fallen due and collectible, are declared bankrupt by a Court decision, either at their request or at the request of one or more of their creditors.'

The implementation of ESOP in Indonesia aims to increase employee participation in company ownership and encourage loyalty and performance. However, ESOPs also have negative impacts that need to be scrutinised. One of the main impacts is the potential conflict of interest between employee-shareholders and management, especially when business decisions are made against the interests of employees as investors. In addition, employees who own a significant amount of shares risk losing not only their jobs but also their investments if the company fails or goes bankrupt.

An example of the negative impact of ESOPs globally can be seen in the case of the bankruptcy of the energy company Enron in the United States.⁴³ Thousands of employees lost their retirement savings because their investment portfolio was concentrated in the company's own shares. In the UK, the failure of construction company Carillion in 2018 also showed that employees who held shares in employee ownership programmes suffered double losses. In Japan, the overly complex structure of ESOPs has created imbalances in the distribution of benefits between senior and junior employees. As such, the implementation of ESOPs requires strict oversight and a regulatory framework that prevents excesses and ensures protection of the rights of employees as minority investors.

Legal Responsibility of the Board of Directors for Labour Policy in Termination of Employee Employment of the Company's Shareholders

BJR is a doctrine that teaches that company directors are not liable for losses arising from a decision-making action if the action is based on good faith and care.⁴⁴ Directors receive legal protection without the need to obtain justification from shareholders or the court for decisions they make in the context of managing the company. BJR is used to protect directors and their staff from any policy or business decision or business transaction carried out for the benefit of the company under the company's goals and

⁴³ David Millon, 'Enron and the Dark Side of Worker Ownership', *Seattle Journal for Social Justice* 1, no. 1 (2002), <https://digitalcommons.law.seattleu.edu/sjsj/vol1/iss1/9>.

⁴⁴ Damara Eko Prasetyo, Badrus Salam Robieth As Syadili, and Yulianingsih, 'Perlindungan Hukum Terhadap Direksi Atas Keputusan Bisnisnya Sesuai Prinsip Business Judgement Rule'.

objectives, with the caveat that as long as the policy or business decision or business transaction is carried out in line with their authority and by prioritising the principle of prudence.⁴⁵ Good faith and accountable/responsible. So, BJR is a legal protection for directors and their staff from liability for any policy or business decision or transaction that results in losses for the company, as long as the policy or business decision or business transaction is carried out in good faith, prudence, honesty, in line with their responsibilities and authority.⁴⁶

Business decisions to be taken by the Board of Directors should reflect as much as possible the protection of all shareholders, both majority and minority shareholders, creditors, workers and also customers, the Board of Directors should create reasonable corporate profits, directors should be brave to take action to prevent practices that are detrimental to the interests of the company. Sometimes, it is difficult for directors to distinguish between a bad business decision and a business decision likely to have a bad outcome. A distinction must be made between a bad decision and a decision with a bad result. The difference is that a bad decision concerns the substance of the decision itself. In contrast, the outcome of a bad decision does not concern the substance of the decision itself, while the outcome of a bad decision concerns the substance of the bad decision.

BJR relates to the ability of the Director to manage risk.⁴⁷ Risk management is necessary because a director is not a clairvoyant who is obliged to know about profitable businesses; in other words, directors will not see the future. There are so many risks taken when Directors make decisions, so Directors are required to know and understand the business being undertaken. Directors are required to re-evaluate all possibilities before decisions are made. Indonesia adheres to three standards that are used as the basis for justifying a limited liability company's business decisions. Business decisions must be made in good faith and with full responsibility, not in the Director's interests.

Based on the study of the implementation and problems, as well as the existing conditions, it is necessary to reconstruct the legislation on aspects that are considered to be the weakness of the Business Judgement Rule in the Termination of Employment of Employees of Shareholders of the Company. The articles in the Indonesian Limited Liability Company law that are reconstructed are Article 97 paragraphs (1), (2) and (6). Many Opinions of Company Law Experts stating that this Article is the adoption of Indonesian limited liability company law on the BJR doctrine and several cases rolling in court make this article 97 by Law Enforcers (Judges, Prosecutors, and Lawyers) as the Application of BJR in Indonesia according to their point of view on Business Decisions made by the Board of Directors.⁴⁸

⁴⁵ Hidayatulloh Hidayatulloh and Éva Erdős, 'State-Owned Enterprise's Debt in the State Financial Regime', *Sriwijaya Law Review* 7, no. 1 (27 January 2023): 105, <https://doi.org/10.28946/slrev.Vol7.Iss1.1843.pp105-120>.

⁴⁶ Irawan, Pujiyono, and Cahyaningtyas, 'Implementation of Business Judgement Rules in Indonesia'.

⁴⁷ Teuku Syahrul Ansari, Herdi Sahrasad, and Irfan Iryadi, 'Indonesian State Owned Enterprises (BUMN or SOEs), and the Urgency of Implementation of Principle of 'Business Judgment Rule'', *Jurnal Cita Hukum* 8, no. 1 (23 March 2020), <https://doi.org/10.15408/jch.v8i1.15042>.

⁴⁸ Teuku Syahrul Ansari, 'Reminding State Enterprises (BUMN) Management Using the Principle of 'Business Judgment Rule': A Preliminary Note', *Budapest International Research and Critics Institute (BIRCI-Journal) : Humanities and Social Sciences* 2, no. 3 (31 July 2019): 27–38, <https://doi.org/10.33258/birci.v2i3.390>.

The authority of the Board of Directors to manage a limited liability company is balanced with the responsibility for the management that has been carried out. Article 97 paragraph (1) of the Indonesian limited liability company law confirms that the Board of Directors is responsible for the company's management, including reducing/terminating employment in this case. The provision of Article 97 paragraph (6) of the Indonesian limited liability company law has a weakness, namely, this provision only gives the right to file a lawsuit to shareholders representing at least 1/10, which limits and does not provide or protect other stakeholders such as workers, creditors, and minority shareholders. For this reason, this study recommends the reconstruction of Article 97 paragraph (6) of the Indonesian limited liability company law, by adding the phrase 'minority shareholders, controlling shareholders, creditors and workers' as parties who can file a lawsuit and changing the wording of paragraph (6).

Value Reconstruction focuses on fulfilling the rights of Employees / Workers, especially Employees of Shareholders of the Company. Reconstruction of the formulation of Indonesian limited liability company law and the reconstructed articles are Article 97 paragraphs (1), (2) and (6). The construction of BJR in Indonesian limited liability company law as it needs to be reconstructed explicitly, primarily if it is related to Common Law and the Director's Fiduciary duty so that there are no multiple interpretations from Law Enforcers in this case Prosecutors, judges and lawyers as Actors who are directly involved in the process of understanding, understanding and analysing business actions in the event of a case that makes BJR as its legal basis, such as Decisions of the Board of Directors that can be categorised as violating BJR and Parties who can file a lawsuit against the Board of Directors if the Board of Directors violates BJR.

CONCLUSION

Termination of employment carried out by the company against shareholders is problematic. On the one hand, there is an employment relationship between the employee and the company; on the other hand, there is also a relationship between the employee as a shareholder and the company. Therefore, if there is a termination of employment under these conditions, it can cause legal problems. In the event of termination of employment of the Company's Shareholder Employee, the employee's rights will be determined by the status of the worker/employee, the reason for the termination, the length of service in the Company, the provisions stipulated in the Stock Option Agreement, and the unique arrangement of separation pay referring to the Collective Labour Agreement if there is a Trade Union in the Company or the Company Regulation if there is no Trade Union in the Company. Business judgment rule as a guideline and instruction for the Board of Directors in making business decisions, where the Board of Directors must always uphold the principles of prudence, good faith, solely for the interests of the company, subject to the provisions of the articles of association and laws and regulations.

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