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A COMPARATIVE LEGAL STUDY OF COMMISSIONER AND SHAREHOLDER AUTHORITY OVER DIRECTOR NEGLIGENCE CASE: INDONESIA VS SINGAPORE

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Abstract

In terms of conducting business interactions through a PT, it is not uncommon for investors from Indonesia and Singapore to experience disharmony in practice, such as negligence by the board of directors that results in harm to the company. Therefore, it is important to have an effective legal mechanism to challenge such negligence so there is an urgency to identify and understand the differences between the legal framework in Indonesia and Singapore in dealing with directors' negligence is important for stakeholders to adopt best practices and improve corporate governance. The results show that derivative rights in Singapore provide a more effective and efficient tool for shareholders to challenge directors' negligence, with clearer legal procedures and stronger legal protections compared to Indonesia. The study concludes that the adoption of best practices from Singapore can improve corporate accountability and governance in Indonesia.

Keywords: *Limited Liability Company (PT), legal action, comparative law*

A. Background

Legal subjects have a very important position and role because they have legal authority. A legal subject is something that according to the law can have rights and obligations and has the authority to carry out legal actions, namely demanding and being sued.[1] Legal subjects are divided into two, namely Humans (*Natuurlijke Persoon*) and Legal Entities (*Rechtspersoon*). Humans as legal subjects have the understanding that humans basically have the rights and obligations to carry out a legal act, such as entering into an agreement, marriage to make a will and other legal acts. Humans as legal subjects can be declared authorized to perform legal acts if they are capable (adult), physically and mentally healthy and able to act legally and are not under guardianship. Meanwhile, a legal entity is a body that according to the law is authorized and becomes a supporter of rights and obligations that have no soul. A legal entity is essentially the rights and obligations of the members together and in it there is joint property that cannot be divided but as a joint owner.[2]

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[1] Raymon Sitorus, "EKSISTENCY OF MSE PERSEROANTS AND THEIR LEGAL IMPLICATIONS ON INSOLVENCY UNDER THE LAW SYSTEM IN INDONESIA," National Law Magazine 51, no. 1 (July 31, 2021): 21–39, https://doi.org/10.33331/mhn.v51i1.141

[2] Ni Kadek Srimasih Ristiyani, Dewa Gede Sudika Mangku, and Ni Putu Rai Yuliartini, "THE LEGAL POSITION OF INTERNATIONAL TRADE ON INDONESIA'S ECONOMY,"

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A legal entity is a reality that arises as a legal necessity in the association of society. As humans, apart from having personal interests, there are also common interests that must be fought together. There are several legal theories that qualify a legal entity to be classified as a legal subject, namely fictie theory, joint wealth theory, joint ownership theory, organ theory and juridical reality theory. PT is a form of business entity that is most attractive to the public, apart from its limited liability, PT also makes it easy for shareholders to transfer their company to anyone by selling all shares owned by the company. The provisions regarding PT have been regulated in Law No. 40 of 2007 concerning Limited Liability Companies.[3]

PT has an independent position which is given Standi Persona by the Law. Therefore, the consequence of the independence of the PT is that all forms of risks arising in the business activities of the PT become the responsibility of the PT itself. In addition, PT has its own assets that are independent of the personal assets of the shareholders to the organs that run the PT so that if there is a loss/gain, the action becomes a burden/benefit for the PT itself. The PT organ in question consists of people who run the PT and are separate from the shareholders. Based on article 1 point 2 of the Company Law, it states that 'The organs of the company are the general meeting of shareholders, the board of directors and the board of commissioners'.[4] Each organ of the PT is given freedom of action as long as it is for the benefit of the PT. Therefore, each organ of the company has the responsibility to complete the task in accordance with its authority. Ideally, authority is exercised in accordance with the responsibilities of each organ and vice versa, responsibility is given in accordance with the authority it has.

This research is conducted on companies that have the status of Public Limited Liability Company (Tbk) in Indonesia or Public Company in Singapore. In this context, both Public Limited Companies and Public Companies have complex corporate governance mechanisms and strict regulations, so an in-depth understanding of the authority and legal rights possessed by commissioners and shareholders in both countries is essential to maintain company integrity and performance. This research aims to identify and analyse the various aspects of laws and regulations that allow commissioners and shareholders to act against directors' negligence, including the procedures, conditions and legal implications of such actions.

First of all, it is necessary to understand the duties and responsibilities of the board of commissioners as stipulated in the provisions of the Company

Journal of Legal Communication (JKH) 8, no. 2 (August 1, 2022): 640–49, https://doi.org/10.23887/jkh.v8i2.52011.

[3] Sylvia Putri and David Tan, "A JURIDICAL ANALYSIS OF PERSEROAN PERORANGAN REVIEWED FROM THE UNDANG-UNION OF COPYRIGHT AND THE UNDANG-UNION OF LIMITED PERSEROAN," *UNES Law Review* 4, no. 3 (March 1, 2022): 317–31, https://doi.org/10.31933/unesrev.v4i3.239.

[4] Yuliana Duti Harahap, Budi Santoso, and Mujiono Hafidh Prasetyo, "Establishment of Individual Limited Liability Company and Legal Responsibility of Shareholders Under the Job Creation Law," *Notarius* 14, no. 2 (December 31, 2021): 725–38, https://doi.org/10.14710/nts.v14i2.43800.

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Law. The board of commissioners is tasked with conducting general and/or special supervision in accordance with the articles of association and providing advice to the board of directors article 1 point (6) of the Company Law. Each member of the board of commissioners is obliged to carry out supervisory duties and provide advice to the board of directors in good faith, prudence and responsibility, and for the benefit of the limited liability company article 114 paragraph (2) of the Company Law.

The Board of Directors has the obligation to manage the running of the company while the Board of Commissioners has the obligation to oversee the management of PT by the directors. Meanwhile, the general meeting of shareholders (GMS) functions as an implementation of overall supervision/control over each fulfilment of the obligations of the Board of Directors and the Board of Commissioners on the rules that have been determined together.[5] In practice, one of the most important organs in running a PT is the Board of Directors. The Board of Directors is given a mandate and trust by all shareholders through the GMS so that in this legal relationship, on the one hand the directors are treated as recipients of power from the company to run the PT in accordance with the objectives and on the other hand the Directors are also treated like employees of the PT in a superior and subordinate relationship (joint and personal liability). The Board of Directors is fully responsible for the management and running of the PT. The Board of Directors is given full rights and powers which are accompanied by the consequence that every action and deed of the company as long as the Board of Directors acts in accordance with what has been determined in the articles of association of the PT.[6]

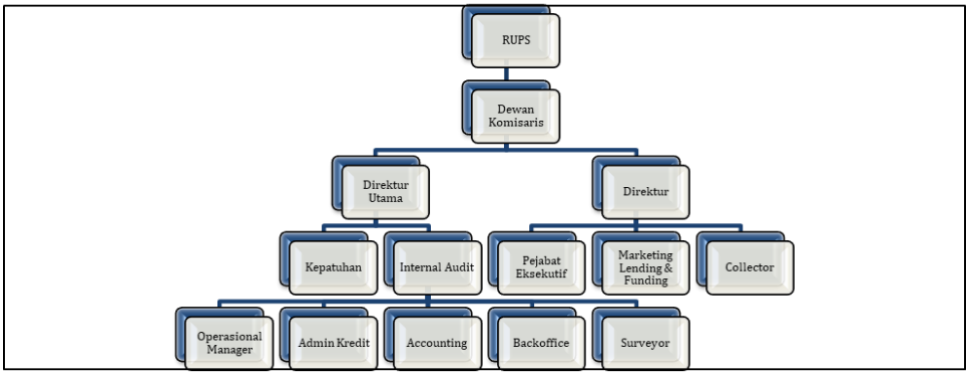

Figure 1. Structure in PT Elements

Conversely, if the actions of the Board of Directors are detrimental to the PT, which are carried out outside the limits and authority that has been given to them, the Directors are personally liable. This is known as limited

[5] Femmy Silaswaty Faried et al., "Individual Corporations in Indonesia: Fostering Economic Growth and Fairness through Simplified Business Formation," *Rechtsidee* 11, no. 2 (December 20, 2023), https://doi.org/10.21070/jihr.v12i2.998.

[6] Marojahan JS Panjaitan et al., "Legal Politics of Management and Settlement of Acts Against the Law of Limited Liability Company Organs," *Journal of Law and Sustainable Development* 11, no. 12 (December 1, 2023): e1843, https://doi.org/10.55908/sdgs.v11i12.1843.

liability, which in principle protects the assets of the business entity, namely the PT. Although limited liability protection has significant benefits, it is not absolute and there are other circumstances that are also detrimental to all parties. Therefore, in carrying out their duties, directors must pay close attention to the objectives, values and principles of the company.[7] The position of the board of directors is very important to be held by a professional in their field who is able to bring about the growth and development of the company by fulfilling the company's goals, values or focus areas. However, it is not excluded that the possibility of directors making mistakes, whether intentional or unintentional, or being careless in managing the company, resulting in financial losses and/or the responsibility of the company.[8] Therefore, the board of commissioners is obliged to convene and if the GMS does not reach consensus, then shareholders with dominant voting rights tend to determine the outcome of the GMS decision. In addition, there are other efforts, namely the shareholders of PT according to the existing provisions have the right to sue the directors concerned to be held accountable up to their personal assets.

Just like in Indonesia, legal entities in Singapore also recognise several forms of business organisations including the sole trader, the partnership and the company.[9] Of the several types of business entities, Singaporean business actors are more likely to choose the form of a company because it is considered to provide certainty to business actors. In terms of conducting business interactions through PT, often investors from Indonesia and Singapore often arise disharmony in practice, especially in the implementation of PT management that interacts in business activities in Indonesia and business in Singapore. There are several problems, especially in the supervision of the management system of PT and Co.Ltd which often collide in regulation (regulation and standardisation), management (administration) to supervision of the running of the business.[10] In order to find out the authority of commissioners and shareholders in supervising directors in Indonesia and Singapore, it is necessary to write/research using the comparative legal method. In accordance with the background described above, the author is interested in conducting research entitled "**Critical Analysis of the Authority of Commissioners and Shareholders in Taking Legal Action Against the Negligence of Directors: A Comparative Study**

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7 Febri Jaya, "Potensi Konflik Kepentingan Dalam Pendirian Badan Hukum Perorangan Pasca Revisi Undang-Undang Perseroan Terbatas Dalam Omnibus Law," *Kosmik Hukum* 21, no. 2 (May 29, 2021): 48, https://doi.org/10.30595/kosmikhukum.v21i2.10310.

8 Arman Hanafi, "Analisis Yuridis Pertanggung Jawaban Direksi Dalam Melakukan Perbuatan Melawan Hukum Atas Dasar Kelalaian Dalam Pengurusan Perseroan Terbatas," *Khazanah Hukum* 3, no. 3 (2021): 116–20, https://doi.org/10.15575/kh.v3i3.14788.

9 Alya Nabita Az-zahra and Sri Bakti Yunari, "Perbandingan Pengaturan Dan Implementasi Doktrin Fiduciary Duty Di Indonesia Dan Singapura," *Reformasi Hukum Trisakti* 6, no. 2 (May 29, 2024): 850–61, https://doi.org/10.25105/refor.v6i2.19935.

10 Felicia Maria and Ulya Yasmine Prisandani, "Establishing A Limited Liability Company: A Comparative Analysis on Singaporean and Indonesian Law," *The Lawpreneurship Journal* 1, no. 1 (March 3, 2021): 43–57, https://doi.org/10.21632/tlj.1.1.43-57.

of Indonesian and Singaporean Law" with the formulation of the problem, namely: 1) How is the authority of commissioners and shareholders in taking legal action against the negligence of directors in Indonesia? 2) How is the authority of commissioners and shareholders in taking legal action against the negligence of directors in Singapore? 3) Can the results of a comparative study of the law between Indonesia and Singapore be used as a reference for the method of resolving the taking of legal action against the negligence of directors in limited liability companies today?

B. Research Methods

The research method used is normative juridical research method. According to Soerjono Soekanto, the normative legal research method is a research of legal principles regarding the relationship between legal principles and doctrines with positive law and laws that live in society.[11]

The approach used in this research uses comparative law, which is to compare the regulations and legal framework related to the authority of commissioners and shareholders in taking legal action against the negligence of directors between two jurisdictions: Indonesia and Singapore. And the case approach involves in-depth analyses of concrete cases that occurred in both countries. By studying legal cases involving legal actions against negligent directors, this research can identify patterns, and legal implications of actions taken by commissioners and shareholders.

Literature materials/secondary data consisting of books, laws and regulations, theories and legal opinions from prominent legal practitioners will be arranged systematically, studied and conclusions drawn. This research is conducted with a legislative approach and a comparative approach.[12] Data processing is done in a qualitative way, which is a method of analysing data but does not display numbers as a result of its research but is presented in the form of discussion with sentence descriptions related to the issue at hand.[13]

C. Research Findings and Discussions

1. Analysis of Directors' Negligence in the Management of the Company

A legal entity must fulfil certain criteria to be considered a legal subject. These criteria relate to legal theories that explain how legal entities can have rights and obligations in the legal system. Directors who harm the PT, which is done outside the limits and authority that

[11] Hari Sutra Disemadi, "Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies," *Journal of Judicial Review* 24, no. 2 (November 30, 2022): 289, https://doi.org/10.37253/jjr.v24i2.7280.

[12] Eko Nurisman and Antony Antony, "Unmasking Xenophobia: Exploring Anti-Chinese Sentiments in Indonesia through a Criminological Lens," *Journal of Judicial Review* 25, no. 1 (June 17, 2023): 89, https://doi.org/10.37253/jjr.v25i1.7731.

[13] David Tan, "Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum," *Nusantara: Jurnal Ilmu Pengetahuan Sosial* 8, no. 8 (2021): 2463–78.

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has been given to them, the Directors are personally responsible. The liability is civil, in which the commissioners and shareholders have the right to take legal action. The Board of Directors is responsible for the management of the Company in good faith. The directors are personally liable for the Company's losses if they are guilty or negligent in carrying out their duties. The liability of a board of directors consisting of 2 (two) or more members of the board of directors shall apply jointly and severally to each member of the board of directors. Exceptions to joint and several liability by members of the board of directors occur if they can prove:

a. The loss is not due to their fault or negligence;
b. Has carried out management in good faith and prudence for the interests and in accordance with the purposes and objectives of the Company;
c. Has no conflict of interest either directly or indirectly over the management actions that resulted in the loss; and
d. Has taken measures to prevent the incidence or continuation of such losses.

The Company Law itself specifically regulates the actions or circumstances that cause directors to be held personally liable, among others:

a. Errors in Financial Statements

   The board of directors has the obligation to submit annual financial statements to the GMS Article 66 paragraph (1) of the Company Law. Furthermore, for this obligation the board of directors also has responsibility for the truth and accuracy of the contents of the financial statements, in addition to each of the directors and the board of commissioners must sign the financial statements.

b. Directors Causing Bankruptcy

   Regarding bankruptcy, if it can be proven that the bankruptcy was caused by the fault or directors and the bankruptcy assets are not sufficient to pay all the obligations of the Company in bankruptcy, then each member of the board of directors is jointly and severally responsible for paying off all these obligations Article 104 paragraph (2).

c. Not Reporting the Shares Owned by Him or His Family in the Company or Other Companies

   Article 101 paragraph (1) of the Company Law regulates the obligation of members of the board of directors to report to the Company regarding the shares owned by the relevant member of the board of directors and/or his/her family in the company or other companies to be recorded in a special register. If the member of the board of directors does not carry out this obligation and causes losses to the Company, then the member of the board

of directors is personally liable for the losses of the Company in Article 101 paragraph (2) of the Company Law.

Based on Lawrence M Friedman's Theory of the Legal System, the legal structure is all legal institutions consisting of law formulation apparatus, law implementation apparatus, and law enforcement apparatus. The legal structure has a function, namely with regard to:

a. Law-making
b. Acculturation and dissemination of law
c. Law enforcement
d. Legal administration

In the context of negligence of directors in Indonesia and Singapore, it can be analysed based on the functions of the legal structure as follows:

a. Directors‘ negligence in Indonesia and Singapore is directly related to law enforcement (c), as law enforcement is the most relevant aspect when dealing with directors’ negligence cases.
b. However, law-making (a), law acculturation and dissemination (b), and law administration (d) also play a role in regulating and managing directors‘ liability, with each element supporting the legal system as a whole in addressing and preventing directors’ negligence.

2. The Authority of Commissioners and Shareholders in Taking Legal Action Against Directors' Negligence in Indonesia

It is undeniable that the company's business transaction cycle is part of the business norm that is expected to bring profits, but the risk of loss is also unavoidable. If there is a net loss in any of the business transactions or liability arises, the company as a Limited Liability Company will be liable and the company's own assets will be utilised in this event. In this case, it is none other than the assets that have been surrendered or released by the shareholders to become the assets of the company in the form of capital accumulation or hoarding.[14] Shareholders as owners of the company have limited liability. Limited liability companies have a division of functions and roles between shareholders and management or directors. The company has a commissioner who has supervisory duties. In the hierarchy of controlling authority in a Limited Liability Company, the General Meeting of Shareholders (GMS) forum, and its decisions are at the top level.

[14] Nicholas Ardyanto and Tjhong Sendrawan, “Perseroan Perorangan Sebagai Badan Hukum Di Indonesia Dalam Kaitannya Dengan Pendirian Perseroan Terbatas Oleh Pemilik Tunggal Berdasarkan Undang-Undang Republik Indonesia Nomor 40 Tahun 2007,” *Ideas: Jurnal Pendidikan, Sosial, Dan Budaya* 8, no. 3 (August 25, 2022): 1085, https://doi.org/10.32884/ideas.v8i3.768.

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Article 1 point (5) of Law of the Republic of Indonesia Number 40 of 2007 Concerning Limited Liability Companies stipulates that the Board of Directors as an organ of the company is authorised to represent the company before or outside the court. This means that referring to Article 1 point (5) of Law of the Republic of Indonesia Number 40 of 2007 Concerning Limited Liability Companies which authorises the board of directors to act on behalf of the company, it is considered a legal mandate. The authority of the directors to represent the Limited Liability Company is reaffirmed by Article 98 point (1) of Law of the Republic of Indonesia Number 40 of 2007 which stipulates that the directors shall represent the company in and out of court. It is further specified that the authority of the directors to represent the Limited Liability Company applies before or outside the court. All actions taken by the directors are deemed to be binding on the Limited Liability Company.[15]

The position of director is sometimes held by one person/more than one person in the board of directors. If the position of director is more than one, the composition consists of several directors and is supervised Under Article 92 paragraph (1) of Law of the Republic of Indonesia Number 40 of 2007, it is stipulated that the authority to appoint and dismiss a director lies with the GMS, and cannot be transferred to other organs of the company. The director as an organ of a Limited Liability Company is the same as a shareholder/corporation, at the same time, sometimes some directors are shareholders of the company itself.[16] The appointment of directors is solely the authority of the GMS and such authority cannot be transferred to other corporate organs. This is part of the implementation of Article 75 paragraph (1) of the Republic of Indonesia Number 40 Year 2007 which confirms that the GMS entrusts the management and operation of the corporation to the board of directors solely for the benefit of the Limited Liability Company.

Article 97 number (5) of Law of the Republic of Indonesia Number 40 of 2007 on Limited Liability Companies provides for legal protection or limited liability for directors from all debts and legal liabilities of the company to the extent that he can justify his actions in good faith. Contrary to Article 97 paragraphs (2) and (3), the director must justify and prove the following matters (as contained in Article 97 paragraph (5)): '(a) The loss was not due to his fault or negligence; (b) He has carried out management in good faith and prudence in the interests of and in accordance with the purposes and objectives of the

[15] Wetria Fauzi, "KAJIAN YURIDIS KONSEP PERSEROAN PERSEORANGAN SEBAGAI BADAN HUKUM PERSEROAN TERBATAS DI INDONESIA," *UNES Law Review* 5, no. 4 (June 8, 2023): 1772–83, https://doi.org/10.31933/unesrev.v5i4.563.

[16] Nalendra Pradipto, Clara Renny Kartika, and Agung Jaya Kusuma, "Pemberhentian Terhadap Direksi Perseroan Terbatas Dalam Kepailitan Melalui Circular Resolution," *Jurnal Suara Hukum* 4, no. 1 (January 10, 2023): 86–106, https://doi.org/10.26740/jsh.v4n1.p86-106.

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Company; (c) He has no direct or indirect conflict of interest regarding the management action that resulted in the loss; and (d) He has taken measures to prevent the occurrence or continuation of the loss'. There is an authority as an alternative for shareholders who do not agree with the decision of the GMS, can ask for the unacceptable responsibility of the board of directors through Article 97 paragraph (6) of Law of the Republic of Indonesia Number 40 Year 2007. The regulation stipulates that 'On behalf of the company, shareholders representing at least 10% (ten per cent) of share ownership with voting rights are authorised to file a lawsuit in court against the directors whose errors and omissions have caused the company to suffer losses'.[17]

The procedure in Article 97 paragraph (6) of Law No. 40/2007 on Limited Liability Companies contains formal legal authority for shareholders who have a control of shares of at least 10% (ten per cent), so that they can act on behalf of the company to hold the directors accountable by filing a lawsuit in court. This means that the provisions of Article 97 paragraph (6) of Law No. 40/2007 on Limited Liability Companies allow and require shareholders to represent the corporation before the court. This rule shows that in addition to directors who are authorised to represent the company, shareholders are also authorised to represent the company. However, there is a difference between the authority obtained by directors and the authority obtained by shareholders. The authority of the board of directors to represent the company is unconditional and unlimited. Whereas shareholders have the authority to represent the company by fulfilling strict requirements, namely:[18]

a. Shareholders who are authorised to represent the company if they control at least 10% of the shares (individually or jointly);
b. Shareholders have the authority to represent the company only when dealing with directors whose errors and omissions have brought losses to the company;
c. Shareholders are not authorised to represent the company against other third parties and;
d. The claim of shareholders to represent the company is only 'requested to request compensation for the benefit of the company because of the errors or negligence of the board of directors that caused losses to the company'.

In principle, there are only two types of disputes submitted to the court in the form of claims for the right to receive compensation,

[17] Erna Lismayanti et al., "Legalitas Tindakan Direksi Perseroan Terbatas," *Jurnal Res Justitia* 3, no. 2 (2023): 193–212.
[18] Dimas Pasha Hafidz and Mohammad Rafi Al Farizy, "Perlindungan Hukum Pemegang Saham Terhadap Tindakan Penarikan Kembali Saham Ditinjau Dari Undang-Undang Perseroan Terbatas," *Jurnal Ilmu Kenotariatan* 4, no. 1 (May 18, 2023): 65, https://doi.org/10.19184/jik.v4i1.39032.

namely due to default or due to unlawful acts. In relation to the right to sue shareholders in representing the interests of the company in court, it is only intended to challenge unlawful acts committed by directors against the corporation. The claim of shareholder rights based on the provisions of Article 97 paragraph (6) of Law No. 40/2007 on Limited Liability Companies is different from the claim of rights based on Article 61 of Law No. 40/2007 on Limited Liability Companies. Article 61 stipulates that every shareholder has the right to file a lawsuit against the company in court if the company's actions are considered unfair and without reasonable grounds, as a result of the GMS decision, the decision of the board of directors or the board of commissioners.[19] In this case, the shareholder acts in his own interest against the corporation through the management based on the mandatory legal authority of the board of directors. The context of the shareholder's demands is purely for his personal interest. The demand emphasised by the shareholder is to ask the corporation to stop actions that are detrimental to shareholders. While the right to sue shareholders based on Article 97 paragraph (6), the shareholders actually act for and on behalf of the company in an effort to sue the directors personally before the court.[20]

Based on the provisions of Article 97 paragraph (6), shareholders who fulfil the requirements are entitled to represent the company without requiring permission from the board of directors. This provision provides room for shareholders to participate in supervising the running of the company by the board of directors, and act on behalf of the company when the board of directors is in an unfavourable situation. It should be emphasised that shareholders are not organs of the company, but under certain conditions and requirements shareholders can represent the company as a legal mandate to sue the directors in court. The lawsuit filed by the shareholder in this case is not for personal interests. Rather, they are acting for and on behalf of the company. If the lawsuit is granted, the corporation will obtain compensation/compensation for the loss.[21] The following is an example of a case of negligence of directors in a public company (PT tbk) in Indonesia:

a. PT Sumalindo Lestari Jaya Tbk: In 2013, Deddy Hartawan Jamin filed a lawsuit against PT Sumalindo Lestari Jaya Tbk and its board of directors and majority shareholder for misappropriation

[19] I Putu Bagus Padmanegara, "Kedudukan Pemegang Saham Minoritas Dalam Penentuan Kebijakan Dan Perlindungan Sebagai Pemegang Saham Perseroan Terbatas Terbuka," *Co-Value Jurnal Ekonomi Koperasi Dan Kewirausahaan* 14, no. 11 (April 30, 2024), https://doi.org/10.59188/covalue.v14i11.4305.

[20] Rosyida Setiani and Siti Nur Intihani, "Perlindungan Hukum Terhadap Pemegang Saham Yang Tidak Menyetor Modal Pada Perseroan Terbatas Dalam Perspektif Keadilan," *VERITAS* 7, no. 2 (December 9, 2021): 86–107, https://doi.org/10.34005/veritas.v7i2.1639.

[21] Taqiyuddin Kadir, "Gugatan Derivatif : Perlindungan Hukum Pemegang Saham Minoritas," *Jurnal Review Pendidikan Dan Pengajaran (JRPP)* Vol 07 (2024): 8.

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of company rights that cost the company IDR 18.7 trillion. However, the lawsuit was not granted by the court because it was considered unclear and vague.

b. PT Tiga Pilar Sejahtera Food Tbk (AISA): The Board of Directors of AISA was involved in manipulating financial statements by increasing receivables from six distributor companies that were actually privately owned by Joko and Budhi, making it look as if the company was performing well. This resulted in the deception of investors who bought AISA shares based on false financial statements.

3. The Authority of Commissioners and Shareholders in Taking Legal Action Against Directors' Negligence in Singapore

Economic development in Asia is inseparable from the existence of PT as a legal entity as a place of interaction between entrepreneurs. PT as one of the supports of the national economy is required to provide maximum benefits to improve the economy in Indonesia so as to have an impact, especially to improve the welfare of the community. In the current development of globalisation, many investors conduct business interactions with other countries through business entities that include legal entities, namely PT including Indonesia's neighbouring countries, namely Singapore, Malaysia and other developed countries such as Britain, America and others. Just like in Indonesia, Singapore's economy is also supported by various business activities which, when referred to its legal system, namely Common Law, has known several forms of business organisations such as:[22]

a. The sole trader/where there is only one party authorised to act as an entrepreneur. The sole trader generally provides capital from his/her own personal funds or from a personal bank loan;
b. The Partnerships/which is a mutual relationship between parties who jointly undertake a business with the aim of achieving maximum profit. Partnerships can arise from verbal or oral agreements and can take the form of a written agreement as set out in the Partnership Act 1890 section 1 of Singapore;
c. The Company/corporation, is a business entity that is principally established by a party that is normally organised to carry on a commercial business.

Of the several types of business entities owned by the Singapore state, business actors in carrying out their business activities are more likely to favour and choose to form a company because the legal entity is considered the most suitable and provides certainty to business actors in Singapore. When compared based on its characteristics, the company

[22] Wei Seng Patrick Tay and Wei Yuan Chua, "Corporate Self-Representation in the Singapore Courts," *Singapore Academy of Law Journal* 33, no. 2 (2021): 1124–1176, https://doi.org/doi/10.3316/informit.200596901002099.

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has similarities with PT in Indonesia, namely there is a separation of assets which causes limited liability. Singapore's corporate law is a product of the Common Law system which consists of only two corporate organs, namely shareholders in general meetings (General Meeting of Shareholders) and the Board of Directors (Board of Directors). In Singapore in general, the board of directors is divided into two parts consisting of the Chief Executive Office (CEO) and the Chairman. The CEO is responsible for the day-to-day management of the company and the Chairman is a non-executive director.[23]

As for the Company's issues, Singapore has established a regulatory foundation in the Companies Act. The Companies Act ("CA") is the primary legislation governing corporate behaviour in Singapore. The CA was first enacted in 1967 and in recent years, the CA has undergone significant amendments in 2014 and 2017. The scope of the CA includes, among other things, the following: (a) incorporation and corporate powers (Part III); (b) regulation of shares, debentures and charges (Part IV); (c) liability of directors and officers of the company and other matters relating to the management and administration of the company (Part V); (d) accounting and auditing arrangements (Part VI); (e) implementation of schemes of arrangement, reconstruction and amalgamation (Part VII); (f) the role of receivers and administrators (Part VIII); (g) the implementation of judicial management (Part VIIIA); (h) provisions for dissolution, including voluntary dissolution and forced dissolution (Part X); (i) the regulation of various types of companies such as investment companies and foreign companies (Part XI); and (j) provisions regarding corporate offences (Part XII, Division 2).[24]

Singapore has a legal basis that regulates the authority of shareholders in taking legal action against the negligence of directors, which is contained in Companies Act 50, but Singapore does not have a board of commissioners that can supervise directors, while in Indonesia there is a board of commissioners that supervises directors. In Singapore, directors basically have obligations to the company and shareholders including:[25]

a. Duty to Act in Good Faith: Directors must act in good faith and in the best interests of the company.

[23] Muhammad Faiz Aziz and Nunuk Febriananingsih, "MEWUJUDKAN PERSEROAN TERBATAS (PT) PERSEORANGAN BAGI USAHA MIKRO KECIL (UMK) MELALUI RANCANGAN UNDANG-UNDANG TENTANG CIPTA KERJA," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 9, no. 1 (April 27, 2020): 91, https://doi.org/10.33331/rechtsvinding.v9i1.405.

[24] Anak Agung Sintya Iswari and Dewa Gde Rudy, "Peran Dan Kedudukan Komisaris Pada Perseroan Perorangan," *Magister Ilmu Hukum* 2023, no. 2 (2023): 1, https://doi.org/https://doi.org/10.21776/ub.arenahukum.2020.01303.9.

[25] Dhammika Dharmapala and Vikramaditya Khanna, "The Impact of Mandated Corporate Social Responsibility: Evidence from India's Companies Act of 2013," *International Review of Law and Economics* 56 (December 2018): 92–104, https://doi.org/10.1016/j.irle.2018.09.001.

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b. Duty to Exercise Powers for Proper Purposes: Directors must exercise their powers for purposes that are in the best interests of the company.
c. Duty of Care, Skill, and Diligence: Directors must perform duties with the expected degree of care, skill and diligence

Since there are only two organs in the company, shareholders have greater rights, especially in filing legal actions if the directors violate their obligations such as derivative claims. Derivative claims mean that shareholders can bring claims on behalf of the company. This is regulated under Section 216A of the Companies Act, which allows shareholders to file a claim if the shareholders can show that the directors have acted to the detriment of the company and the directors themselves did not take the necessary action. To file a derivative claim, shareholders must give written notice to the company of the intention to file a claim, show that the holders have acted in good faith and demonstrate that the proposed action is likely to benefit the company.[26]

In terms of filing derivative claims against directors who have acted negligently, there are concrete examples of cases that have been decided by the Singapore civil courts, such as the case of Petroships Investment Pte Ltd v Wealthplus Pte Ltd and Others [2016] SGCA 17 where this case shows the application of derivative claims in Singapore, shareholders successfully filed derivative claims after proving that the directors had acted in a way that was detrimental to the company. In addition, shareholders can convene an AGM to discuss actions against negligent directors. Decisions at the AGM may include the removal of directors and the filing of lawsuits. In some special cases, it has been shown that shareholders have the right to compel directors to provide relevant information for fair valuation.[27]

It can be concluded that although Singapore's company regulation consists of only two organs, namely shareholders and directors, the authority of shareholders to take legal action against directors' negligence has been strictly regulated in the company act clearly. Clear legal and procedural standards will ensure the accountability and compliance of directors, especially in running the business. Shareholders have legal tools that can be used to protect the interests of the company.

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[26] HARIOM MANCHIRAJU and SHIVARAM RAJGOPAL, "Does Corporate Social Responsibility (CSR) Create Shareholder Value? Evidence from the Indian Companies Act 2013," *Journal of Accounting Research* 55, no. 5 (December 10, 2017): 1257–1300, https://doi.org/10.1111/1475-679X.12174.

[27] P W Lee, "Taming Reflective Loss–Miao Weiguo v Tendcare Medical Group Holdings Pte Ltd [2022] 1 SLR 884," *Singapore Management University School of Law ...* 3, no. 2 (2023): 154–79, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4571706%0Ahttps://ink.library.smu.edu.sg/cgi/viewcontent.cgi?article=1027&context=sljlexicon.

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The following is an example of a case of directors' negligence in a public company in Singapore:

a. Hyflux Ltd: Hyflux Ltd, a water and energy company, suffered huge losses due to the directors' negligence in managing the Tuaspring Integrated Water and Power Plant project. The project ended up with huge losses and debt default, which adversely affected shareholders and creditors.
b. Singapore Post Ltd: Singapore Post's directors are facing allegations of negligence in the disclosure of key information related to the TradeGlobal acquisition. An investigation by the Monetary Authority of Singapore (MAS) found that the directors failed to provide accurate and timely information to investors, leading to substantial losses.

4. The Results of the Comparative Study of Law Between Indonesia and Singapore Can Be Used as a Method of Settlement for Taking Legal Action Against the Negligence of Directors in Limited Liability Companies Currently

Based on the results of a comparative study of the law between Indonesia and Singapore regarding the taking of legal action against the negligence of directors in a limited liability company by commissioners and shareholders, there are several significant differences, namely.

Table 1. Comparative Study of Law Between Indonesia and Singapore

Comparison	Indonesia	Singapore
Legal Basis and Regulatory Framework	- Adopts the Civil Law legal system; - Law No. 40 Year 2007 on Limited Liability Companies (UUPT): Establishes the liability of directors and procedures for shareholders to take legal action. - Civil Code (Kitab Undang-Undang Hukum Perdata): Regulates the general obligations and responsibilities of parties in legal relationships.	- Adheres to the Common Law legal system; - Companies Act (Cap. 50): Sets out the fiduciary duties and responsibilities of directors, as well as the legal procedures for shareholders to take legal action.
Obligations of the Board of Directors	The fiduciary obligations of directors in Indonesia are regulated under the Company Law: - Article 97 of the Company Law: The Board of Directors shall perform its duties in good faith, responsibly, and prudently. - Article 92 of the Company Law: The Board of	Directors in Singapore have obligations that include: - Duty to Act in Good Faith: Directors must act in good faith in the best interests of the company. - Duty to Exercise Powers for Proper Purposes: Directors must exercise their powers for legitimate purposes.

	Directors has full authority in managing the company, but must act in accordance with the articles of association and the interests of the company.	- Duty of Care, Skill, and Diligence: This standard is objective, depending on the circumstances.
Supervision Mechanism and Legal Action	Action by Commissioner: - Article 114 of the Company Law: Commissioners have supervisory authority and can provide recommendations or proposed actions to shareholders. - Article 115 of the Company Law: Commissioners can give warnings and suggestions to directors if violations or negligence are found. Action by Shareholders: - Article 97 paragraph (6) of the Company Law: Shareholders may file a lawsuit with the court on behalf of the company if the directors are found to have committed errors or omissions that harm the company. - General Meeting of Shareholders (GMS): Shareholders can hold a GMS to discuss and make decisions regarding legal action against directors	Action by Shareholders: - Derivative Claims (Section 216A, Companies Act): Shareholders can bring a claim on behalf of the company if they can show that the directors have been negligent and the action was in favour of the company. - General Meeting of Shareholders (GMS): Shareholders may convene a GMS to discuss and decide on actions against negligent directors.
	Shareholders may file a lawsuit viz: - Evidence Collection: The shareholder or commissioner must gather evidence supporting the negligence claim. - Filing a Lawsuit with the Court: A lawsuit is filed with a court of appropriate jurisdiction. - Determination of the Panel of Judges: The court assigns a panel of judges to hear and decide the lawsuit.	Shareholders can file a Derivative claim procedure viz: - Written Notice: The shareholder must give written notice to the company of the intention to make a claim. - Proof of Good Faith: Shareholders must prove that they acted in good faith. - Benefits to the Company: The action must benefit the company.

There is a comparative conclusion between Indonesia and Singapore that there are obligations of directors that have similarities in

principle. However, the supervisory mechanism from Singapore has a more structured procedure, namely with derivative claims while in Indonesia it only relies on internal supervision and GMS. As for legal procedures, Singapore has more provincial certainty with special requirements for filing derivative claims while Indonesia, the procedure focuses more on filing a lawsuit in court. Both systems adopted by Indonesia and Singapore are strong legal tools in ensuring the accountability of directors, but it does not rule out the possibility in the framework of legal reform, especially in Indonesia, in resolving disputes between shareholders against directors' actions for negligence can be done by filing derivative claims.[28]

By adding dispute resolution options for the authority of commissioners and shareholders in taking legal action against directors' negligence in Indonesia, it can implement the filing of derivative claims as in Singapore which can improve corporate governance and protect the interests of shareholders and is a clear and structured procedure that allows for more efficient, fast dispute resolution and avoids prolonged and expensive litigation.

D. Conclusions

The two systems of dispute resolution of the authority of commissioners and shareholders adopted by Indonesia and Singapore have several differences both from the legal basis/regulation, the obligations of directors, legal mechanisms and submission of legal actions to legal procedures. Both systems adopted by Indonesia and Singapore are strong legal tools in ensuring the accountability of directors, but it does not rule out the possibility in the context of legal reform, especially in Indonesia, in resolving disputes between shareholders against directors' actions for negligence can be done by filing derivative claims which have several tangible benefits, namely improving corporate governance and protecting the interests of shareholders and are clear and structured procedures that allow for more efficient, fast dispute resolution and avoid prolonged and expensive litigation.

[28] Daniel Arjuna Felik Manik, "Implikasi Dari Berakhirnya Jabatan Direksi Tanpa Hasil Keputusan Rapat Umum Pemegang Saham Berdasarkan Undang-Undang No. 40 Tahun 2007 Tentang Perseroan Terbatas," *Jurnal Ilmu Sosial Dan Pendidikan (JISIP)* 7, no. 3 (2023): 2084–88, https://doi.org/10.58258/jisip.v7i1.5201/http.

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