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Legal Responsibilities Of The Board Of Directors And Board Of Commissioners In A Limited Liability Company Between Indonesia And Singapore

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ABSTRACT

This study aims to compare the regulation and accountability of corporate organs in the two-tier board system in Indonesia and the one-tier board system in Singapore, especially regarding the proof of negligence, the nature of individual and collective responsibility, and the protection of minority shareholders. This study uses a normative juridical method with a statutory approach, a case approach, and a comparative approach based on eight parameters set before the analysis. Primary legal materials include the Law and its amendments, Government Regulation Number 8 of 2021, POJK Number 33/POJK.04/2014, Companies Act 1967, SGX-ST Listing Rules, the decision of Goh Jin Hian v Inter-Pacific Petroleum [2025] SGHC(A) 7, and the industrial relations decision related to PT Taru Martani, while the Code of Corporate Governance 2018 is placed as a soft law instrument. The result of this study is that the UUPT places part of the burden of proof on the defendant through the grounds of exemption in Article 97 paragraph (5) and Article 114 paragraph (5), while Singapore law imposes on the plaintiff to prove the violation, loss, and causal relationship through a counterfactual scenario. The Goh Jin Hian decision expressly separates the proven breach of duty of care and the obligation to compensate, which is nullified because the causal relationship is not proven. The UUPT establishes collective liability through joint liability, whereas Singapore assesses the liability of each director separately. The one-tenth share threshold in the UUPT closes access to derivative lawsuits for most minority shareholders, in contrast to Section 216A of the Companies Act 1967 which filters lawsuits through court permission. This study recommends lowering the threshold for derivatives lawsuits accompanied by court screening and affirmation of the burden of proving causal relationships, as well as strengthening the supervision of individual companies on a risk-based basis through the enforcement of financial reporting obligations.

Keywords: ***Corporate Law Comparison, Two-Tier Board, Fiduciary Duty, Derivative Lawsuits, Causal Relationships.***

A. Introduction

In law, two legal subjects are known, namely an individual (*natuurlijk persoon*) and a

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legal entity (*rechtspersoon*). [1]In the field of business law, one of the legal entities that is most chosen by business actors is the Limited Liability Company. Initially, the regulation regarding Limited Liability Companies was subject to the Commercial Code, then regulated in Law Number 1 of 1995, and subsequently replaced by Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the UUPT [2]). Limited Liability Companies are in demand because they provide legal certainty while limiting the liability of shareholders to the value of the shares they own [3]. This interest has increased after the Job Creation Law introduced the form of an individual company that is simply established by one person through an electronic statement of incorporation without a notary deed [4]. Based on data from the Directorate General of General Legal Administration, since the service was launched on October 8, 2021 to August 16, 2024, there have been 203,746 individual companies throughout Indonesia [5].

As a legal entity, the company cannot act alone, so it requires an organ that carries out its business activities. In the structure of a Limited Liability Company in Indonesia, the organs that play a central role in the management and supervision are the Board of Directors and the Board of Commissioners[6]. Indonesia requires the use of *a two-tier board* system, while Singapore adheres to a *one-tier board system* that concentrates the management and supervision function on one organ, namely the *board of directors*[7]. Article 1 number 5 of the UUPT places the Board of Directors as the authorized organ and is fully responsible for the management of the company, while Article 1 number 6 of the UUPT places the Board of Commissioners as an organ tasked with general and/or special supervision and advising the Board of Directors. Singapore's corporate law does not recognize the organs of the Board of Commissioners; the only known organs are the *Board of Directors* and *the General Meeting of Shareholders*[8]. Section 157A(1) of the Companies Act 1967 specifies that "*the business of a company is to be managed by, or under the direction or supervision of, the directors*." Control of the board is exercised through shareholder rights, supervision of securities authorities

[1] Humaerotuz Zahra, Ambar Krisna Putri, and Henri Marusaha Tambunan, "Legal Protection for Shareholders: Exploring Rights and Risks in Limited Liability Companies," *Indonesian Legal Media* 2, no. 4 (2024): 216–22, https://doi.org/https://doi.org/10.5281/zenodo.14068902.

[2] Sylvia Putri and David Tan, "Juridical Analysis of Individual Companies Reviewed from the Job Creation Law and the Limited Liability Company Law," *UNES Law Review* 4, no. 3 (2022): 317–31, https://doi.org/https://doi.org/10.31933/unesrev.v4i3.239.

[3] Lana Aulia Afiftania and Dian Purnama Anugerah, "Application of the Principle of Vicarious Liability in Limited Liability Companies," *Notary* 5, no. 3 (2022): 415–34, https://doi.org/10.20473/ntr.v5i3.40084.

[4] Ministry of Education, "The Ease of Obtaining Individual Company Permits," Indonesian Information Portal, 2021, https://indonesia.go.id/kategori/kependudukan/7738/mudahnya-peroleh-izin-perseroan-perorangan?lang=1.

[5] ANTARA, "Together with the Directorate General of AHU, the Regional Office of the Ministry of Law and Human Rights of Jambi held a Piloting and Incubation FGD for Individual Companies," *ANTARA News Jambi*, August 2024.

[6] Dwinta Sugandi, David Tan, and Winda Fitri, "Comparison of the Doctrine of The Piercing of Corporate Veil in Various Countries (Indonesia, France and Germany)," *Unes Journal of Swara Justisia* 8, no. 3 (2024): 581–98, https://doi.org/10.31933/0mcmbd28.

[7] Doni Sagitarian Warganegara, Norhayati Mohamed, and Imbarine Bujang, "Regulatory Settings And Corporate Governance Of Indonesia's Two-Tier Board System," *Building a Sustainable Future: Fostering Synergy Between Technology, Business and Humanity* 131 (2023): 823–36, https://doi.org/10.15405/epsbs.2023.11.68.

[8] Katherine Juniar Tambunan, "The Form of a Corporate Entity with a Corporate Legal Entity and Company Organs: A Comparison Based on the Law in Indonesia and in Singapore," *Justicia Ciencias: Journal of Legal Sciences* 9, no. 2 (2024): 579–96, https://doi.org/10.24967/jcs.v9i2.3186.

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and exchanges, the existence of independent directors, as well as suits brought by companies, shareholders or administrators in bankruptcy[9].

Despite the different structures, both countries recognize the principle *of fiduciary duty* which requires the management of the company to act in good faith, full of prudence, and loyal to the interests of the company[10]. In practice in Indonesia, it is not uncommon to find members of the Board of Commissioners who neglect the supervisory function of the Board of Directors, even though this function is their main duty[11]. The existence of the Board of Commissioners is often seen as less contributing because some of its members are considered to not have adequate competence and are not fully independent[12].

This problem occurred in the case of PT Taru Martani, a regionally owned enterprise (BUMD) of the Special Region of Yogyakarta. The company's President Director placed the company's cash (*idle cash*) in gold futures contracts through an account in his personal name, without the approval of the GMS and without being listed in the Company's Work Plan and Budget, with a placement value that according to investigators reached IDR 18.7 billion in the period from October 2022 to March 2023 [13]. In the investigation stage, the Yogyakarta Special Region High Prosecutor's Office also examined the board of directors and commissioners [14], while the Governor of the Special Region of Yogyakarta requested that the case be processed to the court and admitted that there were indications of financial irregularities [15]. On November 21, 2024, the Corruption Court at the Yogyakarta District Court sentenced the former president to eight years in prison and an additional penalty in the form of compensation of around IDR 17.4 billion [16]. The issue to be examined from the case is why irregularities that lasted for several months could not be prevented by internal supervisory organs, as well as what legal means the company and its shareholders are available to recover losses.

The issue of supervision also exists in individual companies. Article 153A paragraph (1) of the UUPT as amended by Law Number 6 of 2023 allows companies that meet the criteria for micro and small businesses to be established by one person, so that the sole

[9] Luciano Bohn and Ding Jun Toh, "Singapore: Corporate Governance in Singapore," *CSR, Sustainability, Ethics and Governance* Part F828 (2025): 29–57, https://doi.org/10.1007/978-3-031-94751-3_3.

[10] Abiyyu Paras Syakir Arifin and Sodikin Sodikin, "The Application of the Principle of Fiduciary Duty to Realize Good Corporate Governance in Limited Liability Companies," *Journal of Contemporary Law Studies* 2, no. 2 (2024): 173–84, https://doi.org/10.47134/lawstudies.v2i2.3583.

[11] Shenti Agustini, "Responsibility in a Limited Liability Company whose management is carried out by members of the Board of Commissioners after the Job Creation Law," *Journal of Supremacy* 12 (2022): 86–96, https://doi.org/10.35457/supremasi.v12i1.1674.

[12] Achmad Nur Kholis, "Analysis of the Role of the Board of Commissioners in Improving Good Corporate Governance: Legal Perspectives and Its Implementation" 2, no. 1 (2024): 5–10, https://doi.org/https://doi.org/10.55606/birokrasi.v2i1.900.

[13] ANTARA, "Former President Director of PT Taru Martani Sentenced to 8 Years in Prison," *ANTARA News*, November 2024; Medcom, "Director of BUMD in Yogyakarta Becomes Investment Suspect," *Medcom.Id*, May 2024.

[14] Agus Dwi, "Investigating Alleged Corruption of PT Taru Martani, Kejati DIY Examines Directors-Commissioners," *SquirrelSquirt*, 2024.

[15] Bagaskoro Anom, Utomo S Kusno, and Ikhami Lazwar Adib, "Yogyakarta Governor Sri Sultan Hamengku Buwono X Asks Taru Martani Case to Be Processed to Court, Admits There Are Indications of Financial Irregularities," Radarjogja, 2024.

[16] ANTARA, "Former President Director of PT Taru Martani Sentenced to 8 Years in Prison."

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shareholder usually acts as a director without an internal supervisory organ [17]. The security available lies in the obligation to submit financial statements electronically to the Minister no later than six months after the end of the current accounting period as stipulated in Article 10 of Government Regulation Number 8 of 2021. Violations of these obligations are threatened with administrative sanctions in the form of written reprimands, termination of access rights to services, and revocation of legal entity status based on Article 12 of the same regulation. In addition, Article 153J paragraph (2) of the UUPT allows limited liability of shareholders to be waived in certain circumstances. According to the theory of working law put forward by Chambliss and Seidman, the effectiveness of a norm is determined by the interaction between law-making agencies, law enforcement agencies, and role holders, who are influenced by surrounding social and personal forces [18], respectively. If the legislators eliminate internal supervisory bodies for the sake of ease of establishment, then the burden of supervision shifts entirely to law enforcement agencies outside the company. Singapore also allows companies with one member and one director. However, the Companies Act 1967 still requires at least one director domiciled in Singapore (Section 145(1)), a company secretary (Section 171(1)), and the submission of *annual returns* to the Registrar with the Accounting and Corporate Regulatory Authority (ACRA) as set out in Section 197.

In Singapore, the standard of supervision of directors is largely established through court decisions, in accordance with the character of the *common law* [19] system. An example is the case *of Goh Jin Hian v Inter-Pacific Petroleum Pte Ltd (in liquidation)* [2025] SGHC(A) 7. At the first level, through judgment [2024] SGHC 178, the court found that Dr Goh Jin Hian as a director of Inter-Pacific Petroleum Pte Ltd (IPP) had breached his *duty of care* and duty to look after the interests of creditors, and sentenced him to pay damages of US$146,047,099.60 for the withdrawal of bank facilities for fictitious cargo transactions. At the appellate level, the Appellate Division still held that Dr Goh breached the *duty of care* because he was completely unaware of the existence of a cargo trading business line in his company. However, the court rejected the allegations of infringement based on three *red flags*, held that the liability to the creditors was not breached because Dr Goh did not authorize the withdrawal of the funds, and cancelled all damages because the company failed to prove a causal relationship between the breach and the loss. The separation between proven breach of duty, causal relationship, and consequent damages as made in the judgment has not been formulated with a clear standard of proof in Indonesian studies and practice[20].

A lot of studies have been carried out on the responsibility of the company's organs.

[17] Imastian Chairandy Siregar et al., "Responsibility and Governance of Individual Companies as New Legal Entities in Indonesia," *Locus Journal of Academic Literature Review* 1, no. 1 (2022): 26–35, https://doi.org/10.56128/ljoalr.v1i1.49.

[18] William J. Chambliss and Robert B. Seidman, *Law, Order, and Power* (Reading, MA: Addison-Wesley, 1971).

[19] Tomasic Roman, *Company Law in East Asia* (Routledge, 2021).

[20] Lenny Mutiara Ambarita, "Fiduciary Obligations Of The Board Of Directors InManaging Company Shares: ACorporate Law And Capital Market Perspective," *International Journal of Educational Review, Law And Social Sciences (IJERLAS Journal)* 5, no. 4 (2025): 3701–6, https://doi.org/https://doi.org/10.54443/ijerlas.v4i6.2061.

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[21] examine the effectiveness of supervision in the *one-tier board system* in Singapore compared to Indonesia after the enactment of the Job Creation Law with a focus on a general comparison of the regulatory structure. [22] compare the form of business entities and corporate organs in Indonesia and Singapore without discussing the accountability of the organs. examine the[23] fiduciary obligations of the board of directors in the management of shares from the perspective of the capital market, while [24] analyze the legal responsibility of the directors from the perspective of Indonesian commercial law without comparison with other jurisdictions. [25] examining legal protection for directors of state-owned enterprises through *the business judgment rule* in cases of corruption, while [26] comparing compliance with the principle of openness in Indonesia and Singapore in *insider trading* cases. In contrast to these studies, this study examines the legal consequences of differences in organ structures on proving negligence, the nature of individual and collective responsibility, and the access of minority shareholders to law enforcement. The novelty of this study lies in the use of *the Goh Jin Hian decision* as a test tool for the construction of Article 97 and Article 114 of the Constitution, as well as in the formulation of policy recommendations accompanied by normative arguments and considerations of legal consequences. The author is of the view that *the two-tier board system* remains relevant to be maintained as an instrument *of checks and balances* with a rearrangement of access to enforcement and standards of proof.

B. Research Methods

This research is a normative juridical legal research that uses a statute *approach*, a case *approach*, and a *comparative approach*[27]. The comparative approach is used functionally, namely by comparing the way the two legal systems answer the same problems, in the form of controlling the company's management and recovering losses due to violations of their obligations[28].

The primary legal materials in this study are grouped into three categories. The first category is binding laws and regulations. For Indonesia, these legal materials include the Law on Investment; Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, which amends some provisions of the Law on Job Creation; Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector as long as it regulates investor

[21] Muhammad et al. (2025)
[22] Tambunan (2024)
[23] Ambarita (2025)
[24] Afifah et al. (2026)
[25] Alfadani & Bayuaji (2025)
[26] Joeliant & Gunadi (2025)
[27] Silk Day is enshrined, "The Lens of Legal Research: A Descriptive Essay on Legal Research Methodology," *Journal of Judicial Review* 24, no. 2 (2022): 289–304, http://dx.doi.org/10.37253/jjr.v; Marzuki Mahmud, *Legal Research* (Prenada Media, 2017).
[28] Carsten Jungmann, "The Effectiveness of Corporate Governance in One-Tier and Two-Tier Board Systems: Evidence from the UK and Germany," *European Company and Financial Law Review* 3, no. 4 (2006): 426–74, https://doi.org/10.1515/ECFR.2006.019.

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protection; Civil Code, especially Article 1365; Government Regulation Number 8 of 2021; and Financial Services Authority Regulation Number 33/POJK.04/2014. POJK is placed as primary legal material because it is a type of legislation that is recognized as having its existence based on Article 8 of Law Number 12 of 2011 as amended. For Singapore, this legal material includes the Companies Act 1967 (2020 Revised Edition) and the SGX-ST Listing Rules (Mainboard) which are binding on listed companies. The second category is court decisions, namely the decisions [2024] SGHC 178 and [2025] SGHC(A) 7 and the precedents referred to therein, as well as the Industrial Relations Court Decision at the Yogyakarta District Court Number 13/Pdt.Sus-PHI/2026/PN Yyk. The third category is a *soft law governance instrument*, namely the Code of Corporate Governance 2018 issued by the Monetary Authority of Singapore and the G20/OECD Principles of Corporate Governance 2023[29]. The Code of Corporate Governance 2018 is not directly binding; its enforceability comes from Rule 710 of the SGX-ST Listing Rules which requires issuers to explain the application or deviation of the principles and provisions of the Code in their annual reports (*comply or explain*). Some provisions of the Code have also been transferred into the Listing Rules so that they are mandatory, including the obligation of the proportion of independent directors of at least one-third of the *board* members in Rule 210(5)(c). The secondary legal materials include books, journal articles, and expert opinions, while media reports and administrative data are treated as non-legal materials that are only used to reconstruct facts.

Legal materials are collected through literature studies by systematically reviewing written legal materials[30]. Indonesian laws and regulations are searched in the latest applicable version through the legal documentation and information network (JDIH) website and government regulation database, while the Companies Act 1967 is searched through Singapore Statutes Online in the 2020 revised edition. Singapore court decisions are searched through the official eLitigation portal of the Supreme Court of Singapore with the keywords *director*, *duty of care*, *section 157*, and *causation* for judgments from 2020 to 2025. The *Goh Jin Hian case* was chosen because it is the latest appeals court decision that explicitly separates breaches of obligations, causal relationships, and damages for directors who are not directly involved in problematic transactions, so that their position is comparable to that of members of the Board of Commissioners in Indonesia. The decisions of the Indonesian courts are traced through the Directory of Supreme Court Decisions with the keywords "Taru Martani", "Article 97 paragraph (3)", and "Article 114 paragraph (3)". The facts of PT Taru Martani's criminal case are taken from the official statement of the High Prosecutor's Office of the Special Region of Yogyakarta as reported by the media, so that the author does not draw normative conclusions from the details of facts that have not been contained in the decision.

The comparison was made based on eight parameters established before the analysis, namely (1) organ structure and division of functions; (2) standards of behavior imposed on

[29] OECD, "G20/OECD Principles of Corporate Governance 2023" (Paris: OECD Publishing, 2023), https://doi.org/10.1787/ed750b30-en.

[30] Miza Nina Adlini et al., "Qualitative Research Methods of Literature Studies," *Edumaspul: Educational Journal* 6, no. 1 (2022): 974–80, https://doi.org/10.33487/edumaspul.v6i1.3394.

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management; (3) nature of responsibility, individual or collective; (4) burden and standard of proof of negligence; (5) causal relationship and measure of compensation; (6) reasons for exemption and legal protection for management; (7) access of minority shareholders to law enforcement; and (8) the role of external law enforcement. Parameters (1) and (2) are used to answer the formulation of the first problem, parameters (3) to (8) to answer the formulation of the second problem, while the findings in parameters (4), (7), and (8) are the basis for the formulation of recommendations. The collected legal materials are analyzed prescriptively-analytically with deductive reasoning and systematic interpretation between provisions [31].

C. Results and Discussion

1. Regulation of the Duties and Authorities of the Board of Directors and Board of Commissioners in Indonesia and Singapore

Good *corporate governance* is the foundation for the sustainability and accountability of the company, because its principles are a guideline for making the right and responsible decisions while increasing the trust of business partners. However, its implementation in Indonesia is considered not optimal because the corporate culture that supports governance has not been formed firmly and comprehensively [32]. Adequate internal control also requires a clear division of roles between management and supervisory organs[33].

In company law, there are two main models of organ structure, namely *two-tier board* and *one-tier board*. Indonesia requires the use of *two-tier boards* without providing other model options, both for closed companies and public companies, so that the Board of Directors holds management authority and the Board of Commissioners carries out supervisory functions[34]. Singapore adheres to *a one-tier board* that unites management and supervisory functions in one *board of directors*[35]. Based on empirical studies of listed companies in Germany and the United Kingdom, both models can function effectively and neither is superior to the other[36]. A similar thing can be seen in the comparison between the United Kingdom and the United States, two countries adhering to *one-tier boards* that obtain different results in corporate fraud prevention due to differences in the regulation

[31] Disemadi, "The Lens of Legal Research: A Descriptive Essay on Legal Research Methodology."

[32] Siti Nurhaliza et al., "Organizational Culture in the Perspective of Good Corporate Governance," *ACADEMIC CAMPUS PUBLICIZING SCIENTIFIC JOURNAL ECONOMICS AND MANAGEMENT* 4, no. 1 (2026): 635–41, https://doi.org/https://doi.org/10.61722/jiem.v4i1.8261; Devi Pertiwi Ananda Putri and Sri Trisnaningsih, "The Importance of Companies in Applying The Principles of Good," *Sibatik Journal* 2, no. 11 (2023): 3453–58, https://doi.org/https://doi.org/10.54443/sibatik.v2i11.1473.

[33] Nana Kartika et al., "Legal Studies on Hiring and Internal Control in Limited Liability Companies," *Dharmawangsa News* 20 (2026): 96–101, https://doi.org/https://doi.org/10.46576/wdw.v20i1.8209.

[34] Warganegara, Mohamed, and Bujang, "Regulatory Settings And Corporate Governance Of Indonesia's Two-Tier Board System."

[35] Michael Hagana Bangun, "A Comparative Analysis of the Fiduciary Responsibility of the Board of Directors and the Protection of Minority Shareholders: A Critical Study of Company Law in Indonesia and Singapore," *Indonesian Legal Media (MHI)* 4, no. 1 (2026): 434–47, https://doi.org/https://doi.org/https:/doi.org/10.5281/zenodo.17868010.

[36] Jungmann, "The Effectiveness of Corporate Governance in One-Tier and Two-Tier Board Systems: Evidence from the UK and Germany."

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of board composition and the reporting system[37]. To map the differences in the legal basis of organ regulation in the two countries, Table 1 is presented.

Table 1. Comparison of the Legal Basis for the Regulation of Company Organs in Indonesia and Singapore

Yes	Comparative Aspects	Indonesia	Singapore
1	Definition and position of organs	Article 1 number 5 and number 6 of the UUPT	Section 4(1) (definisi *director*) dan Section 157A Companies Act 1967
2	Management and representative authority	Article 92 paragraph (1) and paragraph (2) and Article 98 paragraph (1) of the UUPT	Section 157A(1) dan (2) Companies Act 1967
3	Monitoring and reporting functions	Article 108 paragraph (1) and Article 116 letter c of the UUPT	Section 157A(1) Companies Act 1967 (pengurusan *by or under the direction or supervision of* direktur); Rule 210(5)(c) SGX-ST Listing Rules; Principle 2 Code of Corporate Governance 2018 (*soft law*)
4	Limitation of authority and conflict of interest	Article 99 paragraph (1), Article 102 paragraph (1), and Article 117 paragraph (1) of the UUPT	Section 156(1), Section 160(1), Section 161(1), dan Section 162(1) Companies Act 1967
5	*Fiduciary duty* standards	Article 97 paragraph (2) and Article 114 paragraph (2) of the Constitution	Section 157(1) and (2) of the Companies Act 1967 and common law fiduciary duties
6	Personal civil liability and joint liability	Article 97 paragraphs (3) and (4), Article 114 paragraphs (3) and (4); in bankruptcy Article 104 paragraph (2) and Article 115 paragraph (1) of the Constitution	Section 157(3)(a) of the Companies Act 1967; Assessed liabilities per director

[37] Resa Rasyidah, "Comparison of Corporate Governance with One-Tier Board Systems in the UK and US Related to the Effectiveness of Preventing Fraud in Corporations," *Global & Policy* 1, no. 1 (2013): 11–18.

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Yes	Comparative Aspects	Indonesia	Singapore
7	Criminal liability	Article 155 of the Constitution	Section 157(3)(b) Companies Act 1967
8	Legal defense and protection	Article 97 paragraph (5), Article 104 paragraph (4), Article 114 paragraph (5), and Article 115 paragraph (3) of the Constitution	Section 157C dan Section 391 Companies Act 1967; tidak ada *business judgment rule* statutori
9	Minimum composition and independence	Article 92 paragraph (4) and Article 108 paragraph (5) of the Constitution jo. Article 2 paragraph (1) and Article 20 paragraphs (1) and (3) POJK No. 33/POJK.04/2014	Section 145(1) dan Section 171(1) Companies Act 1967 jo. Rule 210(5)(c) SGX-ST Listing Rules
10	Lawsuit and examination by shareholders	Article 61 paragraph (1), Article 97 paragraph (6), Article 114 paragraph (6), and Article 138 paragraph (3) letter a of the UUPT (threshold 1/10)	Section 216 and Section 216A of the Companies Act 1967 (court permission, without ownership threshold)
11	One-person company	Article 153A paragraph (1) and Article 153J of the UUPT as amended by Law No. 6 of 2023 jo. Articles 9, 10, and 12 of Government Regulation No. 8 of 2021	Section 145(1), Section 171(1), dan Section 197 Companies Act 1967

Based on Table 1, there are differences in the way lawmakers in the two countries formulate standards of conduct, responsibility, and legal protection for corporate organs. The Companies Act formulates separate standards of conduct, responsibilities, and reasons for exemption for the Board of Directors and the Board of Commissioners. In contrast, the Companies Act 1967 only formulates one general standard in Section 157(1), which is then applied by the courts in accordance with the role of each director. In addition, the reasons for exemption in Article 97 paragraph (5) and Article 114 paragraph (5) of the Act must be proven by the members of the body being sued, whereas the exemption from liability in Singapore law is the discretionary authority of the court under Section 391 of the Companies Act 1967 after a proven breach. Another difference lies in access to derivatives lawsuits, which in Indonesia are limited to a tenth of a share ownership threshold, while in Singapore they are screened through court permission.

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In the *two-tier board* system, the Board of Directors runs the management of the company based on good faith, loyalty, and the best interests of the company, while the Board of Commissioners acts as a balancer who supervises and provides advice without participating in operational activities[38]. The separation of functions is intended to create *checks and balances* so that business activities run transparently[39]. In public companies, Article 20 paragraph (3) POJK Number 33/POJK.04/2014 stipulates that in the event that the Board of Commissioners consists of more than two people, the number of independent commissioners must be at least 30% of the total number of members of the Board of Commissioners. Nevertheless, the effectiveness of supervision still depends on the competence and independence of each member, so the two-level structure does not by itself result in good governance[40]. According to the author, the most decisive structural weakness lies in the position of the Board of Commissioners which is outside the company's daily information flow. The Board of Commissioners generally only receives information presented by the Board of Directors, even though effective supervision requires direct access to operational data.

In Singapore, the supervisory functions are carried out by independent directors and non-executive directors who sit on the same board as the executive [41]directors. The fiduciary duty is in the form of a bona *fide duty* to act, avoid conflicts of interest, and the *duty of care, skill and diligence* derives from *the common law* and has been partially codified in the Companies Act 1967[42]. As of January 1, 2022, Rule 210(5)(c) of the SGX-ST Listing Rules requires the number of independent directors to be at least one-third of the *members of* the issuer's board, while the Code of Corporate Governance 2018 recommends that independent directors become the majority if the chairman *of the board* does not have the status of an independent director[43].

Comparatively, both systems recognize *fiduciary duty* as a standard of conduct for corporate organs, although they derive from different legal traditions, namely codification in the *civil law tradition* in Indonesia and *common law* which has been partially codified in Singapore[44]. A more decisive difference lies in the supervisor's position on corporate information. The separation of organs in Indonesia creates a layer of oversight that is

[38] Aufa Wira Prakasa and Albertus Sentot Sudarwanto, "The Doctrine of Fiduciary Duty: Its Role as a Guideline for the Management of Limited Liability Companies by the Board of Directors," *Al-Zayn : Journal of Social Sciences & Law* 3, no. 2 (2025): 241–47, https://doi.org/10.61104/alz.v3i2.993.

[39] Tasman Tasman and Ulfanora Ulfanora, "Good Corporate Governance as a Banking Legal Culture in Indonesia," *Journal of Law, Humanities and Politics* 4, no. 3 (2024): 351–62, https://doi.org/10.38035/jihhp.v4i3.1933.

[40] Kholis, "Analysis of the Role of the Board of Commissioners in Improving Good Corporate Governance: Legal Perspectives and Its Implementation."

[41] Warganegara, Mohamed, and Bujang, "Regulatory Settings And Corporate Governance Of Indonesia's Two-Tier Board System."

[42] Alya Nabita Azzahra and Sri Bakti Yunari, "Comparison of the Regulation and Implementation of the Fiduciary Duty Doctrine in Indonesia and Singapore," *Tristan Law Reform* 6, no. 1096 (2024): 609–20, https://doi.org/https://www.researchgate.net/deref/https%3A%2F%2Fdoi.org%2F10.25105%2Frefor.v6i2.19935?_tp=eyJjb250ZXh0Ijp7ImZpcnN0UGFnZSI6InB1YmxpY2F0aW9uIiwicGFnZSI6InB1YmxpY2F0aW9uIn19.

[43] Bohn and Toh, "Singapore: Corporate Governance in Singapore."

[44] Bangun, "A Comparative Analysis of the Fiduciary Responsibility of Directors and the Protection of Minority Shareholders: A Critical Study of Company Law in Indonesia and Singapore."

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formal and places supervisors outside the day-to-day decision-making process. The incorporation of organs in Singapore places independent directors in the same flow of information as executive directors, with the risk of excessive proximity between supervisors and management.

2. Comparison of Legal Responsibilities of Company Organs in Indonesia and Singapore

The accountability framework of the Board of Directors and the Board of Commissioners in Indonesian corporate law is based on the UUPT, which places the Board of Directors as an organ with full authority over the management of the company and the Board of Commissioners as a supervisory and advisory body [45]. To analyze the work of these responsibilities in practice, this study uses the theory of the working of law which views law as the result of the interaction between norms, implementing institutions, and role [46]holders. In this framework, the Board of Directors and the Board of Commissioners are role holders whose behavior is influenced by legal norms, the threat of sanctions, and social forces in the corporate environment, so that the gap between *law in books* and *law in action* can be explained through these three elements [47].

a. Construction of the Responsibilities of the Board of Directors and Board of Commissioners in Indonesia

Article 97 paragraph (1) of the UUPT specifies that the Board of Directors is responsible for the management of the company, and paragraph (2) requires that the management be carried out by each member of the Board of Directors in good faith and full of responsibility. Furthermore, Article 97 paragraph (3) of the UUPT states:

> "Each member of the Board of Directors is fully personally responsible for the Company's losses if the person concerned is guilty or negligent in carrying out his duties in accordance with the provisions as intended in paragraph (2)."

If the Board of Directors consists of two or more members, the responsibility applies jointly and severally to each member of the Board of Directors based on Article 97 paragraph (4) of the Constitution [48]. However, Article 97 paragraph (5) of the Constitution provides the following reasons for exemption:

> "The members of the Board of Directors cannot be held liable for losses as intended in paragraph (3) if they can prove: a. the loss is not due to their fault or negligence; b. have conducted management in good faith and prudence for the benefit and in accordance with the Company's intentions and objectives; c. have no direct or indirect conflict of interest in the management actions that result in losses; and d. have taken action to prevent the occurrence or continuation of such losses."

[45] Charisa Dwi Santika, Nyulistiowati Suryanti, and Rai Mantili, "The Limit of Authority of the Board of Directors and Board of Commissioners in the Management of the Company is Related to the Revocation of Mining Business Licenses," *Democracy: A Journal of Legal, Social and Political Research* 2, no. 4 (2025): 148–62, https://doi.org/10.62383/demokrasi.v2i4.1413.

[46] Chambliss and Seidman, *Law, Order, and Power*.

[47] Hendra Titisari, *CORPORATE GOVERNANCE: A Theoretical and Practical Review in Indonesia*, 2021.

[48] Salsa Hazzar Sakinah, "Legal Protection and the Limits of Directors' Liability in the Management of Public Companies under the Limited Liability Company," *Journal of Positum Law* 10, no. 1 (2025): 146–62, https://doi.org/https://doi.org/10.35706/positum.v10i1.12842.

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The phrase "if it can be proved" in the provision means that the *business judgment rule* in the Constitution works as a defense that must be proven by the members of the Board of Directors themselves. This formulation is different from the understanding *of the business judgment rule* as a presumption that protects the management from the beginning of the audit. In addition to civil liability, Article 155 of the Constitution stipulates that the provisions regarding the responsibility of the Board of Directors and/or the Board of Commissioners for their errors and omissions do not reduce the provisions in the criminal law[49]. Personal responsibility comes from *fiduciary duty* consisting of *duty of care* and *duty of loyalty*[50].

The responsibilities of the Board of Commissioners are formulated with a similar structure accompanied by several differences in formulation. Article 114 paragraph (1) of the Constitution stipulates that the Board of Commissioners is responsible for the supervision of the company, and paragraph (2) requires each member to carry out the duties of supervision and providing advice in good faith, prudence, and responsibility. The basis of his personal responsibility is regulated in Article 114 paragraph (3) of the Constitution which reads:

> "Each member of the Board of Commissioners is personally responsible for the Company's losses if the person concerned is guilty or negligent in carrying out his duties as intended in paragraph (2)."

If the Board of Commissioners consists of two or more members, the responsibility applies jointly and severally based on Article 114 paragraph (4) of the Constitution. The use of the word "ikut" means that the commissioner's responsibilities are accessory: losses generally come from the actions of the management of the Board of Directors, while the commissioners are held accountable for failing to prevent them[51]. The reason for exemption for members of the Board of Commissioners is regulated in Article 114 paragraph (5) of the Constitution, namely if the person concerned can prove that he has carried out supervision in good faith and prudence, has no personal interest in the management actions of the Board of Directors that resulted in losses, and has given advice to the Board of Directors to prevent the occurrence or continuation of losses. In the event of bankruptcy, Article 104 paragraph (2) and Article 115 paragraph (1) of the Constitution expand the liability to joint liability for the unpaid liabilities of the bankruptcy assets, if the bankruptcy occurs due to the error or negligence of the Board of Directors or the negligence of the Board of Commissioners in carrying out supervision[52]. In the framework of *fiduciary duty*, the obligation of the commissioner is known as *the duty of oversight*, which is the obligation to carry out

[49] Afifah et al., "Legal Responsibility of Directors in Limited Liability Companies According to the Perspective of Indonesian Commercial Law."

[50] Prakasa and Sudarwanto, "The Doctrine of Fiduciary Duty: Its Role as a Guideline for the Management of Limited Liability Companies by the Board of Directors."

[51] Harahap Yahya, *Limited Liability Company Law* (Sinar Graphics, 2021).

[52] Palallo Fachri Rizqi Ramadhan, "The Responsibility of the Board of Commissioners in the Bankruptcy of Limited Liability Companies in Indonesia: A Comparative Study with the State of Vietnam," *Media Legal Indonesia (MHI)* 4, no. 1 (2025): 522–38, https://doi.org/https://doi.org/10.5281/zenodo.17892702.

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active, critical, and continuous supervision[53].

The construction can be tested through the case of PT Taru Martani. At the level of the Board of Directors, the placement of company funds through personal accounts is a violation *of the duty of loyalty* which in itself closes the possibility of the enactment of the protection of Article 97 paragraph (5) of the Constitution, because the condition for the absence of a conflict of interest is not met[54]. The recovery of losses in this case is taken through the criminal route of corruption with additional penalties in the form of substitute money[55]. Throughout the author's search, no lawsuit was found by the company against members of the Board of Directors or the Board of Commissioners based on Article 97 paragraph (3) or Article 114 paragraph (3) of the Constitution. In BUMDs, criminal proceedings are commonly taken because the company's losses are qualified as state or regional financial losses, so the *business judgment rule* only serves as a defense argument[56]. At the level of the Board of Commissioners, the information available to the public is not enough to conclude whether the supervision has met the standards of Article 114 paragraph (2) of the UUPT, or whether the reason for the exemption in Article 114 paragraph (5) of the UUPT can be proven. The weakness of the company's internal control also arises in a separate industrial relations case. In its reconvention lawsuit, PT Taru Martani postulates that the non-conformity in the payment of employee allowances occurred due to weaknesses in the company's administrative and internal supervision practices in the past (Decision Number 13/Pdt.Sus-PHI/2026/PN Yyk, p. 21). The reconvention lawsuit was rejected in its entirety and the subject matter was not related to gold investment, so the postulate was a unilateral acknowledgment of the company. The gold investment was not listed in the Company's Work Plan and Budget, but it continued for several months. This situation is a type of warning sign that should be tested in a civil case, namely whether the sign is clear enough to require the commissioner to conduct further investigation. Since there is no civil lawsuit against the company's organs, the question has never been examined by the court.

b. Construction of Directors' Responsibilities in Singapore

Section 157(1) of the Companies Act 1967 specifies that "*a director must at all times act honestly and use reasonable diligence in the discharge of the duties of his or her office*." Section 157(2) prohibits officers and agents of a company from abusing their position or information obtained by virtue of their position. A breach of these provisions

[53] Item Jovanka Eugenia and Kalalo Flora P., "Legal Aspects of the Responsibility of the Board of Commissioners to the Board of Directors Who Violate Fiduciary Duty So as to Cause Losses for Limited Liability Companies According to Law Number 40 of 2007 concerning Limited Liability Companies," *Lex Privatum* 9, no. 4 (2021): 65–75.

[54] Yessira Dianita, "Application of the Principle of Piercing the Corporate Veil to Fiduciary Duty Violations," *Progressive Politics : Journal of Law, Politics and Humanities* 2, no. 3 (2025): 72–79, https://doi.org/10.62383/progres.v2i3.2529.

[55] ANTARA, "Former President Director of PT Taru Martani Sentenced to 8 Years in Prison."

[56] Alfadani and Bayuaji, "Legal Protection of SOE Directors for Business Decisions Reviewed from the Aspect of Corruption Crimes"; Anisa Deny Setiawati and Mokhamad Gisa Vitrana, "The Doctrine of Business Judgment Rule in the SOE Law: The Limit of Responsibility of the Board of Directors in Corruption Crimes," *Journal of Law* 14, no. 1 (2025): 155–70, https://doi.org/10.56013/rechtens.v14i1.4256.

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gives rise to two legal consequences, namely liability to the company for gains made or losses suffered by the company under Section 157(3)(a), and criminal liability under Section 157(3)(b). In addition, directors are also bound by their fiduciary duties under the *common law*, namely to act bona *fide* in the interests of the company and avoid conflicts of interest[57]. According to the Singapore courts, Section 157(1) is a formulation of *the common* law *duty of care*, and that all directors, whether executive or non-executive, are subject to a minimum objective standard to take reasonable steps in order to direct and monitor the management of the company. This standard was formulated in *Ho Yew Kong v Sakae Holdings Ltd* [2018] 2 SLR 333 and referred to again in the judgment [2025] SGHC(A) 7paragraphs [52]–[53]. The standard is not lowered due to a director's limited knowledge and can be enhanced if the director has special expertise.

Unlike the Companies Act, the Companies Act 1967 does not formulate a *business judgment rule* as a statutory defence. Section 157C allows directors to rely on reports, financial data, and professional advice prepared by certain parties as long as they are done in good faith and after due diligence. Section 391 gives the court the authority to discharge a director, either in whole or in part, if the director has acted honestly and reasonably so that it is forgivable. Outside of these two provisions, courts generally do not reassess business decisions taken bona *fide* [58]. This framework is supported by the Code of Corporate Governance 2018 and the rules of the exchange that place independent directors as a supervisory mechanism within a single *board* [59].

c. Analysis of the Decision of Goh Jin Hian v Inter-Pacific Petroleum: Breach of Duty, Causal Relationship, and Damages

The IPP was established in 2011, placed under *judicial management* on September 4, 2019, and declared in compulsory liquidation on March 25, 2021. The lawsuit in Suit No 953 of 2020 was filed on behalf of the company by its bankruptcy administrators against Dr Goh, who served as a director from 2011 until his resignation on August 12, 2019. The lawsuit is based on two obligations, namely duty *of care* and the obligation to take into account the interests of the creditor *duty*, relating to the withdrawal of bank facilities in the amount of US$146,047,099.60 for a cargo transaction that turned out to be fictitious and US$10,508,238.71 for *a legitimate bunker* transaction . The first-instance judgment, [2024] SGHC 178, granted most of the plaintiffs' allegations and sentenced Dr Goh to pay damages for the withdrawal of funds for cargo transactions. In the appeal decision [2025] SGHC(A) 7, the Appellate Division examined the case by separating the three issues in order.

The first issue was whether or not there was a breach of duty. The Appellate Division upheld the finding that Dr Goh breached the *duty of care* by not knowing the existence of the cargo trading business line, even though the business line accounted for

[57] Azzahra and Yunari, "Comparison of the Regulation and Implementation of the Fiduciary Duty Doctrine in Indonesia and Singapore."
[58] Bangun, "A Comparative Analysis of the Fiduciary Responsibility of Directors and the Protection of Minority Shareholders: A Critical Study of Company Law in Indonesia and Singapore."
[59] Bohn and Toh, "Singapore: Corporate Governance in Singapore."

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about half of the company's revenue. However, the court rejected the argument that Dr Goh breached his obligations by ignoring three *red flags*, namely the request for audit confirmation to Mercuria, the suspension of the *bunker operator's license*, and the confirmation of the debt to Maybank. According to the court, the audit confirmation request was related to the existence of receivables and not to the arrears of payments; there were no visible signs of arrears, and the company's auditors themselves did not find any fraud. The court also stated that a director's duty of supervision did not include an obligation to find fraud in the absence of a warning mark, as the director *"is not a forensics investigator or a sleuth"* ([2025] SGHC(A) 7, paragraph [158]). With respect to *creditor duty*, the court referred to *Foo Kian Beng v OP3 International Pte Ltd (in liquidation)* [2024] 1 SLR 361 and stated that this obligation was tested subjectively based on the good faith of the director at the time the transaction was made, so that it could only be breached by the director who authorised or exercised his discretion over the transaction. Since Dr Goh did not authorise the withdrawal of funds for cargo transactions, this obligation was declared not to have been breached.

The second issue is the causal relationship. The court stated that the burden of proving a causal relationship lies with the company as the plaintiff. Based on the *but-fors test*, the plaintiff is obliged to establish a *counterfactual* scenario by outlining the concrete steps that the director would take if he were to carry out his obligations, and explain how those steps would find fraud and prevent losses. The burden of proof only shifts to the director after the scenario has been prima *facie proven* ([2025] SGHC(A) 7, paragraphs [129]–[140]). Referring to *Lexi Holdings plc v Luqman* and *Weavering Capital (UK) Ltd v Dabhia*, the court rejected the first instance consideration which concluded the existence of a causal relationship solely on the basis of common sense, because such consideration presupposes facts that should have been proved, particularly in neatly arranged fraud ([2025] SGHC(A) 7, paragraph [150]). The reversal of the burden of proof as in *Sim Poh Ping v Winsta Holding Pte Ltd* was declared inapplicable to the breach of *duty of care*, while its application to *creditor duty* was left open ([2025] SGHC(A) 7, paragraph [130]).

The third issue was the result of damages. The court recognized that the company suffered a loss, because the withdrawal of funds for fictitious transactions created a liability to the bank in the absence of any commensurate benefit ([2025] SGHC(A) 7, paragraph [127]). Since the causal link between the proven breach and the loss could not be proved, all damages were cancelled and the application for exemption under Section 391 did not need to be examined. This judgment also did not contain any consideration of the *business judgment rule*.

The decision provides several lessons for Indonesia. Article 97 paragraph (3) and Article 114 paragraph (3) of the UUPT have contained elements of causal relationship through the phrase "responsible ... for the Company's losses if the person concerned is guilty or negligent", while the standard of proof is not specified in the UUPT. On the other hand, Article 97 paragraph (5) letter a and Article 114 paragraph (5) of the UUPT place part of the burden of proof on the defendant, namely to prove that the loss did not arise

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due to his fault or that supervision has been carried out properly. This direction of the burden of proof is contrary to *the decision of Goh Jin Hian* which requires the plaintiff to prove *counterfactual* first. The lawsuit in this case was filed by the bankruptcy administrator, in line with the principle that derivatives lawsuits under Section 216A are no longer available after the company is in liquidation as decided in *Petroships Investment Pte Ltd v Wealthplus Pte Ltd* [2016] SGCA 17. The equivalent in Indonesia is the responsibility of the Board of Directors and the Board of Commissioners in bankruptcy under Article 104 paragraph (2) and Article 115 paragraph (1) of the UUPT [60].

d. Comparative Implications for Proving Negligence, Individual and Collective Liability, and Protection of Minority Shareholders

The implications of the difference between the two systems based on the comparison parameters that have been determined in the research method are summarized in Table 2 below.

Table 2. Implications of the Difference Between Two-Tier Board and One-Tier Board on Liability Enforcement

Yes	Parameter	Indonesia (two-tier)	Singapura (one-tier)	Implications
1	Burden of proving negligence	The plaintiff proves guilt or negligence (Article 97 paragraph (3), Article 114 paragraph (3)); the defendant proves the reason for the release (Article 97 paragraph (5), Article 114 paragraph (5))	Plaintiff proves infringement, loss, and causality; discharge is at the discretion of the court (Section 391)	Indonesia shifts part of the burden to the defendant; Singapore demands stricter proof from the plaintiff
2	Causality and indemnity	An element of implicit causality, with no formulated standard of proof	Test *boots* for with *detailed counterfactual* ([2025] SGHC(A)7)	Proven violations do not automatically give rise to compensation

[60] Ramadhan, "The Responsibility of the Board of Commissioners in the Bankruptcy of Limited Liability Companies in Indonesia: A Comparative Study with the State of Vietnam."

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Yes	Parameter	Indonesia (two-tier)	Singapura (one-tier)	Implications
3	Proof of supervisor's negligence	Layered: losses resulting from the actions of the Board of Directors and the negligence of the supervisory directors of separate	Minimum objective standards for all directors, including non-executives	In Indonesia, the ignorance of the commissioner has not been firmly formulated as an offence; in Singapore, ignorance of the line of business is already an offence
4	Individual or collective responsibility	Joint liability with individual exemption	Assessed per director without statutory liability	Indonesia encourages attitude documentation; Singapore demands per-person evidence
5	Minority shareholder access	Derivatives lawsuit and examination require 1/10 of the shares	Any member may file with the court's permission (Section 216A)	Screening in Indonesia is number-based, in Singapore substance-based
6	External enforcement	Dominant through the criminal route after the loss	Civil litigation by companies or bankruptcy administrators; regulators and exchanges	Supervisory standards in Indonesia are rarely formulated through civil rulings

The first implication relates to proving negligence. In the *two-tier board system*, a lawsuit against a member of the Board of Commissioners requires multi-level proof. The plaintiff must first prove the existence of losses stemming from the actions of the Board of Directors, then prove separately that the commissioner negligent in supervising. The position of the commissioner who is outside the company's daily information flow raises two possibilities. The commissioner can argue that he did not know of any irregularities, while the ignorance itself can be considered negligence if a warning sign is available. In addition, Article 114 paragraph (5) letter c of the Civil Code, which exempts commissioners if they have provided advice to prevent losses, risks becoming a condition of exemption that is too easy to meet if formal advice without

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follow-up is considered sufficient. In the *one-tier board* system, the question asked is whether the director has placed himself in a position to direct and monitor management. In *the Goh Jin Hian ruling*, ignorance of the company's line of business was declared an infringement, while the claim for damages was dismissed because the causal relationship was not proven. For the plaintiff in Indonesia, the biggest practical obstacle is access to the company's internal documents, as the application for an audit of the company under Article 138 paragraph (3) letter a of the UUPT also requires the ownership of at least one-tenth of the shares with voting rights.

The second implication relates to the nature of individual and collective responsibility. The UUPT establishes collective responsibility through a mechanism of joint liability as stipulated in Article 97 paragraph (4), Article 114 paragraph (4), Article 104 paragraph (2), and Article 115 paragraph (1). However, the exemption from such responsibility is individual because each member must prove for himself or herself the reason for the exemption in Article 97 paragraph (5) or Article 114 paragraph (5). This construction encourages each member of the organ to document his or her attitude in the minutes of the meeting. On the other hand, the passive member can bear all the losses with the main perpetrator, so the plaintiff tends to direct the lawsuit to the member who is most able to pay. In contrast, in Singapore law the obligations under Section 157 are imposed on each director individually and the breach is assessed on a person-by-person basis with standards tailored to his or her role. The Companies Act 1967 does not contain statutory joint liability provisions like the Companies Act, so the plaintiff must prove the violation, causal relationship, and damages separately against each director. In *the case of Goh Jin Hian*, the lawsuit was only directed against one director.

The third implication is related to the protection of minority shareholders. Article 97 paragraph (6) of the Constitution states:

> "On behalf of the Company, shareholders who represent at least 1/10 (one-tenth) of the total number of shares with voting rights may file a lawsuit through the district court against the members of the Board of Directors who due to their mistake or negligence cause losses to the Company."

Similar provisions apply to lawsuits against members of the Board of Commissioners based on Article 114 paragraph (6) of the Constitution. Shareholders who do not reach the threshold of one-tenth of the shares cannot file a derivative lawsuit. Direct lawsuits based on Article 61 paragraph (1) of the Constitution are open to every shareholder. The object of the lawsuit is the company's actions that harm shareholders personally, so this lawsuit cannot be used to recover the company's losses from negligent management[61]. In public companies with scattered shareholding, the threshold of one-tenth can practically only be met by large shareholders who generally already have influence over the composition of the Board of Directors and the Board of Commissioners. This

[61] Zahra, Krisna Putri, and Tambunan, "Legal Protection for Shareholders: Exploring Rights and Risks in Limited Liability Companies."

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situation makes it difficult to use derivative lawsuits in companies whose management is under the influence [62] of controlling shareholders. In Singapore, Section 216 of the Companies Act 1967 gives every member the right to file an application for oppressive or unfair actions, while Section 216A allows derivatives suits without a shareholding threshold. The conditions specified in Section 216A(3) are notification to the directors at least 14 days in advance, the existence of good faith, and a *prima facie* claim in the interests of the company. The screening of lawsuits is carried out by judges based on the substance of the case. The G20/OECD Principles of Corporate Governance 2023 state that minority shareholders must be protected from adverse actions, whether by or for the benefit of the controlling shareholders, and must have effective means of redress[63].

D. Conclusions and Recommendations

Based on the results of the research and discussion, it can be concluded that Indonesia and Singapore both recognize the principle *of fiduciary duty*, but have different institutional constructions and mechanisms for enforcing the responsibilities of directors. Indonesia through the Limited Liability Company Act (UUPT) separates the management and supervisory functions between the Board of Directors and the Board of Commissioners, while Singapore through *the Companies Act 1967* integrates the two functions in a single *board of directors* with general standards as stipulated in Section 157(1). These differences have implications for proving negligence, the nature of liability, and the access of minority shareholders in filing derivative lawsuits. The UUPT imposes a partial burden of proof on the defendant through Article 97 paragraph (5) and Article 114 paragraph (5), as well as recognizing joint liability with the possibility of individual exemption. In contrast, Singapore law places proof of breach of duty, loss, and causal relationship on the plaintiff, while assessing the individual liability of each director. The decision of *Goh Jin Hian v Inter-Pacific Petroleum* [2025] SGHC(A) 7 shows that the proof of a breach of *duty of care* does not necessarily give rise to an obligation of compensation if the causal relationship cannot be proven. In addition, the requirement of ownership of a minimum tenth of a share in Article 97 paragraph (6) and Article 114 paragraph (6) of the Constitution limits minority shareholders' access to derivative lawsuits, in contrast to Section 216A *of the Companies Act 1967* which uses a court permit mechanism. The findings of the PT Taru Martani case also show that limited access to the civil lawsuit mechanism can shift the enforcement of management responsibilities to the criminal realm without providing adequate space for the establishment of supervisory standards for the Board of Commissioners through civil rulings. Therefore, the effectiveness of the implementation *of fiduciary duty* is not solely determined by the structure of the company's organs, but also by the disclosure of information, access to law enforcement mechanisms, and the certainty of legal consequences for negligence in carrying out management and supervision obligations.

Based on these findings, it is necessary to update the company's legal policy through

[62] Bangun, "A Comparative Analysis of the Fiduciary Responsibility of Directors and the Protection of Minority Shareholders: A Critical Study of Company Law in Indonesia and Singapore."
[63] OECD, "G20/OECD Principles of Corporate Governance 2023."

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two main steps. First, the lawmaker needs to lower the threshold for share ownership to file a derivative lawsuit as stipulated in Article 97 paragraph (6) and Article 114 paragraph (6) of the UUPT, from one-tenth to one-hundredth of shares with voting rights and a holding period of at least six months. This change needs to be accompanied by a screening mechanism through court permission, the obligation to make a written request in advance to the company's organs, and court supervision of the peace or the withdrawal of lawsuits to prevent abuse of the right to sue. The regulation also needs to be aligned with Article 138 paragraph (3) letter a of the UUPT regarding the company's audit, without eliminating protection for the management through the provisions of exemption from liability and proof of causal relationship. Second, supervision of individual companies needs to be strengthened through the enforcement of the obligation to submit financial statements as stipulated in Article 10 of Government Regulation Number 8 of 2021, including through an automatic marking system for companies that do not meet reporting obligations, the gradual application of sanctions based on Article 12, and the disclosure of compliance status to the public while still paying attention to the protection of personal data based on Law Number 27 of 2022. Strengthening supervision needs to consider the characteristics of micro and small businesses through simplifying the reporting format and providing a grace period before the imposition of sanctions. In addition, if the failure to report for two consecutive periods is intended to be used as an indication of asset mixing for the purpose of implementing Article 153J paragraph (2) of the Constitution, the regulation must be carried out through the law while still providing opportunities for the company to refute the presumption. Thus, the reform of the UUPT is expected not only to expand access to *fiduciary duty enforcement* and strengthen the accountability of the company's organs, but also to create a balance between the protection of minority shareholders, legal certainty for management, and the protection of creditors' interests.

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