HANG TUAH LAW JOURNAL

Volume 9 Issue 2 October 2025

Minority Shareholders Activism in Family Firms: A Comparative Study of Indonesian and South Korean Law

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Article

Keywords:
Family Firms; Shareholders Minority; Shareholders Activism; *Chaebol*

Article History
Received: Sep 26, 2024;
Reviewed: May 20, 2025;
Accepted: May 21, 2025;
Published: Jun 14, 2025.

Abstract

Family firms significantly contribute to the economies of Indonesia and South Korea. Despite their importance, these firms face challenges related to succession and minority shareholder rights. Indonesia lacks a robust regulatory framework for minority shareholder activism, relying primarily on the Indonesian Company Law despite the existence of the General Guidelines for Governance of Indonesian Family-Owned Businesses. In contrast, South Korea's chaebols, large family-controlled conglomerates, face stricter regulatory oversight to protect minority shareholders, including the Monopoly Regulation and FairTrade Act and the Korean Stewardship Code. Therefore, this paper aims to find the differences between Indonesian and South Korean legal regime on the minority shareholder activism regulation for family firms, while also aiming to bring practical policy suggestions. To achieve such purpose, this study employs a juridical legal method with comparative approach. The study provides comparative analysis from the two different jurisdictions based on its regulations, and suggesting that providing stricter regulation on institutional investors for family-firms, as well as adding the guidelines with more specific recommendation for minority shareholding member of family firms may help in promoting a more equitable corporate governance regime in family-owned businesses.

Introduction

Indonesia and South Korea share a significant presence of family firms that play a crucial role in their national economies. In Indonesia, 95% of businesses are conducted through private family firms, contributing 25% to the country's Gross Domestic Product (GDP).[1] In South Korea, the total revenues of the 21 largest family firms in 2007 amounted to $850 billion, nearly matching South Korea's GDP of $1.3 trillion.[2] Despite debates about the definition of family firms, a generally accepted definition is businesses governed and/or managed on a sustainable, potentially cross-generational basis to pursue the formal or implicit vision held by members of the same family or a small number of families.[3]

In Indonesia, family firms typically begin with high family involvement and expectations of trans-generational succession. The history of large businesses in Indonesia today originated from family firms that were founded by a small number of shareholders, who are related or affiliated to one another.[4] Notably, 74% of these firms maintain a collectivist approach in decision-making and strategic policies. A prominent example is the Salim Group, founded by Sudono Salim (Liem Sioe Liong), which has grown to be the largest diversified business group in Southeast Asia, accounting for 5% of

1 PriceWaterhouseCooper Indonesia, "Survey Bisnis Keluarga 2014," *PwC Indonesia*, no. November (2014): 1–35, https://www.pwc.com/id/en/publications/assets/indonesia-report-family-business-survey-2014.pdf..

2 Seung Rok Park and Ky hyang Yuhn, "Has the Korean Chaebol Model Succeeded?," *Journal of Economic Studies* 39, no. 2 (2012): 260–74, https://doi.org/10.1108/01443581211222680.

3 Marleen Dieleman, "How Chinese Are Entrepreneurial Strategies of Ethnic Chinese Business Groups in Southeast Asia ? A Multifaceted Analysis of the Salim Group of Indonesia," 2007, 1–208, https://scholarlypublications.universiteitleiden.nl/access/item%3A2856228/view.

4 Ulya Yasmine Prisandani and Kartika Paramita, "Corporate Governance and Shareholder Engagement Practices in Indonesia: A Shifting Paradigm," in *The Cambridge Handbook of Shareholder Engagement and Voting*, ed. Harpreet Kaur et al., Cambridge Law Handbooks (Cambridge: Cambridge University Press, 2022), 86–106, https://doi.org/DOI:10.1017/9781108914383.006.

Indonesia's GDP.[5] However, a survey indicates a declining trend in family firm continuity across generations, with only 61% surviving into the second generation, 24% into the third, and a mere 5% into subsequent generations.[6] This decline is often attributed to internal family conflicts, especially with the arrival of new generations.

Despite these challenges, Indonesia lacks a regulatory framework specifically governing family firms, influencing many to remain privately owned. These firms often resist public listing to avoid improved governance and management practices that might reduce their ability to enjoy private benefits of control.[7] Specific corporate governance guideline for family-owned businesses have been issued by the National Committee on Governance Policy (*Komite Nasional Kebijakan Governansi*) but it remains a non-binding recommendation for companies.

The question remains whether remaining private ensures sustainable success, given the declining rates of trans-generational succession, despite corporate governance still being considered essential to the success of family-run businesses[8]. Nevertheless, some family firms, such as Salim Group subsidiaries namely, PT Salim Ivomas Pratama Tbk, PT Medco Energi International Tbk, and PT Indofood Sukses Makmur Tbk, have opted for public ownership to access public financing.[9] This trend is reflected in the significant increase in stock ownership, with 5.25 million stock investors, predominantly retail investors, participating in Initial Public Offerings (IPOs).[10]

In addition to this, some minority shareholders in Indonesia family firms have attempted to enhance their participation through activism. However, traditional shareholder activism is limited to the creation of minority shareholder associations with a limited number

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5 Marleen Dieleman, *Loc.Cit.*

6 Yetty Komalasari Dewi, "In Search of Legal Foundation for Indonesian Family Firms," *Indonesia Law Review* 6, no. 2 (2016): 246, https://doi.org/10.15742/ilrev.v6n2.228.

7 *Ibid.*

8 Akie Rusaktiva Rustam and I Made Narsa, "Good Corporate Governance: A Case Study of Family Business in Indonesia," *Journal of Asian Finance, Economics and Business* 8, no. 5 (2021).

9 Stockbit, "11 Perusahaan Salim Group Yang Ada Di Bursa Efek Indonesia," Stockbit, 2022, https://snips.stockbit.com/investasi/perusahaan-salim-group.

10 Bursa Efek Indonesia, "Melalui Berbagai Pencapaian Tahun 2023, Pasar Modal Indonesia Tunjukkan Optimisme Hadapi Tahun 2024," IDX, 2023, https://www.idx.co.id/en/news/press-release/2080.

of participants and is governed only by the Indonesian Company Law No. 40 Year 2007 (hereinafter "ICL").[11] This raise concerns in regard to both family firm succession and minority shareholder rights in family firms.

Similarly, the success of South Korea's economy is largely attributed to the entrepreneurial spirit of chaebol founders and their remarkable growth. *Chaebols* refer to large conglomerates consisting of numerous related corporations engaged in diverse businesses under highly concentrated family control.[12] The governance structures of *chaebols* vary, with a few large flagship companies or holding companies listed on the stock exchange, while many affiliates remain unlisted. The controlling family typically holds titles like Honorary Chair and exercises control over the entire group, often with minimal direct shareholding. Circular shareholdings and pyramidal structures enable controlling shareholders to exert control disproportionate to their economic cash flow rights, leading to conflicts of interest between controlling and non-controlling shareholders.[13]

In contrast to Indonesia which has yet to govern minority shareholder activism in family firms explicitly by way of *lex specialis* debates or regulations, minority shareholder distress towards *chaebols* in South Korea has been a significant issue, even influencing presidential elections. In 2012, candidate Geun-Hye Park campaigned on economic democratization and anti-*chaebol* sentiments, which contributed to her election victory.[14] South Korea has since implemented regulatory measures to oversee controlling

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11 Ulya Yasmine Prisandani, "Shareholder Activism in Indonesia: Revisiting Shareholder Rights Implementation and Future Challenges," *International Journal of Law and Management* 64, no. 2 (January 1, 2022): 225–38, https://doi.org/10.1108/IJLMA-07-2021-0169.

12 Myungsu Hong, "Korea ' s Chaebol Regulations and the Relationship between Competition and Company Law," in *Intersections Between Corporate and Antitrust Law* (Cambridge University Press, 2023), 110–30, https://doi.org/https://doi.org/10.1017/9781108899956.009.

13 Seung Young Yoon, "Shareholder Engagement and Voting in South Korea," in *The Cambridge Handbook of Shareholder Engagement and Voting* (Cambridge University Press, 2022), 145–64, https://doi.org/https://doi.org/10.1017/9781108914383.009.

14 Sang Yop Kang and Kyung-Hoon Chun, "Korea's Stewardship Code and the Rise of Shareholder Activism," in *Global Shareholder Stewardship* (Cambridge University Press, 2022), 239–60, https://doi.org/https://doi.org/10.1017/9781108914819.012.

family members and intervene in management. This has culminated in the enactment of the Monopoly Regulation and FairTrade Act, which intersects competition and company law to restrict chaebols from engaging in certain affiliated investments and corporate structures.[15]

Additionally, in 2016, the government established the Korean Stewardship Code (hereinafter "KSC"), modeled after similar frameworks in the United Kingdom and Japan. This soft law aims to bolster minority shareholder activism and mitigate abuses by *chaebols* through enhanced institutional investor engagement.[16]

Korea is also one of the largest investor countries of Indonesia,[17] and recent studies have started to compare corporate governance and corporate law regime in both jurisdictions. For example, the study of Fery and Park (2022)[18] brought forth crucial differences between the corporate law and governance regime in Indonesia and South Korea with regard to director representation and auditor role in the companies of both countries.

Given the significance of family firms both in Indonesia and South Korea and the key differences in the regulations and governance in that respect, comparative research may be beneficial in nature to support the effort of strengthening family firms' governance in both jurisdictions, while bringing suggestions for practical utilization at both domestic and international level. After all, existing research on regular, non-family companies may not be applicable to family firms due to the different nature and practices of the two as presented in *inter alia* Muawanah (2014)[19].

To achieve such objectives, this study aims to answer two research questions namely the extent to which regulatory frameworks and corporate governance practices on minority shareholder activism in family firms differ in Indonesia and South Korea, as well as policy

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15 Seung Young Yoon, *Loc.Cit.*

16 Sang Yop Kang and Kyung-Hoon Chun, *Loc.Cit.*

17 Anton Santoso, "Indonesia Still Attractive to Korean Investors, Says Minister," *Antara News*, April 29, 2025, https://en.antaranews.com/news/353377/indonesia-still-attractive-to-korean-investors-says-minister.

18 Fery Fery and Jihyun Park, "Comparative Study on the Corporate Governance Between The South Korean And Indonesian Law," *Journal of Law and Policy Transformation* 7, no. 2 (2022), https://doi.org/10.37253/jlpt.v7i2.7237.

19 Umi Muawanah, "Corporate Governance dan Kepemilikan Keluarga," *Jurnal Akuntansi Multiparadigma; Vol 5, No 2 (2014): Jurnal Akuntansi Multiparadigma*, 2014, https://doi.org/10.18202/jamal.2014.08.5024.

recommendations that can improve minority shareholder activism in Indonesian family firms based on the comparative research conducted with South Korea.

Method

This research employs a legal research methodology, incorporating qualitative regulation and practice analysis. It involves an examination of both hard laws and soft laws relevant to minority shareholder activism in family firms in Indonesia and South Korea, with the aim of understanding how Indonesian family firms could become publicly owned while fostering minority shareholder activism.

This study utilized a juridical normative method. This method is essential for gaining legal knowledge by examining statutory regulations and identifying the issues that arise between entities in respective countries. The study includes primary, secondary, and tertiary legal materials, such as statutory laws, financial services authority regulations, soft law principles, academic journals, and articles. Further, the analysis in this research is also based on a comparative study of the regulatory frameworks in Indonesia and South Korea. The regulations and policy in Indonesia on minority shareholder activism in family firms is compared head-to-head with the regulations in Korea. The regulation in Indonesia is majorly based on the ICL while also taking into account the General Guidelines for Governance of Indonesian Family-Owned Businesses *(Pedoman Umum Governansi-Badan Usaha Milik Keluarga Indonesia)* that are compared to South Korean regulations which include the Korean Commercial Code (상법 or *Sangbeop*), Korean Stewardship Code (한국 스튜어드십 코드 or *Hanguk Seutyueodeusip Kodeu*), and the Monopoly Regulation and Fair Trade Act (독점규제 및 공정거래에 관한 법률 or *Dokjeom Gyuje mit Gongjeong Georaee Gwanhan Beomnyul*). The differences of legal framework and the gap within these regimes will then be analyzed, and policy recommendation for Indonesia will subsequently be provided based on these comparative analysis.

Result and Discussion

A. Family Firms Legal Framework in Indonesia

Most businesses in Indonesia are family-owned. However, the law governing these businesses does not adequately address the specific concept of family firms. There is no precise legal definition or substantial scholarly attention given to family businesses, resulting in the absence of a specific legal framework for family-owned companies in Indonesia.[20]

The types of business firms and companies in Indonesia are governed by various laws and regulations, and the types that are commonly used are *commanditaire venootschap* or commonly abbreviated as "CV", cooperatives (*koperasi*), and limited liability company. Most family firms take the form of limited liability companies and hence are primarily regulated under the ICL, which provides that individuals with blood or marital ties can be incorporators, members of the Board of Directors, or members of the supervisory board, adhering to the company's articles of association.

Back to family firms, family members often serve as incorporators and hold the majority of the shares. According to Article 1 Paragraph 1 of the ICL, a company is a legal entity composed of capital contributions, with authorized capital consisting of nominal shares owned by shareholders. As majority shareholders, family members stand to benefit significantly from the company's profits and suffer considerable losses when the company underperforms.[21] This majority control leads to active participation by family members in the company's activities, potentially neglecting or violating the rights of minority shareholders who are non-family members. Such dynamics can lead to conflicts of interest, with the majority shareholders potentially abusing their power and marginalizing minority shareholders.[22] Consequently, family firms in Indonesia are prone to potential abuses of power, rendering minority shareholders powerless against the majority. Such abuses of power may consist of withholding dividends, dilution of shares, misuse of

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20 Yetty Komalasari Dewi, *Loc.Cit.*

21 Binoto Nadapdap, *Hukum Perseroan Terbatas : Berdasarkan Undang-Undang No. 40 Tahun 2007* (Jakarta: Jala Permata Aksara, 2020).

22 Abhiyoga Dirdanaraputra Gautama and Yetty Komalasari Dewi, "Contoh Holrev" 6, no. 1 (2022): 1–22, https://doi.org/10.1111/j.1741-6248.1988.00427.x.Colli.

company assets for personal benefits, and dominating the corporate boards.[23]

B. Family Firms Legal Framework in South Korea

Under the Korean Commercial Code (hereinafter "KCC"), there are six types of corporate entities: general partnership (*hapmyung hoesa*), limited partnership (*hapja hoesa*), limited liability partnership (*hapja johap*), limited liability company (*yuhan chaekim hoesa*), joint-stock company (*chusik hoesa*), and closed company (*yuhan hoesa*).[24] Among these, the joint-stock company is the most prominent, often serving as the basis for family firms in South Korea.[25]

Family firms in South Korea, known as *chaebols*, are governed by a specific regulatory framework. The first legislation addressing chaebols was the 1986 amendment of the Monopoly Regulation Act, reflecting a legislative determination to manage chaebol issues through competition policy.[26] This policy restricts certain corporate practices to address economic concentration problems. The Monopoly Regulation Act imposes three main prohibitions on *chaebols*: Article 7-3 prohibits mutual investment and cross-shareholding between affiliates, Article 7-4 limits the total amount of investment by affiliates, and Article 7-5 restricts the voting rights of shares held by financial institutions within chaebol groups.[27] These measures aim to prevent the misuse of customer funds to expand or strengthen affiliates. These prohibitions apply to family firms categorized as *chaebols* with total assets exceeding 10 trillion won. For family firms with assets between 5 trillion and 10 trillion won, the obligation is to disclose their status and internal transactions.[28]

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23 Fiona Priscillia Kohar and Yetty Komalasari Dewi, "Abuse Of Rights By Majority Shareholders In Indonesian Family-Owned Company: Is It Likely?," *Sriwijaya Law Review* 5, no. 1 (2021), http://dx.doi.org/10.28946/slrev.Vol5.Iss1.887.pp29-41.

24 Roger Chae and Kyoung Soo Chang, "Introduction Of Additional Company Entities : Hapja Johap And Yuhan Chaekim Hoesa," *SHIN & KIM*, 2011, https://www.shinkim.com/newsletter/corporate/201107/corporate_eng201108_10.html

25 Seung Young Yoon, *Loc.Cit.*

26 Myungsu Hong, *Loc.Cit.*

27 *Ibid.*

28 BHSN LEGAL. "Criteria for Determining Chaebols in Korea," 2020, https://bhsn.co.kr/en/en/standard-of-judgement-of-korean-chaebols/?ckattempt=1

Additionally, the current Monopoly Regulation Act imposes requirements for *chaebols* that wish to establish holding companies. Under Article 8-2, a holding company must hold more than twice the total amount of capital, own shares of a subsidiary exceeding 40% of the total issued shares, and limit ownership of non-affiliate domestic company shares to 5%. These requirements aim to reduce circular investments and improve the separation of ownership and management among affiliated companies.[29] *Chaebol* firms typically exhibit a complex corporate structure. Family members may hold more than 50% of the shares, making them majority shareholders, or they may control the company with less than 10% of the shares through circular shareholdings or a pyramidal structure.[30] This allows controlling shareholders to exert significant control despite limited economic cash flow rights. However, this structure often leads to corporate governance problems, particularly concerning minority shareholders. Controlling families frequently engage in tunneling through related party transactions, issuance of undervalued stocks, and unfair mergers to siphon off the value of group companies.[31]

When a *Chaebol* company violates the Monopoly Regulation Act, the controlling family faces both criminal and administrative penalties. Unfair related party transactions are often prosecuted as criminal breaches of trust (*baeim*), which can result in imprisonment.[32]

C. Minority Shareholder Activism in Indonesia Family Firms

Towards the imposition of shareholder activism in Indonesia, such rights are imposed through shareholder rights within the ICL which encompasses several key rights which are designed to ensure fair treatment and participation in corporate governance. In accordance with Article 62 of the ICL shareholders who disagree with certain corporate decisions or actions can request the company

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[29] Youngjin Jung and Wha Seung Chang, "Korea's Competition Law and Policies in Perspective," *Northwestern Journal of International Law and Business* 26, no. 3 (2006): 687–728, https://scholarlycommons.law.northwestern.edu/njilb/vol26/iss3/33/.

[30] Myungsu Hong, *Loc.Cit.*

[31] Youngjin Jung and Wha Seung Chang, *Loc.Cit.*

[32] Kon Sik Kim, "Related Party Transactions in Insolvency," *The Law and Finance of Related Party Transactions*, no. March (2018): 260–81, https://doi.org/10.1017/9781108554442.010.

to repurchase their shares at a fair price. This right applies in cases of changes to the Articles of Association ("AoA"), transfer or assurance of company assets exceeding 50% of total assets, or during mergers, consolidations, acquisitions, or separations.[33] If the repurchase request exceeds the limit set by Article 37 paragraph (1) letter b, the company must ensure that the remaining shares are purchased by a third party.

Shareholders holding at least 10% of the total shares can request a General Meeting of Shareholders ("GMS") by submitting a registered letter to the Board of Directors ("BoD") detailing the reasons (Article 17 of the ICL). The BoD must announce the GMS within 15 days. If the BoD fails, the request can be escalated to the Board of Commissioners ("BoC"), who must convene the GMS within another 15 days. If both the BoD and BoC fail, shareholders can seek permission from the District Court to conduct the GMS. Shareholders can file a lawsuit against unfair and unreasonable decisions by the company's organs, particularly the BoD or BoC, that are detrimental to shareholders (Article 61 of the ICL). This lawsuit, filed with the District Court in the company's domicile, targets negligent decisions causing losses. Company Law provides the legal basis for holding the BoD and BoC accountable, requiring proof in line with Articles 1365-1366 of the Civil Law.

Shareholders may request a due diligence inspection if they allege the company has engaged in tortious activities detrimental to shareholders or third parties (Articles 138-141 ICL). Company Law allows for such inspections based on allegations of wrongdoing by the BoD, BoC, or the company itself. Shareholders can propose the dissolution of the company through a GMS resolution, submitted by the BoD, BoC, or minority shareholders holding at least 10% of the shares (Article 141 of the ICL). For approval, 3/4 of the shares with voting rights must be present at the GMS, and the decision must be agreed upon by 3/4 of the total votes.

In practice, concentrated ownership and control structures in Indonesia lead to low levels of disclosure and transparency. Dominant shareholders often engage in insider trading due to lax supervision. Public participation in decision-making is low, as individual shareholders typically hold small percentages of shares, leaving decision-making dominated by controlling shareholders.

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[33] Fiona Priscillia Kohar and Yetty Komalasari Dewi, *Loc.Cit.*

However, the government has implemented measures to protect minority shareholders, such as Financial Services Authority (*Otoritas Jasa Keuangan* or commonly abbreviated as "OJK") Regulation No. 14/POJK.04/2019, which requires GMS approval for capital increases without a rights issue to be attended and approved by independent and unaffiliated shareholders.

In response to these challenges, minority shareholders have begun forming associations to strengthen their influence. For instance, the Minority Shareholder Association of PT. Bank Tabungan Negara (Persero) Tbk. has actively pressured for the appointment of suitable directors. Similarly, the Indonesian Shareholder Association of PT. Bank Muamalat Indonesia, Tbk. has engaged in public discussions to address the bank's issues. The PT. Tiga Pilar Sejahtera Food – FKS Sejahtera Food Retail Investor Forum has also taken action by filing formal complaints against the BoD's mismanagement.[34] However, it shall be taken into account that such response is within the voluntary basis and no explicit framework to regulate the concept of minority shareholder association.

1. Regulatory Framework of Institutional Investors on Minority Shareholder Activism

Institutional investors play a crucial role in protecting minority shareholders by ensuring prudent decision-making and preventing majority shareholder abuses. Good Corporate Governance principles mandate equitable treatment of all shareholders, including institutional investors and the retail investors they represent.[35] Institutional investors, governed by specific regulations, can significantly influence corporate governance through their voting power and participation in the GMS.[36]

In Indonesia, there are no laws and regulations whether hard or soft laws which mention the term of institutional investors.[37] The concept of institutional investors could only be inferred from the term of investment manager (*manajer investasi*) in Law No. 8 Year

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34 Ulya Yasmine Prisandani, *Loc.Cit.*

35 Robert A. G. Monks and Nell Minow, *Corporate Governance* (Wiley, 2011).

36 Luther Lie and Yetty Komalasari Dewi, "An Ineffective Institutional Investors Law in Indonesia? Why Bother," *Indonesia Law Review* 11, no. 3 (2021): 231–48, https://doi.org/10.15742/ilrev.v11n3.1.

37 Apri Sya'bani, "Minority Shareholders' Protection in the Indonesian Capital Market," *Indonesia Law Review* 4, no. 1 (2014): 114, https://doi.org/10.15742/ilrev.v4n1.96.

1995 regarding Capital Market which defined as the party which business activity is to manage the stock portfolio for the clients or manage the collective investment portfolio for a group of clients, except for insurance companies, pension funds, and banks which conduct the business activities on their own in accordance with the prevailing laws and regulations. This definition also reiterated in Financial Services Authority Regulation No. 43/POJK.04/2015 regarding investment managers code of conduct, in which the party categorized as investment managers follows to be A natural person (*orang perseorangan or natuurlijk persoon*), limited liability company (*perusahaan or perseroan terbatas*), partnership (*usaha bersama or maatschap*), association (*asosiasi* or *vereeniging*), or any organized group (*kelompok yang terorganisasi*).

Within such regulations, this classifies institutional investors primarily as 'investment managers' or asset managers, rather than including asset owners comprehensively. This limited classification poses challenges, as other institutional investors, like insurance companies, are not explicitly addressed. Thus, in Indonesia there is indeed a lack of regulation to govern the institutional investors regulation in which to act on behalf of the investors or beneficiary, which could hinder the establishment of good corporate governance within respective institutions.

2. Indonesian General Guidelines for Governance of Indonesian Family-Owned Businesses

In this guideline, a family business entity or family company is defined as a corporation or company that carries out business activities with the aim of creating and increasing value and benefits for shareholders, whether they come from the family or other parties

from outside the family circle, as well as other stakeholders, both in the form of limited liability companies and legal entities other than limited liability companies.

Further, this guideline emphasize the categorization of family members for the purpose of clarifying good governance scope which include members that are (1) not the business owners and not actively involved in the business; (2) the business owners but not actively involved in the business; (3) not the owners but actively involved in the business as the director, commissioner, or employee; and (4) the business owners and actively involved in the business as the director, commissioner, or employee.

This governance principles for family-owned businesses in this guideline are to be implemented using the "Apply or Explain" approach. This means that families who own business entities are encouraged to apply each principle, recommendation, and guideline in a way that suits their specific business context. The focus is not merely on formal compliance—such as creating internal rules—but on substantive implementation that involves a real shift in mindset and culture.

The General Guidelines for Governance of Indonesian Family-Owned Businesses strongly advises for family businesses to write-up and prepare family constitutions that act as guidance and governing regulation for the family members, which will enable current and future members to decide priorities and important matters of the business, including their rights and obligations as owners and shareholders, and their relationship to the business. In addition to this, the Guideline also encourages family business to have family discussion forum, family board[38], as well as a family secretariat but does not provide specific recommendation for minority shareholding family members.

D. Minority Shareholder Activism in South Korea Family Firms

The activities of shareholder activists in South Korea are grounded in specific rights provided to minority shareholders under the KCC. These rights empower shareholders to actively participate in the oversight and governance of companies, ensuring transparency and accountability.[39] One critical right is the ability to inspect the company's documents and accounting books. Shareholders holding at least 0.1% of the total issued and outstanding shares (0.05% if the company's paid-in capital is no less than 100 billion won) for at least six months can request such inspections. This request can only be denied if the company proves it is unreasonable (Article 681 of the KCC).

Another significant right is the ability to convene general meetings of shareholders (Article 366 of the KCC). Minority

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[38] Refers to a governing body which consists of a limited number of family members that represents and acts on behalf of the Family Forum to coordinate family's activities.

[39] South Korea Law et al., "Shareholders ' Rights & Shareholder Activism," 2023.

shareholders holding at least 1.5% of the total shares for six months can request a meeting by submitting a written statement or electronic document detailing the agenda and reasons. This ensures that shareholders can address important issues even if the board of directors is reluctant to do so.

Shareholders also have the right to propose agendas for these meetings. Those holding at least 1% of the voting shares (0.5% if the company's paid-in capital is no less than 100 billion won) for six months can submit proposals at least six weeks before the meeting (Article 363-2 of the KCC). The board must present these proposals unless they violate laws or the company's articles of incorporation. The KCC also grants shareholders the right to file derivative suits. If a director violates the law or the articles of incorporation, or neglects their duties through misconduct or negligence, shareholders holding at least 0.01% of the shares for six months can request the company to file a lawsuit (Articles 403-406 of the KCC). If the company fails to act, the shareholders can file the suit themselves. The 2020 amendment to the KCC further allows shareholders to address issues in subsidiaries through multi-step derivative lawsuits.

Lastly, shareholders can request an injunction against a director's unlawful conduct if it risks causing irreparable damage to the company (Article 402 of the KCC). This right is available to those holding at least 0.05% of the voting shares (0.025% if the company's paid-in capital is no less than 100 billion won) for six months. This provision ensures that shareholders can promptly intervene to prevent harm to the company. These rights collectively empower minority shareholders to play a crucial role in corporate governance, promoting transparency, accountability, and fairness in South Korean companies.[40]

1. Regulatory Framework of Institutional Investors on Minority Shareholder Activism (Korean Stewardship Code)

Before the enactment of Korean Stewardship Code (hereinafter "KSC"), in the *chaebol*-dominated economy, it was) difficult for institutional investors to carry out shareholder activism, which aimed to revamp business malpractices of chaebols and their controlling shareholders. Also, *chaebol* have securities brokerage firms

[40] Eun-Young Lee, "A General Introduction to Shareholder Rights and Activism in South Korea." KIM & CHANG, 2023, https://www.lexology.com/library/detail.aspx?g=eeb12c5f-9471-43d2-bffb-c4e7521fe19e.

as well as institutional investors such as asset management firms and insurance companies. A *chaebol*'s own institutional investor is not inclined to engage in shareholder activism against the affiliated companies of other chaebols. This practice of non-intervention has been, expressly or implicitly, complied with in the business community dominated by *chaebols*.[41] Thus, this phenomenon created problems towards how the minority shareholder could be protected, and through this issue, the KSC arose to tackle the issue of non-affiliated institutional investors towards chaebol companies.

The KSC, known as *sutakja* for steward and *sutakja-chaeg-im* for stewardship, establishes detailed principles and guidelines for institutional investors when investing in listed companies. *Sutakja* is a well-established legal term referring to a trustee under the Trust Act of Korea, and *chaeg-im* denotes duty, responsibility, or liability. Thus, *sutakja-chaeg-im* translates to the duty of a trustee or fiduciary duty. This terminology raises questions about the equivalence of a steward to a trustee and stewardship to fiduciary duty.[42] According to the KSC, while the concept of a steward is not exactly the same as that of a trustee, institutional investors owe a 'stewardship responsibility' akin to a trustee's fiduciary duty towards their clients and beneficiaries, rather than the investee company. The Korean Code explicitly states that institutional investors must act in the best interests of their clients and beneficiaries.

The Korean Code also considers elements from the United Kingdom's Stewardship Code. While the United Kingdom Code emerged from concerns over the dormancy of institutional investors in ownerless corporations, the ownership structure in Korean corporations is typically characterized by strong controlling family shareholders.[43] One of the primary objectives of stewardship in South Korea is to regulate these controlling shareholders, particularly by curbing 'tunneling,' which involves the transfer of wealth to controlling shareholders at the expense of non-controlling shareholders. Therefore, the concept of KSC is within the conception of limited institutional investors becoming stewards to its investors or beneficiaries.

The Korean Stewardship Code governs seven key responsibilities. First, institutional investors should establish and

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41 Sang Yop Kang and Kyung-Hoon Chun, *Loc.Cit.*

42 Korea Stewardship Code, "Korea Stewardship Code," 2016.

43 Sang Yop Kang and Kyung-Hoon Chun, *Loc.Cit.*

publicly disclose a clear policy on how they will perform their stewardship responsibilities. Second, they should establish and publicly disclose an effective and transparent policy on managing conflicts of interest during their stewardship activities. Third, they must regularly monitor investee companies to enhance these companies' mid to long-term value, thereby protecting and raising the investors' investment value. Fourth, when necessary, they should aim to form a consensus with investee companies and establish internal guidelines on the timeline, procedures, and methods for stewardship activities. Fifth, institutional investors should establish and publicly disclose their voting policy and records, including the reasons for each vote, to allow for verification of the appropriateness of their voting activities. Sixth, they should regularly report their voting and stewardship activities to their clients or beneficiaries. Lastly, institutional investors should possess the capabilities and expertise required to implement stewardship responsibilities actively and effectively

It is important to note that implementation of the code is by registration, making it neither mandatory nor binding for all institutions. However, registering to the code foster's public trust, benefiting both the investor and the institution. Non-compliance with the KSC requires a "comply or explain" approach, similar to the concept applicable in the United Kingdom.[44]

Before the implementation of the KSC, family-owned companies in South Korea operated with minimal checks on the powers of controlling shareholders. These families often held substantial control over corporate decisions, leading to potential conflicts of interest and unfair practices that disadvantaged minority shareholders. Tunneling and other self-serving activities by controlling families were not uncommon, exacerbating corporate governance issues and undermining the confidence of minority investors.[45]

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44 *Ibid.*

45 Sang Yop Kang, "Game of Thrones: Corporate Governance Issues of Children's Competition in Family Corporations," *Berkeley Business Law Journal* 15, no. 1 (2018)., https://openurl.ebsco.com/EPDB%3Agcd%3A5%3A11358853/detailv2?sid=ebsco%3Aplink%3Acrawler&id=ebsco%3Agcd%3A130292113&link_origin=www.google.com

The KSC aims to address these issues by establishing a framework where institutional investors play a proactive role in monitoring and influencing corporate governance. By acting in the best interests of their clients and beneficiaries, institutional investors can exert pressure on family-controlled companies to adopt more transparent and equitable practices. This includes advocating for better governance standards, opposing actions that harm minority shareholders, and ensuring that corporate decisions align with long-term value creation rather than the short-term interests of controlling families.

E. Indonesia and South Korea Minority Shareholder Activism in Family Firms Comparative Analysis

Through the differences from Indonesia and South Korea Activism towards family firms, hereby presented the table of differences of regulatory framework which implemented within the respective countries;

Table 1. Comparison of Regulatory Framework between Indonesia and South Korea Minority Shareholder Activism in Family Firms

Threshold	Indonesia	South Korea
Family-Owned Company	No regulatory provision.	Competition Law: *Chaebol* 1. prohibition of mutual investment 2. restricted the voting rights of insurance and financial companies belonging to large enterprise groups (*chaebol*).
Minority Shareholder Activism	(one tier) 1. Derivative action 2. Request of GMS 3. Proposal of GMS 4. Request of Inspection 5. Company repurchased shares	(multi-tier: applicable to the *Chaebol* subsidiaries) 1. Derivative action 2. Request of GMS 3. Proposal of GMS 4. Request of Inspection 5. Injunction against a director's unlawful conduct
Institutional Shareholder	Investment Manager: *reksadana* (limited) *except* for insurance	Institutional Shareholders: pension fund, insurance company, asset manager, PEF, security firm, investment advisor,

	companies, pension funds, and banks which conduct the business activities	service firm, bank, other
Stewardship Code	No specific stewardship code, only the General Guidelines for Governance of Indonesian Family-Owned Businesses which uses apply-or-explain mechanism.	Korean Stewardship Code that applies comply-or-explain mechanism.

(Source: Author)

In comparing the aforementioned differences, it becomes evident that, unlike South Korea, Indonesia's regulatory framework provides limited provisions and oversight for minority shareholders. This deficiency potentially exposes minority shareholders to inadequate protection concerning their rights within the governance of family firms. Indonesia lacks a defined regulatory framework delineating what constitutes a family firm, how institutional investors function, and the establishment of guidelines enabling institutional shareholders to act in the best interests of their beneficiaries or investors, exacerbated by the absence of a stewardship code.

1. Case Study Approach

a. Minority Shareholder Activism in Indonesia: Case of Indofood CBP Sukses Makmur Tbk.

The recent takeover transaction involving Indonesian tycoon Anthoni Salim has highlighted significant concerns about corporate governance and the hindrance of minority shareholders activism in Indonesia. On Friday, Salim narrowly secured shareholder backing for a $3 billion takeover deal between companies he controls, despite criticism over the transaction's valuation and questions about its governance.[46] Salim's holding company, First Pacific Co Ltd, announced the takeover by its subsidiary Indofood CBP Sukses Makmur Tbk. (hereinafter "ICBP") of Pinehill Company Ltd was approved by independent shareholders, with 52% voting in favor at a special meeting. It shall be taken into account that Pinehill Company is still affiliated with ICBP because it is a consortium in which Anthoni Salim indirectly owns approximately 49% of the shares of

[46] Ihya Ulum Aldin, "Investor Respons Negatif Akuisisi Pinehill, Dua Saham Indofood Rontok," katadata, 2020, https://katadata.co.id/finansial/bursa/5ecde5644d885/investor-respons-negatif-akuisisi-pinehill-dua-saham-indofood-rontok.

Pinehill Company.[47] This transaction, requiring a simple majority to pass, also necessitates the approval of ICBP shareholders to proceed.

Concerns were raised by some First Pacific shareholders about the $3 billion price tag, arguing it was excessively high. Although Salim and his associates were barred from voting at the Hong Kong meeting due to related-party rules, they are eligible to vote under Indonesian regulations in ICBP's extraordinary general meeting. This discrepancy has raised further governance issues, exacerbated by the fact that market perception of the transaction led to significant drops in Indofood Sukses Makmur Tbk PT (hereinafter "INDF") and ICBP shares.[48]

The transaction ultimately proceeded, highlighting loopholes in Indonesian law and the lack of robust institutional investor regulation. Under Indonesian regulations, even transactions between affiliated parties can proceed without independent shareholder approval if the board of directors declares no conflict of interest.[49] As per Regulation No. IX.E.1 (attachment to the Decree of the Chairman of Bapepam-LK No. Kep-412/BL/2009 dated 25 November 2009 regarding Affiliated Party Transactions and Conflict of Interest in Certain Transactions). Furthermore, upon Regulation No. IX.E.2 (attachment to decree of the Chairman of Bapepam-LK No.Kep-614/BL/2011 dated 28 November 2011 on Material Transaction and Change of Main Business Activities), the only requirement is a public announcement in a national newspaper.

This case underscores the challenges posed by concentrated ownership in family firms, which can undermine shareholder activism and protection. The regulatory framework in Indonesia fails to adequately address the role and rights of institutional investors in overseeing large family-controlled firms. The ability to conduct affiliated transactions without a general meeting of shareholders discourages foreign investment and highlights the ineffectiveness of current institutional investor protections. Addressing these regulatory

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47 Tahir Saleh, "Kenapa Indofood Rela Caplok Pinehill Hingga Rp 45 T?," CNBC Indonesia, 2020, https://www.cnbcindonesia.com/market/20200528085204-17-161394/kenapa-indofood-rela-caplok-pinehill-hingga-rp-45-t.

48 PT INDOFOOD CBP SUKSES MAKMUR TBK, "Information Memorandum to the Shareholders in Connection with the Proposed Shares Acquisition Transaction," The Jakarta Post, 2020.

49 PT INDOFOOD CBP SUKSES MAKMUR TBK.

gaps is crucial to ensuring fair corporate governance and protecting minority shareholders in Indonesia.

b. Minority Shareholder Activism through Stewardship Code: Case of Korean Air Co. Ltd

On March 27, 2019, shareholders of Korean Air Lines Co., Ltd. ("Korean Air") made a historic decision by voting against the re-election of then-CEO Cho Yang Ho. The decision was narrowly decided, with just under two-thirds of the shareholders voting in favor of Cho Yang Ho, falling short by approximately 2% of the votes needed to keep him on the board. This vote marked the first time in the country's history that a Chaebol executive was denied a board seat. Given the series of scandals involving Cho Yang Ho and his family members while managing the nation's largest airline, it is surprising that he was not ousted earlier.[50]

Korean Air has been embroiled in numerous scandals, beginning with the infamous 'nut rage' incident in 2014 when Cho Yang Ho's daughter, Cho Hyun Ah, forced a plane to return to the gate because she was displeased with how macadamia nuts were served. This incident sparked national outrage and led to her receiving a suspended 10-month sentence. In 2018, another incident, dubbed 'water rage,' involved Cho Yang Ho's younger daughter, Cho Hyun Min, throwing water at an advertising executive during a meeting. Additionally, Cho's wife, Lee Myung Hee, was indicted for physically and verbally abusing drivers, security guards, and housekeepers over many years. Cho Yang Ho himself has faced accusations of tax evasion, embezzlement, and breach of trust.[51]

The decisive push for shareholders to act may have stemmed from the increasing adoption of the KSC. As KSC has encouraged institutional investors to engage in active shareholder initiatives, a significant shift from the traditionally passive approach of Korean shareholders. The National Pension Service, the third-largest pension fund in the world and Korean Air's second-largest shareholder, voted against Cho Yang Ho at the Annual General Meeting.

This case showcases that shareholder activism through the institutional shareholder can compel the Chaebol firms or the family firms to listen and respond to the voice of minority shareholders through the activism brought up by the institution.

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50 A. Shin, "Chaebols and Stewardship: Korean Air Shareholders Make History," Glass Lewis, 2019.

51 *Ibid.*

F. Indonesia's Future Step in Regulating Minority Shareholder Activism in Family Firms

The analysis of South Korea's adoption of the Korean Stewardship Code (KSC) illustrates its effective mitigation of power abuses by Chaebols over the past decades. South Korea's stringent regulations on transactions involving family firms, coupled with a well-defined framework for institutional investors, have significantly enhanced minority shareholder activism. In contrast, Indonesia lacks a clear regulatory definition of family firms, despite their prevalence in the country. This study suggests that Indonesia should establish a specialized regulatory framework for family firms, beyond the provisions of the Indonesian Company Law (ICL).

Moreover, Indonesian law should clearly define and expand the concept of institutional investors, moving beyond the limited scope of mutual funds (*reksadana*). This broader definition would enable institutional investors to play a more active role in family firms, advocating for the interests of their investors or beneficiaries. Adopting a code similar to South Korea's KSC would benefit Indonesia by creating a more attractive investment environment for foreign investors. Currently, Indonesia ranks 73rd in the Ease of Doing Business index, with a business certainty index related to law and licensing still below a satisfactory rating.[52] The Indofood case, where BlackRock, a foreign institutional investor, raised concerns that went unaddressed due to regulatory deficiencies, underscores this need. Furthermore, a softer approach may also be applied by amending the General Guidelines for Governance of Indonesian Family-Owned Businesses instead of providing a huge room for family owners or family boards to determine the authority and power of minority shareholding members.

Addressing these regulatory gaps presents both a challenge and an opportunity for Indonesia to enhance its framework for family firms, institutional investors, and stewardship principles. Strengthening these areas will bolster shareholder activism and protect minority shareholder rights in family-owned firms, ultimately fostering a more transparent and equitable business environment.

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[52] World Bank Group, "Ease of Doing Business in Indonesia," World Bank, 2020, https://archive.doingbusiness.org/en/data/exploreeconomies/indonesia.

Conclusion

Indonesian laws, specifically in the Company Law, has yet to explicitly provide regulation for minority shareholder activism in family-owned companies, and therefore must rely on the more general regulation on shareholder rights and obligations without going into the specific context. In comparison, the General Guidelines for Governance of Indonesian Family-Owned Businesses has provided recommendations for family shareholding members although leaving an enormous room to each family with regard to determining the rights and obligations of majority and minority shareholding members. On the other hand, South Korea has successfully implemented the stewardship code to enhance minority shareholder activism in family-owned companies. This regulatory framework has effectively curbed power abuses by *Chaebols* and promoted more equitable corporate governance by way of regulating institutional investors in family-owned companies.

To address these challenges, Indonesia could benefit from adopting a Stewardship Code similar to that of South Korea. This code should include stringent restrictions on affiliated transactions within family groups and extend its applicability to various institutional investors, including banks, insurance companies, and other financial institutions. An amendment to the General Guidelines for Governance of Indonesian Family-Owned Businesses can also be done to highlight minority shareholder rights in a more explicit and stern way. By doing so, Indonesia can enhance shareholder protection and foster a more transparent and equitable business environment, addressing the current regulatory hurdles similar to what South Korea faced before its regulatory reforms.

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Acknowledgment

The research for this paper is further continued from the International Comparative Corporate Law, International Business Law Program, School of Law and International Studies Universitas Prasetiya Mulya.

Conflicting Interest Statement

There is no conflict of interest in the publication of this article.

Publishing Ethical and Originality Statement

All authors declared that this work is original and has never been published in any form and in any media, nor is it under consideration for publication in any journal, and all sources cited in this work refer to the basic standards of scientific citation.