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DIRECTORS' ELECTION WITHIN CONCENTRATED SHAREHOLDING STRUCTURE: A COMPARATIVE ANALYSIS OF MALAYSIA AND INDONESIA

[PEMILIHAN PENGARAH DALAM STRUKTUR PEMEGANGAN SAHAM TERTUMPU: KAJIAN PERBANDINGAN MALAYSIA DAN INDONESIA]

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Abstract

Shareholders' involvement in directors' elections is viewed as an important governance tool, enabling the disciplining of non-performing directors. However, this power could be distorted to entrench directors affiliated with controlling shareholders. This article presents a comparative analysis of directors' election mechanisms comparing Malaysia and Indonesia, jurisdictions with similar concentrated shareholding structures (dominated by family and state control) but with different board structures (unitary versus dual board). Highlighting gaps in statutory laws and corporate governance rules related to shareholder proposal rights, voting mechanisms and the functioning of the nomination committee, the article analyses whether the shareholders' election rights are effective to counter director entrenchment. The article relies primarily on qualitative research method, combining doctrinal legal analysis and a comparative study of legal provisions, international and regional developments and court decisions. The article finds three key differences: First, Malaysia requires lower shareholding thresholds (2.5% for agenda proposals versus Indonesia's 20%), facilitating minority shareholder participation. Second, Indonesia's no mandatory poll and slate voting enables controlling shareholders' dominance that could lead to the entrenchment of affiliated directors. Third, there are different patterns of the tension between the nomination committee's authority and shareholders' powers. Malaysia showed the nomination committee's resistance to shareholder nominees, while Indonesian cases reveal concerns about bypassing the nomination committee. This article contributes to comparative corporate governance scholarship by: (1) identifying how unitary versus dual board structures produce distinct shareholder empowerment outcomes in concentrated ownership contexts; (2) documenting gaps in voting mechanisms that facilitate director entrenchment; and (3) providing a framework for evaluating shareholders' election rights across ASEAN jurisdictions. © 2025, International Islamic University Malaysia-IIUM. All rights reserved.

Author keywords

Controlling Shareholders; Directors' Election; Nomination Committee; Unitary and Dual Board Structures; Voting Rights

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