Nusantara: Journal of Law and Islamic Law
Published by Yayasan Cerdas Pedia Indonesia
Volume 2 Issue 1, 2026 ISSN (Online) ***3110-8415***
Journal Homepage: **https://jurnal.smartpedia.co.id/index.php/nusantara**

Fair Value Determination for Minority Shareholder Appraisal Rights: Comparative Indonesia and Singapore

Penentuan Fair Value Appraisal Rights Pemegang Saham Minoritas: Perbandingan Indonesia dan Singapura

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History:
Submitted: 30-04-2026
Revised: 25-05-2026
Accepted: 30-05-2026

Keyword:
Appraisal Right; Fair Value; Minority Discount; Commercial Fairness; Oppression Remedy.

Kata Kunci:
Hak Appraisal; Nilai Wajar; Diskon Minoritas; Keadilan Komersial; Pemulihan Penindasan.

https://doi.org/10.65101/nusantara.v2i1.325

Abstract

Indonesian corporate law formally recognizes minority shareholder appraisal rights but lacks methodological parameters for fair value determination, rendering statutory protections completely ineffective against majority shareholder oppression. This study conducts normative legal research utilizing statutory, conceptual, and comparative approaches to effectively contrast Indonesian regulations with Singaporean jurisprudence and global corporate valuation standards. Results reveal that Singapore proactively replaces statutory appraisal rights with comprehensive oppression remedies, empowering courts to strictly enforce commercial fairness via mandatory buyouts that absolutely prohibit minority discounts. In stark contrast, Indonesia's existing normative void systemically facilitates structural asymmetry and massive wealth appropriation. To fix this legal vacuum, Indonesia must rapidly reconstruct its corporate litigation framework by statutorily adopting established commercial fairness doctrines. Legislators must explicitly mandate binding judicial guidelines requiring independent financial valuers and formally abolish all minority discount applications. This vital systemic integration will successfully elevate domestic corporate governance toward superior global dispute resolution quality and justice.

Abstrak

Hukum korporasi Indonesia formal mengakui hak appraisal pemegang saham minoritas namun defisit parameter metodologis untuk penentuan harga wajar, membuat perlindungan statutoris ini sama sekali tak efektif melawan penindasan pemegang saham mayoritas. Studi ini menjalankan riset hukum normatif memakai pendekatan regulasi, konseptual, dan komparatif guna efektif mengontraskan aturan Indonesia dengan yurisprudensi Singapura serta standar valuasi korporasi global. Hasil menunjukkan Singapura proaktif mengganti hak appraisal statutoris dengan instrumen pemulihan penindasan komprehensif, memberdayakan peradilan guna ketat menegakkan keadilan komersial via pembelian wajib yang mutlak melarang diskon minoritas. Berbanding terbalik, kekosongan normatif eksisting Indonesia sistemik memfasilitasi asimetri struktural serta perampasan kekayaan masif. Guna menambal vakum hukum ini, Indonesia wajib cepat merombak kerangka litigasi korporasinya lewat adopsi statutoris atas doktrin keadilan komersial mapan. Legislator harus eksplisit mewajibkan pedoman yudisial mengikat yang mensyaratkan penilai finansial independen dan formal menghapus seluruh aplikasi diskon minoritas. Integrasi sistemik esensial ini akan sukses mengangkat kualitas resolusi sengketa global dan keadilan.

A. INTRODUCTION

1. Background

The corporation, as an artificial legal entity, operates upon the premise of an aggregation of capital, which inherently engenders a power structure predicated upon proportional equity ownership. This fundamental dynamic legitimizes the principle of majority rule, wherein controlling shareholders exercise plenary authority in directing strategic corporate policies, including fundamental corporate changes such as mergers, consolidations, acquisitions, or spin-offs. Although this principle constitutes an essential postulate within the framework of corporate democracy, unfettered dominance frequently culminates in exploitation and majority oppression, thereby infringing upon the microeconomic interests of minority shareholders. Consequently, an acute clash of norms arises when the business rationale for corporate expansion diametrically collides with the fundamental economic rights and distributive justice inherently vested in minority shareholders.[1]

To mitigate such structural asymmetry and the risk of value expropriation, modern corporate law establishes an exit mechanism universally recognized as the appraisal right. This instrument grants dissenting minority shareholders who oppose strategic corporate decisions the fundamental right to demand the repurchase of their equity by the corporation at "fair value." In Indonesia, the statutory recognition of the appraisal right is normatively codified in Article 62, read in conjunction with Article 126, of Law No. 40 of 2007 on Limited Liability Companies. However, the implementation of these provisions is marred by a profound legal lacuna: the absence of methodological parameters and a jurisprudential framework governing the definition, scope, and mathematical formulation of said fair value. This normative void has demonstrably engendered protracted disputes, as evidenced by negotiation deadlocks in judicial decisions and extrajudicial interventions within Indonesian banking restructuring cases, wherein valuation disparities between minority shareholders and the corporation precipitate persistent legal uncertainty.[2]

Within contemporary academic discourse endeavoring to resolve the problematics of minority shareholder protection, a review of the extant literature reveals a polarization

[1] Dwi Rahmawati et al., "Perlindungan Hukum Terhadap Pemegang Saham Minoritas Dalam Undang-Undang Perseroan Terbatas," *Iuris Studia: Jurnal Kajian Hukum* 2, no. 1 (June 30, 2021): 34–48, https://doi.org/10.55357/is.v2i1.76.
[2] "Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas (UUPT)" (2007).

of scholarly inquiry bifurcated into two principal paradigms. The first strand of scholarship concentrates on procedural and structural safeguards. Specifically, Rahmawati et al. emphasize the oversight mechanism effectuated through the corporate investigative instrument (*enquete recht*) pursuant to Article 138 of the Company Law, analyzing the PT Sumalindo Lestari Jaya Tbk case and correlating this mechanism with the derivations of distributive justice.[3] In a similar vein, Wardani et al. posit that the implementation of Good Corporate Governance (GCG) constitutes a panacea for the inadequate enforcement of minority shareholder protections,[4] Meanwhile, Putri and Al Farisi undertake a comparative analysis of derivative actions between Indonesia and South Korea, conceptualizing the mechanism as a safeguard against directorial negligence.[5]

The second strand of scholarship delves into substantive protections and the anomalies inherent in closely held corporations. Kohar and Dewi dissect the phenomenon of the abuse of rights within family-owned enterprises in Indonesia, positing that the absence of an explicitly codified doctrine of majority abuse (*abus de majorité*) within the Company Law systematically marginalizes the position of minority shareholders.[6] Takke subsequently establishes an incisive comparative foundation by juxtaposing Indonesia's normative-procedural approach against Singapore's substantive paradigm, specifically through the oppression remedy (Section 216 of the Companies Act), which is predicated upon the principle of commercial fairness.[7] Furthermore, Iida elevates this discourse to a global level by empirically dissecting how advanced jurisdictions, such as Delaware (the United States) and Japan, navigate the debate concerning the inclusion or exclusion of the

[3] Rahmawati et al., "Perlindungan Hukum Terhadap Pemegang Saham Minoritas Dalam Undang-Undang Perseroan Terbatas."
[4] Theresia N. A Wardani et al., "Perlindungan Hak Pemegang Saham Minoritas Dalam Perseroan Terbatas: Analisis Terhadap Implementasi Ketentuan UU Perseroan Terbatas Dalam Keadilan Dan Kepastian Hukum Di Lingkungan Bisnis Modern," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 5, no. 4 (May 9, 2025): 3674–86, https://doi.org/10.38035/jihhp.v5i4.4534.
[5] Melisa Dwi Putri and Muhammad Fahmi Reksa Al Farisi, "Comparison of Derivative Action Regulations in Indonesia and South Korea in Providing Legal Protection for Minority Shareholders," *Istinbath : Jurnal Hukum* 21, no. 02 (November 14, 2024): 40–54, https://doi.org/10.32332/istinbath.v21i02.9849.
[6] Fiona Priscilia Kohar and Yetty Komalasari Dewi, "Abuse of Rights by Majority Shareholders in Indonesian Family-Owned Company: Is It Likely?," *Sriwijaya Law Review* 6, no. 2 (January 31, 2021): 29–41, https://doi.org/10.28946/slrev.Vol5.Iss1.887.pp29-41.
[7] Shareen Virgita Septalia Takke, "Perlindungan Hukum Pemegang Saham Minoritas Terhadap Penyalahgunaan Kekuasaan Pemegang Saham Mayoritas Di Indonesia Dan Singapura," *Media Hukum Indonesia (MHI)* 4, no. 1 (2025): 509–12, https://ojs.daarulhuda.or.id/index.php/MHI/article/view/2794.

"synergy" variable in the fair value calculus within appraisal litigation.[8]

Based on a thematic synthesis juxtaposing these contemporary scholarly works, a profound blind spot emerges within national corporate legal discourse. Predominant prior studies have remained confined to analyzing minority rights protections at the procedural echelon, corporate governance compliance, or the broad contours of the oppression doctrine. However, they conspicuously fail to bridge the critical intersection between corporate legal jurisprudence and corporate finance, particularly concerning the juridical-economic construction of fair value determination. This theoretical and empirical chasm leaves complex valuation issues—such as the application of a minority discount—wholly insulated from rigorous legal scrutiny.

Departing from extant literature primarily fixated on the efficacy of procedural safeguards (e.g., derivative actions and *enquête recht*) or managerial governance, this study propounds a novel approach. It analytically dissects the anatomy of fair value determination and economic valuation methodologies in the exercise of appraisal rights (and their equivalents) through the jurisprudential lens of commercial fairness. The comparative novelty of this research lies in specifically unravelling the disparity between the regulatory vacuum of valuation standards in Indonesia and the judicial prescriptions in Singapore—which consistently proscribe the minority discount—while further juxtaposing this framework against the ongoing discourse surrounding synergistic value in the jurisdictions of Delaware and Japan.

This article advances the central thesis that the statutory lacuna within the Indonesian Company Law regime regarding the definition, parameters, and methodology of determining "fair value" has relegated the appraisal right to a mere paper tiger. This normative void systematically coerces minority shareholders into capitulating to negotiational asymmetries absent definitive financial remediation. Consequently, the assimilation of substantive principles from Singaporean jurisprudence—specifically the doctrine of commercial fairness, which prescriptively weds independent economic valuation with judicial authority while categorically rejecting the minority discount—is not merely an option, but an urgent imperative for Indonesian legal reform. Integrating judicially cognizable financial valuation instruments into procedural law constitutes a

[8] Hidefusa Iida, "How Does the Appraisal Right with the Concept of the Fair Value Including Synergies Work?: Lessons from Japan," *Asian Journal of Comparative Law* 18, no. 3 (December 22, 2023): 407–25, https://doi.org/10.1017/asjcl.2023.22.

rational mechanism to foster an equitable investment climate, mitigate the expropriation of economic value by controlling entities, and harmonize domestic corporate legal standards with the global discourse on shareholder protection.

2. Research Questions

Proceeding from the conceptual and empirical elaborations delineated in the preceding background, the research questions that guide the analytical trajectory and focus of this article are categorized into three principal dimensions:

a. How do the structural problematics and statutory lacunae concerning the determination of fair value delegitimize the effective exercise of the appraisal right by minority shareholders in Indonesia pursuant to the Limited Liability Company Law?
b. How does the jurisprudence of the Singaporean legal system construct the determination of fair value and proscribe the application of the minority discount through the oppression remedy mechanism to afford substantive protection to minority shareholders?
c. How can the integration of the commercial fairness doctrine and the standardization of economic valuation methodologies be reconstructed to elevate Indonesia's corporate legal protection framework toward global dispute resolution standards?

3. Research Methods

To comprehensively resolve the legal issues under examination, this study adopts a normative (doctrinal) legal research methodology, reinforced by statutory, conceptual, and comparative approaches. The selection of this methodology is predicated upon the analytical justification that an assessment of the efficacy of the fair value concept is inextricably bound to a dogmatic interpretation of positive law, which must subsequently be juxtaposed with its judicial application and enriched through a comparative analysis of foreign legal regimes to formulate an ideal juridical construct.[9]

The sources of legal materials are hierarchically and meticulously delineated. Primary legal materials encompass pivotal corporate statutes, specifically Indonesia's Law No. 40 of 2007 on Limited Liability Companies and Singapore's Companies Act 1967. The primary analysis further necessitates the dissection of critical jurisprudence, notably

[9] Terry Hutchinson, "Doctrinal Research," in *Research Methods in Law* (London: Routledge, 2025), 8–38, https://doi.org/10.4324/9781032710372-2.

the *PT Sumalindo Lestari Jaya Tbk* case (Supreme Court Decision No. 3017 K/Pdt/2011) in Indonesia, alongside landmark judicial pronouncements in Singapore, including *Sakae Holdings Ltd*, *Ng Kek Wee v. Sim City Technology Ltd*, and *Over & Over Ltd v. Bonvests Holdings Ltd*. Secondary legal materials are extracted from leading peer-reviewed journal articles published within the preceding five years, centering on the scholarly discourse surrounding appraisal rights, oppression remedies, and corporate finance law.

The compilation of these legal materials is effectuated through comprehensive library research to verify doctrinal coherence across the examined jurisdictions. In the culminating phase, the analytical framework operationalizes a deductive syllogism integrated with systematic and teleological methods of statutory interpretation. This methodological synthesis creates a dialectic between static legal norms, empirical jurisprudential realities, and corporate economic theory, thereby deconstructing the root causes of power asymmetries, exposing lacunae in shareholder protection, and prescriptively formulating a globally congruent normative framework for the modernization of Indonesian corporate law.

B. DISCUSSION

1. Deconstructing the Problematics of Fair Value and the Reduction of the Appraisal Right in Indonesian Corporate Law

The architectural framework of Indonesian corporate law establishes minority shareholder protections through an array of instruments heavily anchored in a normative-procedural approach. Law No. 40 of 2007 on Limited Liability Companies formally codifies derivations of distributive justice, conceptualized as a statutory safeguard against the dominance of majority shareholders. One of the most strategic manifestations of this protective principle is the appraisal right, correlatively codified in Article 62, read in conjunction with Article 126, of the Company Law.[10]

These provisions explicitly confer a statutory right upon dissenting shareholders who oppose fundamental resolutions of the General Meeting of Shareholders—such as mergers, consolidations, acquisitions, spin-offs, substantial amendments to the articles of incorporation, or the disposition of corporate assets exceeding fifty percent of the company's net worth—to demand the repurchase of their equity by the corporation at "fair value." This doctrine is further fortified by the elucidation of Article 126 of the

[10] Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas (UUPT).

Company Law, which mandates that no corporate restructuring transaction may be legitimized if it threatens to prejudice the interests of minority shareholders.[11]

Notwithstanding this statutory framework, critical analysis reveals that the implementation of the appraisal right in Indonesia has suffered severe functional degradation and substantive hollowing, directly attributable to the absence of normative parameters defining the contours of said "fair value." In stark contrast to jurisdictions possessing mature corporate jurisprudence, the Company Law remains confined to textual abstraction, wholly failing to delineate a methodological framework for financial valuation. Consequently, Indonesian positive law remains conspicuously silent as to whether fair value should reflect historical book value (Price to Book Value or PBV), market capitalization, or intrinsic value derived from Discounted Cash Flow (DCF) methodologies.[12] This statutory lacuna engenders an interpretive void that, in practice, is systematically exploited by controlling shareholders, who structurally wield absolute control over information flows, corporate books and records, and the management of corporate resources.

The empirical manifestation of normative tension and legal deadlock, precipitated by the definitional void surrounding fair value, can be comprehensively examined through banking merger and acquisition disputes triggered by the Single Presence Policy, specifically involving PT Bank KEB Indonesia and PT Bank Hana Indonesia. In this instance, the ownership structure was acutely asymmetric: Korea Exchange Bank commanded ninety-nine percent of the shares as the absolute controlling majority, while PT Clemont Finance Indonesia, as the minority shareholder, held a mere one percent equity interest. Upon the initiation of the merger policy, the minority shareholder dissented against the transaction and invoked its appraisal right pursuant to Article 62 of the Company Law. However, the corporate legal framework reached an impasse when PT Bank KEB offered share repurchase compensation predicated strictly upon book value

[11] Maya Sari, Abdul Rachmad Budiono, and Hanif Nur Widhiyanti, "Analisa Perlindungan Hukum Bagi Pemegang Saham Minoritas Dalam Proses Akuisisi Berdasarkan Pasal 126 Undang-Undang Nomor 40 Tahun 2007," *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 2, no. 2 (December 12, 2017): 115–24, https://doi.org/10.17977/um019v2i22017p115.

[12] I Kadek Andika Saputra, Johanes Ibrahim Kosasih, and I Nyoman Sujana, "Multiple Interpretations of Determining the Reasonable Price of Shares in the Process of Acquiring Rural Banks (BPR)," in *Advances in Social Science, Education and Humanities Research*, 2023, 615–23, https://doi.org/10.2991/978-2-38476-180-7_66.

(approximately Rp 933 million per share), derived from historical financial statements.[13] Conversely, the minority shareholder categorically rejected the aforementioned PBV valuation and demanded a multiple-based valuation reflecting the deprivation of anticipated returns, predicated on the factual premise that they had never received any dividend distributions throughout their tenure of ownership.

The deadlock in the Bank KEB-Hana case exposes at least three acute structural deficiencies within the Company Law regime. First, textually, Article 126 of the Company Law stipulates that the invocation of the appraisal right by dissenting minority shareholders cannot enjoin the consummation of the merger. As a logical corollary, the bargaining power of the minority is relegated to a nadir; the fundamental corporate transaction proceeds unabated, and the minority is subjected to a forced exit (freeze-out or squeeze-out), bereft of any injunctive relief pending the mutual agreement upon a fair value.[14] Second, there is a conspicuous absence of an efficient adjudicatory mechanism to resolve valuation disputes. Although doctrinally such controversies may be litigated before the District Court pursuant to Article 61 of the Company Law, the Indonesian civil justice system lacks a specialized and competent judicial procedure for financial valuation (in stark contrast to the appraisal proceedings within the Delaware Court of Chancery, which expeditiously appoint independent valuation experts).[15]

Third, the ultimate resolution of the Bank KEB-Hana dispute was entirely untethered from the statutory mechanisms prescribed by the Company Law. Instead, the remedy materialized through extrajudicial intervention by Bank Indonesia, acting in its capacity as the supervisory authority. The central bank exerted discretionary regulatory leverage by withholding the requisite merger approval until the controlling entity capitulated and compensated the minority shareholder in accordance with its valuation demands. This precedent unequivocally corroborates that the Company Law has failed to engender legal certainty within the realm of appraisal rights, thereby relegating the protection of proprietary interests to *ad hoc* political and regulatory bargaining situated

[13] Anandiaz Raditya Priandhana, Paramita Prananigtyas, and Siti Mahmudah, "Perlindungan Hukum Terhadap Pemegang Saham Minoritas Dalam Merger Perbankan Berdasarkan Single Presence Policy (Studi Kasus Pada PT. Bank KEB Indonesia Dan PT. Bank Hana Indonesia)," *Diponegoro Law Journal,* 5, no. 40 (2016): 1–20, https://doi.org/10.14710/dlj.2016.13743.
[14] Assaf Hamdani, Beni Lauterbach, and Yevgeny Mugerman, "Reservation Prices in Shareholders' Response to Freeze-out Tender Offers," *Journal of International Financial Markets, Institutions and Money* 64 (January 2020): 101160, https://doi.org/10.1016/j.intfin.2019.101160.
[15] Kohar and Dewi, "Abuse of Rights by Majority Shareholders in Indonesian Family-Owned Company: Is It Likely?"

far beyond the purview of private corporate jurisprudence.[16]

The pathological deficiencies inherent in the Company Law's normative-procedural approach are demonstrably not confined to the appraisal right; rather, they permeate other corporate litigation mechanisms, notably the *enquête recht* (the statutory right to petition for a corporate investigation) codified in Article 138. The *PT Sumalindo Lestari Jaya Tbk* case serves as compelling jurisprudence exposing the protracted and arduous litigation trajectory that public minority shareholders (commanding a collective 13.78% equity stake) must navigate, ultimately culminating in Supreme Court Decision No. 3017 K/Pdt/2011.[17,18]

In this litigation, the minority shareholders alleged that the controlling entity engaged in tortious conduct detrimental to the corporation, specifically citing the provision of an uncollateralized loan to a subsidiary (*PT Sumalindo Hutani Jaya*) amounting to Rp 140.2 billion via a Zero Coupon Bond, alongside an opaque *inbreng* (in-kind capital contribution) asset transfer executed without the requisite authorization of an Extraordinary General Meeting of Shareholders (EGMS). Although the Supreme Court adjudicated in favor of the minority—predicated upon the quantitative satisfaction of the statutory one-tenth equity threshold—the victory was strictly confined to a procedural-administrative remedy (namely, the judicial authorization to conduct an investigation). Crucially, the ruling failed to yield any automatic economic restitution or direct compensatory damages to the aggrieved minority shareholders.[19,20]

Furthermore, even within the context of closely held family corporations, judicial interpretation frequently suffers from disorientation due to the absence of explicit doctrinal guidance concerning majority oppression. In the adjudicatory proceedings of *Jhon Kumala v. PT Karya Lestari Makmur* and *Conal Kanginan v. Fadjar Kanginan*, the courts sustained the minority shareholders' claims predicated upon tortious conduct—

[16] Iida, "How Does the Appraisal Right with the Concept of the Fair Value Including Synergies Work?: Lessons from Japan."
[17] "Putusan Mahkamah Agung Nomor 3017 K/Pdt/2011, Tanggal 12 September 2012, Antara PT Sumalindo Lestari Jaya Tbk Melawan Deddy Hartawan Jamin, Dkk" (2012).
[18] Lintang Caesar Pangestu, Zakiah Noer, and Dara, "Perlindungan Terhadap Pemegang Saham Minoritas Berdasarkan Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas," *Judge: Jurnal Hukum* 6, no. 7 (February 7, 2026): 2101–8, https://doi.org/10.54209/judge.v6i07.2067.
[19] "Putusan Mahkamah Agung Nomor 3017 K/Pdt/2011, Tanggal 12 September 2012, Antara PT Sumalindo Lestari Jaya Tbk Melawan Deddy Hartawan Jamin, Dkk" (2012).
[20] Lintang Caesar Pangestu, Zakiah Noer, and Dara, "Perlindungan Terhadap Pemegang Saham Minoritas Berdasarkan Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas," *Judge: Jurnal Hukum* 6, no. 7 (February 7, 2026): 2101–8, https://doi.org/10.54209/judge.v6i07.2067.

specifically, the arbitrary suppression of dividends and capricious equity dilution.[21,22]

However, as analyzed by Kohar and Dewi, courts frequently misapply the jurisprudential basis of the cause of action (invoking Article 61 of the Company Law, which is inherently designated for claims against the corporate entity, rather than Article 3, paragraph 2, which governs the personal liability of the controlling majority), and the compensatory damages awarded are often unilaterally reduced below the valuation of the minority's actual economic harm.[23] These jurisprudential realities corroborate the thesis advanced by Takke, which postulates that Indonesian corporate legal instruments remain confined to the mere rectification of procedural infractions, yet demonstrate a profound myopia in remedying substantive commercial and financial inequities.[24] Consequently, until the parameters of fair value are statutorily codified through the integration of financial valuation methodologies and judicial adjudication, the appraisal right in Indonesia will merely perpetuate an illusion of protection.

2. Reconstructing Substantive Justice: The Commercial Fairness Doctrine and the Exclusion of the Minority Discount in Singaporean Law

To transcend the dogmatic impasse within Indonesian corporate law, a comparative analysis with a common law jurisdiction characterized by the preeminence of a sophisticated capital market, such as Singapore, offers a revolutionary alternative paradigm. A profound anomaly revealed upon an examination of the Singapore Companies Act 1967 (Chapter 50) is that Singaporean law does not, in fact, recognize an automatic statutory appraisal right (statutory minority buy-out right) upon the consummation of a merger, amalgamation, or corporate restructuring.[25]

This stands in diametric opposition to the corporate traditions of other Commonwealth jurisdictions—such as those governed by the Canadian Business Corporations Act or the statutory frameworks of New Zealand—which explicitly confer appraisal rights. Nevertheless, rather than abandoning minority shareholders to a

[21] "Putusan Mahkamah Agung Nomor 2108 K/Pdt/2015, Tanggal 25 November 2015, Antara Jhon Kumala Melawan PT Karya Lestari Makmur" (2015).
[22] "Putusan Pengadilan Negeri Surabaya Nomor 737/Pdt.G/2014/PN.Sby, Tanggal 2015, Antara Conal Kanginan, Dkk. Melawan Fadjar Kanginan, Dkk (PT Giunco Kota Mas)" (2015).
[23] Kohar and Dewi, "Abuse of Rights by Majority Shareholders in Indonesian Family-Owned Company: Is It Likely?"
[24] Takke, "Perlindungan Hukum Pemegang Saham Minoritas Terhadap Penyalahgunaan Kekuasaan Pemegang Saham Mayoritas Di Indonesia Dan Singapura."
[25] "Singapore Companies Act 1967 (Chapter 50)" (1976), https://sso.agc.gov.sg/Act-Rev/CoA1967/Published/20211231?DocDate=20061031.

defenseless position, Singapore constructs a profoundly more holistic, adaptive, and incisive protective framework through an equitable instrument known as the oppression remedy, exclusively codified in Section 216.[26,27,28]

Section 216 vests the High Court of Singapore with absolute jurisdiction and discretion to pierce the veil of internal corporate affairs and intervene in governance resolutions whenever corporate actions, directorial decisions, or the maneuvers of majority shareholders are executed in a manner that is oppressive, evinces a disregard of minority interests, or is unfairly discriminatory. The Singaporean legal architecture refuses to be ensnared by mere formal compliance. Conversely, the courts have formulated a standard of review predicated upon commercial fairness.[29]

The judiciary astutely recognizes that within a corporate entity—particularly in private companies that function essentially as quasi-partnerships predicated on mutual trust and confidence—majority actions that ostensibly comply with the Articles of Association or General Meeting procedures on paper may nevertheless be classified as unfair prejudice. This oppression encompasses practices of financial marginalization, such as the systematic withholding of dividends coupled with the extraction of corporate wealth through inflated directorial remuneration, exclusion from management participation, or equity dilution devoid of compelling commercial rationality, all of which fundamentally subvert the legitimate expectations of the minority.

The paramount significance of Section 216 centers upon its exceptionally broad remedial spectrum. Pursuant to the statutory formulation of Section 216(2), judicial authority extends far beyond the mere issuance of declaratory judgments; courts are empowered to fundamentally re-engineer corporate realities by invalidating resolutions, granting injunctive relief, and—statistically the most frequently awarded remedy—mandating a compulsory buy-out of the minority's equity by the oppressive majority or by the corporation itself at fair value. Within this framework, Section 216 operates as the functional equivalent of the appraisal right in Indonesia, yet it is fortified by coercive judicial instruments that culminate directly in the monetization of the shares.[30]

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[26] "Canada Business Corporations Act (R.S.C., 1985, c. C-44)" (1985), https://laws-lois.justice.gc.ca/eng/acts/C-44/section-241.html.
[27] Liam Kampen, "Minority Buy-out Rights: Questioning the Right to Exit in New Zealand," *Te Mata Koi: Auckland University Law Review* 29 (January 1, 2023): 265–93.
[28] "Section 216 of the Companies Act (Cap. 50)" (1976), https://sso.agc.gov.sg/Act/CoA1967?ProvIds=pr216-.
[29] Section 216 of the Companies Act (Cap. 50).
[30] Section 216 of the Companies Act (Cap. 50).

However, to ensure that this equitable instrument is not susceptible to abuse, the Singaporean judiciary unequivocally bifurcates disputes involving personal wrongs from those constituting corporate wrongs. In the landmark precedent of *Sakae Holdings Ltd*, the Singapore Court of Appeal delineated a rigorous analytical framework: Section 216 is to be invoked exclusively for the restitution of a minority shareholder's personal prejudice (such as a buy-out order to facilitate an exit strategy), whereas breaches of duty directed against the corporate entity itself (such as the misappropriation of corporate funds by directors) must be redressed through a statutory derivative action pursuant to Section 216A.[31] This bifurcation prevents the occurrence of double recovery while simultaneously focusing the oppression remedy on the restoration of distributive justice for the shareholders.

At the essential juncture of determining fair value in the execution of a buy-out order, the Singaporean judiciary transcends the role of a mere arbiter, transforming itself into an architect of financial justice. Upon issuing a buy-out order, the court does not relegate the valuation process to the opaque realm of bilateral negotiation between the parties, as is customary in Indonesia. Conversely, the court articulates explicit court directions and appoints an independent valuer governed by binding mathematical parameters. The most crucial comparative finding—one that dogmatically deconstructs structural power asymmetries—is that the Singaporean courts proactively instruct that the calculation of fair value must be executed without applying a minority discount.

Within the discipline of corporate finance and global merger and acquisition practices, the minority discount constitutes a mechanism of equity value deduction that frequently amounts to 10% to 30% of the baseline valuation.[32] This deduction is theoretically justified by market principles on the premise that minority shares are inherently illiquid (characterized by a lack of marketability) and absolutely devoid of the power (lack of control) to direct cash flows, dictate dividend distributions, or force the dissolution of the corporate entity—in stark contrast to the control premium attached to the equity held by the controlling majority. Mathematically, the application of this discount is formulated as $V_{fair} = V_{base}$ X (1- $D_{minority}$}. Should this parameter be permitted to

[31] "Ho Yew Kong v Sakae Holdings Ltd [2018] SGCA 33" (2018), https://www.elitigation.sg/gd/s/2018_SGCA_33.
[32] Tarsisius Catur Budi Nugraha and Sri Wahyuni, "Determinants of the Discount for Lack of Marketability in Business Valuation: Evidence from Indonesia," *Journal of Accounting and Finance Management* 6, no. 4 (October 24, 2025): 2245–54, https://doi.org/10.38035/jafm.v6i4.2492.

govern, minority shareholders victimized by a squeeze-out would be compelled to accept financial compensation severely depreciated well below their *pro rata* equity interest in the corporation's going-concern value.[33]

In addressing this dynamic, Singaporean jurisprudence adopts an uncompromising moral-economic stance: the application of a minority discount within the context of oppression constitutes a fundamental perversion of commercial fairness. If a minority shareholder is subjected to a forced exit due to the exploitative conduct of the majority, imposing a minority discount is tantamount to conferring a double financial reward upon the oppressor by permitting them to acquire the victim's equity at a depreciated price.

As articulated in the monumental precedent of *Ng Kek Wee v. Sim City Technology Ltd* and reaffirmed in *Over & Over Ltd v. Bonvests Holdings Ltd*, Singaporean courts mandate buy-outs on a pricing basis that reflects the *pro rata* utility of the corporation's assets and holistic projections, deliberately eliminating any form of discount as a mechanism of substantive reparation for the unfairly prejudicial conduct.[34,35]

The ontological and methodological divergence between the Indonesian and Singaporean regimes is exceptionally stark. Whereas in Indonesia the determination of "fair value" is relegated to a regulatory state of nature—devoid of objective parameters and binding judicial coercive instruments—in Singapore, the adjudication of fair value is elevated to an instrument of judicial social engineering. Explicit judicial directives ensure that the perpetrators of corporate oppression are precluded from expropriating wealth derived from the inherent illiquidity of the victim's shares, while the minority receives compensation that is economically commensurate with the sustained value of their substantive investment.

3. Academic Dialogue and the Elevation of Discourse: Weaving the Common Thread of Economic Valuation within the Global Corporate Legal Paradigm

The pathological deficiencies inherent in the legal protection of minority shareholders in Indonesia must not be confined to, nor diagnosed exclusively within, the narrow parameters of domestic jurisdictional discourse. When subjected to critical dialogue with contemporary, extensive research delineating the global corporate

[33] Katarzyna Byrka-Kita and Michał Grudziński, "Control Premium and Minority Discounts in Polish Business Valuation Practices – Evidence From Research," *Financial Internet Quarterly* 13, no. 1 (January 10, 2024): 1–14, https://doi.org/10.1515/fiqf-2016-0014.
[34] "Ng Kek Wee v Sim City Technology Ltd" (2014), https://www.elitigation.sg/gd/s/2014_SGCA_47.
[35] "Over & Over Ltd v Bonvests Holdings Ltd and Another" (2008), https://www.elitigation.sg/gd/s/2008_SGHC_226.

governance landscape—particularly Iida's empirical scholarship dissecting the mechanics of the appraisal right and the integration of economic valuation in Delaware (United States) and Japan—a profound developmental chasm is exposed. This comparative lens reveals the severe extent to which Indonesia's legal architecture lags in adopting the synergistic fusion of legal and economic parameters, thereby failing to embrace the *law and economics* paradigm.[36] The theses posited by Kohar and Dewi, alongside Wardani et al.—which merely advocate for the importance of Good Corporate Governance (GCG) and administrative compliance—remain premature and untethered from practical reality unless they are accompanied by substantive statutory revisions that mandate the judiciary to conduct financial valuations.[37,38]

Within global discourse, the focal point of the debate surrounding appraisal right valuation has evolved far beyond the mere procedural polemic of "how to determine the price." Instead, it has coalesced around the substantive inquiry of whether the determination of "fair value" must exclude or accommodate anticipated future synergy benefits (the synergy effect).

In the jurisdiction of Delaware—widely recognized as the global epicenter for corporate dispute resolution—the Court of Chancery interprets fair value through a dogmatic exclusion of synergy effects, employing a *deal-price-minus-synergy* formula. The economic rationale underpinning this exclusion is that the acquirer (the surviving post-merger entity) should not be penalized by being compelled to pay upfront for value additions and efficiencies they have not yet generated. Conversely, Japanese corporate law (following the 2005 amendments to the Companies Act) charts a distinctively progressive trajectory wherein fair value is statutorily mandated to incorporate synergy value in the event of a value-increasing merger. This approach is specifically designed to maximize distributive justice for minority shareholders, granting them a proportionate share of the anticipated future gains derived from squeeze-out transactions or amalgamations orchestrated by the controlling majority.

[36] Iida, "How Does the Appraisal Right with the Concept of the Fair Value Including Synergies Work?: Lessons from Japan."
[37] Kohar and Dewi, "Abuse of Rights by Majority Shareholders in Indonesian Family-Owned Company: Is It Likely?"
[38] Wardani et al., "Perlindungan Hak Pemegang Saham Minoritas Dalam Perseroan Terbatas: Analisis Terhadap Implementasi Ketentuan UU Perseroan Terbatas Dalam Keadilan Dan Kepastian Hukum Di Lingkungan Bisnis Modern."

Despite being anchored in diametrically opposed valuation theories (Delaware relying on a hypothetical stand-alone value and Japan embracing synergy value), both jurisdictions converge methodologically when adjudicating fundamentally fair transactions. When the price formation process demonstrates procedural fairness and withstands rigorous judicial scrutiny—such as a robust market check in the United States or a fair procedure devoid of acute conflicts of interest in Japan—courts in both nations moderate appraisal arbitrage by anchoring fair value directly to the actual deal price, operating under the conviction that an unconflicted transaction price represents an objective convergence of market efficiency.[39]

To elucidate the mapping of the academic discourse and the novelty of this comparative synthesis, a comparative matrix detailing the integration of financial valuation within corporate law is delineated as follows:

Table 1. Juridical and Economic Comparison of Minority Rights

Dimension of Juridical & Economic Analysis	**Indonesia (Company Law)**	**Singapore (Companies Act)**	**Dimension of Juridical & Economic Analysis**
Substantive Right Foundation	Explicit statutory right (Appraisal Right under Art. 62) without specialized corporate courts.	No statutory appraisal right; absolute substitution via the equitable Oppression Remedy (Section 216).	**Substantive Right Foundation**
Fair Value Methodology	Highly abstract. Lacks explicit parameters (e.g., PBV, DCF); susceptible to valuation anarchy.	Judicially determined, predicated on the principle of commercial fairness as directed by the court.	**Fair Value Methodology**
Application of Minority Discount	Unregulated. Highly vulnerable to majority pressure due to structural power asymmetries.	Proactively prohibited and eliminated via explicit judicial directions in buy-out orders.	**Application of Minority Discount**

[39] Iida, "How Does the Appraisal Right with the Concept of the Fair Value Including Synergies Work?: Lessons from Japan."

Spectrum of Judicial Intervention	Confined to reviewing formal procedural violations. Exercising the right does not enjoin or invalidate mergers.	Broad and prescriptive. Empowered to issue injunctions, invalidate resolutions, and mandate forced buy-outs.	**Spectrum of Judicial Intervention**

The preceding comparative table corroborates and solidifies the novelty of this research. It establishes that the fundamental structural deficiency in Indonesia extends beyond mere deficits in business ethics, directorial integrity, or corporate governance failures—as conventionally dominated by existing literature—and is, in fact, rooted in an epistemological void regarding an economically valid valuation methodology that is legally operationalized within civil courts. Juxtaposed against this sophisticated global discourse, the architecture of the Indonesian Company Law reveals a dual blind spot: not only does it lack guidelines dictating whether *fair value* should incorporate future synergy efficiencies or reject historical minority discounts, but its civil judicial system is also devoid of a definitive *standard of review* (such as the *entire fairness test* or validation by an *independent special committee*) to calibrate whether a deal price presented by the board of directors warrants judicial confirmation as a fair instrument of restitution.

In responding to this chasm—which threatens to undermine the very fundamentals of investment—Indonesia is certainly not obliged to blindly replicate the entirety of Singapore's common law framework. However, it is imperative for the national legal system to urgently extract the underlying spirit of substantive justice inherent therein and translate it into formal statutory law. Consequently, the common thread delineated by this comparative analysis culminates in two prescriptive solutions. First, the legislature or the Supreme Court (through the promulgation of a Supreme Court Regulation [PERMA] on corporate dispute resolution) must adopt a standard of *commercial fairness*. This would empower the judiciary to dissect and mitigate the empirical economic prejudice inflicted by the majority, even when such actions are veiled beneath the guise of procedural compliance at a General Meeting of Shareholders (GMS). This construction aligns with the universal derivations of distributive justice, emphatically rejecting the rationale that majority legitimacy confers the right to expropriate the fair value belonging to the minority.

Second, the Company Law must be revised to incorporate explicit judicial guidelines for the operationalization of "fair value" in the execution of appraisal rights, statutorily mandating it as a *going-concern value* while categorically precluding any margin for the application of a minority discount. This valuation process must bind the court to appoint an independent panel of experts (*independent valuer*), thereby emancipating minority shareholders from the snare of asymmetric negotiations that suppress economic value—as exemplified by the tragedy suffered by PT Clemont Finance Indonesia in the Bank KEB Hana dispute. By elevating commercial valuation standards into civil procedural law, Indonesia will not only curtail the avenues for oppressive arbitrage that have historically distorted the market, but will also revitalize the sanctity of the appraisal right as an indispensable instrument that guarantees equitable financial reparation and global-equivalent legal certainty for all shareholders.

C. CONCLUSION

The execution of the appraisal right for minority shareholders in Indonesia currently remains ineffective due to a legal void within the Company Law (UUPT) concerning the definition, parameters, and methodology for determining fair value. In stark contrast to Indonesia, Singaporean jurisprudence successfully provides substantive protection through the oppression remedy mechanism, which applies the principle of commercial fairness and prescriptively prohibits the application of a minority discount in equity valuation. In response to this disparity, Indonesia's corporate legal framework must be reconstructed by adopting the doctrine of commercial fairness, thereby empowering the judiciary with the authority to dissect and mitigate the empirical economic prejudice suffered by minority shareholders. As a long-term resolution, the Company Law must be revised to integrate judicial guidelines that mandate the engagement of an independent valuer to determine fair value without applying a minority discount, thereby actualizing legal certainty and investment protection commensurate with global dispute resolution standards.

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