FAMILY CAPITALISM AND CORPORATE GOVERNANCE OF FAMILY-CONTROLLED LISTED COMPANIES IN INDONESIA

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I INTRODUCTION

This article discusses corporate governance of family-controlled companies on two levels. At the more general level, it examines the notion of family capitalism as a paradigm of corporate governance which supplements the managerial capitalism paradigm in Anglo-American corporate governance systems, and the alliance capitalism paradigm prevailing in Japan and Germany. At the more specific level, the article explores family capitalism in the Indonesian context. In particular, it focuses on the question of how family relationships and family values can influence the corporate governance of companies listed on the Jakarta Stock Exchange ('JSX').[1]

In doing so, the article builds on two previous articles on Indonesian corporate governance. The first article sketched the legal and business contexts of Indonesian corporate governance, taking into account the effects of the Asian financial crisis of 1997–99.[2] The second article undertook case studies of three Indonesian banks, focusing on key corporate governance aspects at critical junctures in their corporate lives.[3] It was concluded that, despite significant improvements to the Indonesian corporate governance framework during the 1990s, actual corporate governance behaviour during that decade still diverged substantially from stated principles. In particular, if the behaviour of the three banks was measured against key corporate governance principles — such as

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1 Indonesia has two stock exchanges: the Jakarta Stock Exchange ('JSX') and the Surabaya Stock Exchange ('SSX'). The latter is located in the second largest Indonesian city of Surabaya but is much smaller than the JSX in terms of market capitalisation. Hence this article focuses on the JSX.

2 Benny S Tabalujan, 'Corporate Governance of Indonesian Banks: The Legal and Business Contexts' (2001) 13 *Australian Journal of Corporate Law* 67.

3 Benny S Tabalujan, 'Why Indonesian Corporate Governance Failed: Conjectures Concerning Legal Culture' (2002) 15 *Columbia Journal of Asian Law* 141.

responsibility, accountability, fairness and transparency[4] — their actual behaviour appeared anomalous. It was then suggested that the divergence between the formal corporate governance framework and actual corporate governance behaviour was due, at least to some extent, to a local culture which did not appear to support fully some of the corporate governance principles transplanted from overseas.

This article explores the impact of local culture on corporate governance by looking at family relationships in companies listed on the JSX. In the Indonesian corporate context, the family is especially important, as recent studies have revealed a large proportion of aggregate Indonesian economic activity revolves around companies controlled by a small group of wealthy and powerful family groups. The values and culture of these families, therefore, presumably affect how their companies are run and, indirectly, how corporate Indonesia runs.

The empirical part of this study focuses on listed companies for several reasons. Firstly, they are among the most transparent of Indonesian companies. They are more strictly regulated and are subject to more disclosure rules than their unlisted counterparts.[5] Also, there is more published data available for them. Moreover, the largest and most prestigious players in the Indonesian corporate scene are generally listed on the stock exchange. Because listed companies tend to be more international and open to global trends in respect of their outlook, scope of operations, and management structure, they are also more likely to be at the vanguard of Indonesian corporate governance developments than unlisted companies. Thus, examining the corporate governance of listed companies is a good way to obtain a snapshot of what is likely to be the best practice in Indonesian corporate governance. In Indonesia, it is unlikely that the level and sophistication of corporate governance in unlisted companies will exceed that in listed companies.

Part II contains a summary of the current research on corporate governance of family-controlled companies and introduces the family capitalism paradigm. Part III comprises an overview of the formal legislative framework of Indonesian corporate governance, providing background for the subsequent discussion. Part IV attempts to empirically reveal the extent of family relationships among members of the corporate boards of public companies listed on the JSX. To facilitate longitudinal comparison, I use published data for two calendar years: 1997 (prior to the onset of the 1997–99 Asian financial crisis) and 2001 (when many Asian economies had started to recover or had already recovered from the crisis).

4 These are commonly known as the 'RAFT' principles (responsibility, accountability, fairness and transparency) and now appear to be increasingly accepted among policy makers. They are enshrined in the Organisation for Economic Co-operation and Development ('OECD'), Ad hoc Taskforce on Corporate Governance, *OECD Principles of Corporate Governance* (1999), <http://www.oecd.org/pdf/M00008000/M00008299.pdf> at 27 September 2002.

5 In using the term 'unlisted', I refer to private companies and unlisted public companies. Theoretically, not all public companies have to be listed — but it is difficult to envisage why a company would be structured as a public company unless it is for the purpose of listing: see Tabalujan, below n 32, 30.

Part V contains a discussion of the empirical findings grounded in corporate governance principles as they apply to family-controlled companies. I highlight the key implications of my findings and offer suggestions as to the potential impact of family relationships on Indonesian corporate governance. These suggestions are significant not only for Indonesia but also other developing economies where family-controlled business entities proliferate.

II FAMILY CAPITALISM

Past research into the phenomenon of family business is 'surprisingly small in quantity and rather shallow in its theoretical consideration'.[6] This was probably due to the wide acceptance of Berle and Means' concept of the 'managerial firm' as the dominant theoretical paradigm for studying companies, focusing on issues such as the separation of ownership and control as well as agency costs.[7] As Germany and Japan became economic powerhouses during the 1970s and 1980s, more research was devoted to a contrasting paradigm based on 'relationship-based' governance in companies.

Eventually, this resulted in the recognition of two basic models of corporate governance systems in developed economies. The first model is the Anglo-American 'market-based' model which emphasises the maximisation of shareholder value, while the second model is the 'relationship-based' model which emphasises the maximisation of the interests of a broader group of stakeholders.[8] These two models are not a comprehensive theory of corporate governance but provide convenient paradigms for classifying actual corporate governance systems which exist today.[9]

Within each model, the corporate governance system existing in a particular jurisdiction may vary significantly. Each system is unique because it features its own corporate governance mechanisms. For example, the corporate governance

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6 Akira Suehiro, 'Family Business Re-assessed: Corporate Structure and Late-Starting Industrialization in Thailand' (1993) 31 *Developing Economies* 378, 379.

7 Adolf Berle and Gardiner Means, *The Modern Corporation and Private Property* (1932). The dominance of the Berle and Means paradigm was further reinforced by Alfred D Chandler, *The Visible Hand: The Managerial Revolution in American Business* (1977).

8 Donald H Chew, 'Introduction' in Donald H Chew, *Studies in International Corporate Finance and Governance Systems* (1997) 1. See also Nicholas Dimsdale, 'The Need to Restore Corporate Accountability: An Agenda for Reform' in Nicholas Dimsdale and Martha Prevezer (eds), *Capital Markets and Corporate Governance* (1994) 13, 14 (referring to the United States and United Kingdom systems as 'market-based systems' and Japan and Germany as 'bank-based systems'); Allen Sykes, 'Proposals for a Reformed System of Corporate Governance to Achieve Internationally Competitive Long-Term Performance' in Nicholas Dimsdale and Martha Prevezer (eds), *Capital Markets and Corporate Governance* (1994) 111, 114 ff (referring to the 'British/US system' and the 'Continental system' which encompasses 'most of Western Europe, Japan and the newly industrializing Pacific Rim countries').

9 Despite the rapid growth in corporate governance literature, leading scholars appear to shy away from creating a general theory of corporate governance: see Klaus J Hopt and Stefan Prigge, 'Preface' in Klaus J Hopt et al (eds), *Comparative Corporate Governance: The State of the Art and Emerging Research* (1998) ix.

systems of the United States, Canada, the United Kingdom and Australia all fall within the market-based model — yet each has a distinctive corporate governance system with a distinctive legal framework.[10] The same situation is found in the relationship-based model. Germany, France and Japan have different corporate governance systems but they all fall within the relationship-based model.[11]

More recently, a third paradigm has been gaining currency. This paradigm is based on the prevalence of family business. In the words of one Japanese scholar, 'family business' is 'a form of enterprise in which both ownership and management are controlled by a family kinship group, either nuclear or extended, and the fruits of which remain inside that group, being distributed in some way among its members'.[12]

The increasing recognition of this third paradigm is largely due to the realisation that family businesses 'have been remarkably obdurate' in Asia, as well as in other developing and some developed countries.[13] This renewed interest in family business, somewhat late in coming, must be welcomed. Recent research by Stijn Claessens of the World Bank shows that, in developing countries such as Malaysia, Thailand and the Philippines, families control a large proportion, if not the majority, of businesses. Moreover, this phenomenon also exists in developed East Asian economies such as Hong Kong and Singapore.[14] Family businesses also continue to be present in substantial numbers in other non-Asian developed countries as well as transitional economies.[15]

The economic power wielded by family businesses can be enormous. The study by Claessens, Djankov and Lang using 1996 data found that the top 15 family groupings in Indonesia controlled a massive 61.7 per cent of the total

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10 One point of difference is the office of company secretary: see John Douglas Maltas, 'The Importance of the Company Secretary as an Aid to Good Corporate Governance: An Australian Perspective' (1999) 4 *Corporate Governance International* 12.

11 The differences between the corporate governance systems on specific matters may, however, be very significant. For a sample of studies on Germany and Japan in particular, see Mark J Roe, 'Some Differences in Corporate Structure in Germany, Japan, and the United States' (1993) 102 *Yale Law Journal* 1927; Hwa-Jin Kim, 'Markets, Financial Institutions, and Corporate Governance: Perspectives From Germany' (1995) 26 *Law & Policy in International Business* 371; Mark J Roe, 'German Codetermination and German Securities Markets' [1998] *Columbia Business Law Review* 167; Thomas J Andre Jr, 'Cultural Hegemony: The Exportation of Anglo-Saxon Corporate Governance Ideologies to Germany (1998) 73 *Tulane Law Review* 69; Ronald J Gilson and Mark J Roe, 'Understanding the Japanese *Keiretsu*: Overlaps between Corporate Governance and Industrial Organization' (1993) 102 *Yale Law Journal* 871; Ronald J Gilson and Mark J Roe, 'Lifetime Employment: Labor, Peace and the Evolution of Japanese Corporate Governance' (1999) 99 *Columbia Law Review* 508.

12 Suehiro, above n 6, 378.

13 Haider A Khan, 'Corporate Governance of Family Businesses in Asia: What's Right and What's Wrong?' (Working Paper No 3, Asian Development Bank, 1999) 2 (fn 4).

14 Stijn Claessens et al, 'Expropriation of Minority Shareholders: Evidence from East Asia' (Working Paper No 2088, World Bank, 1999); Stijn Claessens, Simeon Djankov and Larry H P Lang, 'The Separation of Ownership and Control in East Asian Corporations' (2000) 58 *Journal of Financial Economics* 81.

15 Rafael La Porta, Florencio López-de-Silanes and Andrei Shleifer, 'Corporate Ownership Around the World' (1999) 54 *Journal of Finance* 471; Pankaj Ghemawat and Tarun Khanna, 'The Nature of Diversified Business Groups: A Research Design and Two Case Studies' (1998) 46 *Journal of Industrial Economics* 35; Tarun Khanna and Krishna Palepu, 'Why Focused Strategies May be Wrong for Emerging Markets' (1997) 75(4) *Harvard Business Review* 41.

value of listed assets, representing 21.5 per cent of gross domestic product ('GDP').[16] According to the same study, the figures for other Asian countries were no less startling. For example, in the Philippines, the top 15 families controlled 55.1 per cent of listed assets (representing 46.7 per cent of GDP) while in Hong Kong, the top 15 families controlled 34.4 per cent of listed assets (representing 84.2 per cent of GDP).[17] The Claessens, Djankov and Lang study has been substantiated to some extent by a later, but more limited, study commissioned by the Asian Development Bank ('ADB').[18] In view of these substantive findings, it is critical that researchers and policy makers learn more about how these family businesses are run and, in particular, how family companies are governed.

Given the dominance of family companies it is unfortunate that there does not appear to be a standard terminology which describes their corporate governance. This third model of corporate governance has been given various labels, including 'family mercantilism',[19] 'family business groups',[20] and 'personal capitalism'.[21] Carney and Gedajlovic's nomenclature set[22] comprises 'managerial capitalism' (referring to the Anglo-American shareholder model), 'alliance capitalism' (referring to the German-Japanese stakeholder model) and 'personal capitalism' (referring to the personalised, often family-based, governance model common in East Asia).

On the whole, but subject to one proviso, I find Carney and Gedajlovic's nomenclature to be most useful as it highlights the key feature of each corporate governance paradigm. The term 'managerial capitalism' harks back to the title of Chandler's famous work which built upon Berle and Means' classic book.[23] The term 'alliance capitalism' aptly captures the systemic network of alliances and cross-shareholdings which is common in the German-Japanese paradigm. My one proviso relates to the term 'personal capitalism'. The adjective 'personal' is somewhat ambiguous. It may refer to the personal (as opposed to contractual or professional) nature of business relationships common in this third paradigm. Alternatively, it may refer to the tendency of businesses in this third paradigm to be owned by individual persons.

Carney and Gedajlovic appear to use the term 'personal capitalism' to refer to the former, since they explicitly state that they are focusing 'specific attention on the merits and limits of the personalised and relational governance models which dominate many economies in East Asia'.[24] If this is the case, there appears to be

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16 Claessens, Djankov and Lang, above n 14, Table 9.

17 Ibid.

18 Juzhong Zhuang et al, *Corporate Governance and Finance in East Asia: A Study of Indonesia, Republic of Korea, Malaysia, Philippines, and Thailand* (2000).

19 Daniel Fitzpatrick, 'Indonesian Corporate Governance: Would Outside Directors or Commissioners Help?' in Chris Manning and Peter van Diermen (eds), *Indonesia in Transition* (2000) 293, 296.

20 Khan, above n 13.

21 Michael Carney and Eric Gedajlovic, 'Corporate Governance and Firm Capabilities: A Comparison of Managerial, Alliance and Personal Capitalisms' (2001) 18 *Asia Pacific Journal of Management* 335.

22 Ibid.

23 Alfred D Chandler, 'The Emergence of Managerial Capitalism' (1984) 58 *Business History Review* 473.

24 Carney and Gedajlovic, above n 21, 336.

an inadvertent slide in logic. Personalised and relational business dealings are also hallmarks of the corporate governance paradigm common in Japan and Germany. In Japan, for example, it is well-known that the *keiretsu* network (the web of alliances unique to Japanese corporate groups) relies heavily on personal relationships.[25] Indeed, some commentators have referred to this second paradigm as the relationship-based or relational model in contrast to the market-based or contract-based Anglo-American model.[26] In other words, personalised and relational business dealings are not unique to the third paradigm.

What does appear to be unique in countries which fall into the third paradigm is the fact that a significant number of companies in these countries, even those which are publicly listed, are owned or controlled by the individuals who founded them or their families. This is one of the key findings of the Claessens, Djankov and Lang study, as substantiated by the ADB study. The important point to note is that the individual founder's holdings are typically handed down to their families, either during their lifetimes or thereafter. Hence, it seems appropriate to refer to the corporate governance phenomenon in such countries as 'family capitalism' rather than 'personal capitalism'. The use of the term 'family' thus distinguishes this third paradigm from the first and second paradigms on two fronts: the relational and personalised nature of business and corporate dealings prevailing within and among companies in the third paradigm; and the fact that many of these companies are largely family-owned or controlled. Accordingly, the rest of the article uses the term 'family capitalism' to refer to this third paradigm of corporate governance.

The renewed interest in family capitalism has spurred research and discussion on some of the corporate governance implications associated with this paradigm. For example, Khan discusses the flexibility and agility of family-based management.[27] Carney and Gedajlovic suggest that because of the coupling of ownership with control, businesses under the family capitalism paradigm tend to have powerful incentives for running efficient operations, but particularistic values and a tendency towards nepotism (eg, appointing incompetent family relatives to key management positions) may detract from such efficiency.[28] Moreover, Khan, Carney and Gedajlovic highlight the lack of adequate monitoring mechanisms as a key issue in family capitalism.[29] In addition to these broader studies, individual country-based studies focusing on family capitalism are also starting to emerge.[30] The present article, focusing on family capitalism in Indonesia is a further contribution to this growing body of research.

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25 Gilson and Roe, 'Lifetime Employment' above n 11.

26 Chew, above n 8, 1.

27 Khan, above n 13, 22.

28 Carney and Gedajlovic, above n 21, 346–7.

29 Khan, above n 13, 22; Carney and Gedajlovic, above n 21, 346.

30 Yin-hua Yeh, Tsun-siou Lee and Tracie Woidtke, 'Family Control and Corporate Governance: Evidence from Taiwan' (2001) 2 *International Review of Finance* 21.

III LEGISLATIVE FRAMEWORK OF INDONESIAN CORPORATE GOVERNANCE[31]

To facilitate understanding of the subsequent discussion in this article, a brief summary of the formal legislative framework of Indonesian corporate governance, focusing especially on public companies listed on the JSX, is provided. I begin with the legislation which lies at the centre of Indonesia's corporate legislative framework: the *Company Law 1995*.[32] This legislation came into operation on 7 March 1996.[33] It constitutes the first wholesale revision of Indonesian company law since the Dutch colonial authorities introduced the *Commercial Code 1847*.[34] The *Company Law 1995* defines a public company (*perusahaan terbuka*) as a company whose capital and number of shareholders meet 'certain criteria' or a company which makes an offer to the public.[35] No details are given in the legislation as to what is meant by 'certain criteria'.

In practice, the main differences between Indonesian private and public companies are found in their 'deeds of establishment' — the equivalent of articles and memorandum of association in common law jurisdictions. More specifically, the provisions governing the capital structure, the transfer of shares, and the rights of shareholders are different. In addition, according to art 1(22) of the *Capital Market Law 1995*,[36] a listed public company must have at least 300 shareholders and a minimum paid-up capital of Rp 3 billion (US$1.3 million; US$0.35 million).[37]

It should be noted that this requirement for a listed public company to have at least 300 shareholders is not inconsistent with the findings in the Claessens, Djankov and Lang study which showed a majority of Indonesian listed companies being largely owned or controlled by family groups.[38] In capital

31 The material in Part III is derived mainly from Tabalujan, above n 2.

32 Law No 1 of 1995 Concerning the Limited Liability Company (*Undang-undang Nomor 1 Tahun 1995 Tentang Perseroan Terbatas*, '*Company Law 1995*'). For an introduction to the *Company Law 1995*, see Benny S Tabalujan, *Indonesian Company Law: A Translation & Commentary* (1997). See also Austin Pullé, 'The New Company Law of Indonesia' (1996) 17(4) *The Company Lawyer* 122; Normin S Pakpahan, *Introduction to the New Company Law of Indonesia* (1995); Gatot Supramono, *Hukum Perseroan Terbatas Yang Baru* (1996).

33 *Company Law 1995* art 129.

34 Although the Dutch were present in Indonesia from approximately 1600 there was no formal company law for more than two centuries until the *Commercial Code 1847* came into force with 21 articles specifically regulating companies. These 21 articles have now been replaced by the *Company Law 1995* with its 129 articles. Thus, purely in terms of length, with the enactment of the *Company Law 1995*, Indonesian corporate law burgeoned by more than six times.

35 *Company Law 1995* art 1(6). Apart from this stipulation, as a whole, the *Company Law 1995* does not contain many provisions specifically addressed to public companies.

36 Law No 8 of 1995 Concerning the Capital Market (*Undang-undang Nomor 8 Tahun 1995 Tentang Pasar Modal*, '*Capital Market Law 1995*'). See the references below n 48.

37 To facilitate comparison, US dollar equivalents are provided for monetary sums denoted in Indonesian rupiah. The exchange rate used is the rate prevailing at the relevant time. In the case of rupiah amounts found in legislation, I provide the average exchange rate for the calendar year during which the legislation was enacted as well as the exchange rate prevailing at the time of writing in June 2002 (Rp 8600 = US$1). It should be noted that, as a result of the Asian financial crisis, the rupiah plummeted against the US dollar to as low as Rp 16,900 = US$1. The pre-crisis rate was about Rp 2600 = US$1.

38 Claessens, Djankov and Lang, above n 14.

market terminology, the minimum shareholder requirement creates a 'spread' of shareholders which is necessary to ensure that there is a ready market of willing buyers and sellers for that stock. Companies seeking listing fulfil this shareholder spread requirement by obtaining the services of underwriters and investment bankers who place or allocate the company stock among various individual, corporate and institutional investors. In many listed companies, the founders or founding family may decide to retain say, 70 per cent of the company stock, while floating off the remaining 30 per cent to the public. The result is that the 30 per cent public spread may be held by say, 5000 shareholders, but the publicly listed company is still largely owned and controlled by the founders or founding family.

In respect of its name, a public company is characterised by the suffix '*terbuka*' (usually abbreviated to '*Tbk*') which literally means 'open'.[39] Companies listed on the two stock exchanges — the JSX and the much smaller Surabaya Stock Exchange ('SSX') — must be public companies. A catch-all provision in the *Company Law 1995* provides that companies engaged in the capital market (which would include listed public companies) are subject to the *Company Law 1995* unless otherwise regulated by specific laws and regulations applicable to the capital market.[40] Meanwhile, there does not appear to be any officially published record as to the number of private and public companies in Indonesia. A reasonable guess is that there are around 500 000 companies in existence, of which around 350 are listed publicly on the JSX.[41]

Following the Dutch and European civil law model, Indonesian companies have a two-tier management structure comprising of a board of directors (*dewan direksi*) headed by a president director (*presiden direktur*) and a board of commissioners (*dewan komisaris*) headed by a president commissioner (*presiden komisaris*).[42] Directors are to manage (*mengurus*) and represent (*mewakili*) the company on a day-to-day basis.[43] Commissioners are responsible for supervising

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39 *Company Law 1995* art 13(3).

40 *Company Law 1995* art 127.

41 Accurate statistics as to the number of companies in existence in Indonesia are not available due to the fact that there is no effective central registry of companies at present. When the *Company Law 1995* was first enacted, it was hoped that the more stringent registration provisions in art 23 would help encourage better compliance of the company registration process with the Department of Trade and Industry: see Tabalujan, above n 32, 22. This still has not occurred. In conversations with senior officials from the Department of Justice in March 2000, I was told that the authorities themselves do not know the exact number of companies currently in existence. At that time, the officials estimated that there were between 400 000 and 500 000 companies in existence, with only a very small portion of these being public companies. They also mentioned that 20 000 new companies were being formed annually.

42 For a brief discussion which contrasts the Anglo-American one-tier and the European two-tier structure, see Bernhard Grossfeld, 'Management and Control of Marketable Share Companies' in *International Encyclopaedia of Comparative Law* (1971) vol XIII, 6. For an overview of the German-style supervisory board, the *Aufsichtsrat*, see Jennifer Shearman, 'Corporate Governance: An Overview of the German Aufsichtsrat' [1995] *Journal of Business Law* 517. See also Colin Harper, 'A Case for Two Tier Boards' (1996) 6(2) *Australian Corporate Lawyer* 18.

43 *Company Law 1995* arts 1(4), 82. On the duties and liabilities of directors and commissioners under the *Company Law 1995*, see Patrick F F de van der Schueren, 'Duties and Potential Liabilities of Directors and Commissioners in Indonesia' (1997) 2 *Asian Commercial Law* 146.

(*mengawasi*) and advising (*memberikan nasihat*) the directors.[44] Both directors and commissioners are appointed by the general meeting of shareholders (*rapat umum pemegang saham*).[45] Public companies must have at least two commissioners[46] and two directors.[47]

The second piece of formal legislation that affects the governance of publicly listed Indonesian companies is the *Capital Market Law 1995*.[48] This legislation came into force on 1 January 1996.[49] The scope of the *Capital Market Law 1995* is very wide. It enumerates the powers of the regulatory bodies, in particular the Capital Market Supervisory Board (*Badan Pengawas Pasar Modal* or '*Bapepam*')[50] and the JSX. It also regulates market institutions,[51] market participants including various professionals,[52] and market transactions.

Bapepam is currently the key regulatory authority in the capital market. It reports directly to the Minister of Finance[53] and is responsible generally for the development, regulation and supervision of the capital market.[54] Its goal is to create and maintain an orderly, proper and efficient market which protects the interests of shareholders and the public.[55] Bapepam's inspection and

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44 *Company Law 1995* arts 1(5), 97.

45 *Company Law 1995* art 80(1) for directors; *Company Law 1995* art 95(1) for commissioners. Only a natural person can become a director or commissioner.

46 *Company Law 1995* art 94(2).

47 *Company Law 1995* art 79(2). Companies other than those listed in *Company Law 1995* art 94(2) may have only one director and one commissioner.

48 For an English translation of the *Capital Market Law 1995*, see Normin S Pakpahan, *Introduction to the New Capital Markets Law of Indonesia* (1996). For an overview of the legislation, see Benny S Tabalujan, 'Indonesia's New Capital Market Law' (1997) 15 *Asia Business Law Review* 14.

49 *Capital Market Law 1995* art 116. Prior to that, the Indonesian capital market was regulated by a hotchpotch of legislation. These include: the Law No 15 of 1952 Concerning the Bourse; Presidential Decree No 53 of 1990; Minister of Finance Decree No 1548/KMK.013/1990. On the regulatory framework of the capital market from its origins to 1996, see generally Robert B Dickie, 'Development of Third World Securities Markets: An Analysis of General Principles and a Case Study of the Indonesian Market' (1981) 13 *Law and Policy in International Business* 177; Bacelius Ruru, 'Development of Equity and Bond Markets: History and Regulatory Framework in Indonesia' (1995) 5 *Australian Journal of Corporate Law* 326; David C Cole and Betty F Slade, *Building A Modern Financial System: The Indonesian Experience* (1996).

50 'Bapepam', as an acronym, can be traced back to 1976 when the Capital Market Formation Board (*Badan Pembina Pasar Modal*) and the Capital Market Executive Board (*Badan Pelaksana Pasar Modal*) were formed pursuant to Presidential Decree No 52 of 1976. In reality, the Capital Market Formation Board was not activated. In 1990, pursuant to Presidential Decree No 53 of 1990, the Capital Market Executive Board became the Capital Market Supervisory Board (*Badan Pengawas Pasar Modal*). Throughout, the 'Bapepam' acronym remained unchanged.

51 The market institutions are securities exchanges (*bursa efek*), clearing and guarantee institutions (*lembaga kliring dan penjaminan* or 'LKP') and depository and settlement institutions (*lembaga penyimpanan dan penyelesaian* or 'LPP'); for a brief explanation of their functions, see Tabalujan, above n 48, 16.

52 The market participants may be grouped under the following categories: investors, intermediaries (eg, securities firms, investment advisors), supporting institutions (eg, custodians, securities administration bureaus, and trust agents) and supporting professions (public accountants, legal consultants, valuers and notaries): Tabalujan, above n 48, 17–18.

53 *Capital Market Law 1995* art 3(2). Bapepam is the Indonesian equivalent of the Securities and Exchange Commission ('SEC') in the United States.

54 *Capital Market Law 1995* art 3(1).

55 *Capital Market Law 1995* art 4.

investigation powers are especially noteworthy.[56] It can impose administrative sanctions (*sanksi administratif*) for any contravention of the legislation or any implementing regulations.[57] Moreover, the *Capital Market Law 1995* also provides affected parties who have suffered loss to seek civil remedies against erring directors and commissioners.[58]

Bapepam has the power to give detailed technical explanations on the *Capital Market Law 1995* and its implementing regulations.[59] It can also issue regulations on numerous matters, ranging from procedures for appointing company officers to the registration of prospectuses.[60] Most Bapepam regulations do not deal specifically with corporate governance issues. Instead, they deal with the licensing and regulation of stock exchanges, securities companies, clearing and depository institutions, custodian banks, and various other capital market institutions. The Bapepam regulations also cover procedural aspects such as the processing of Registration Statements (which contain draft prospectuses) for public offers and the preparation of annual reports.

It should be noted that Bapepam's functions are to be subsumed under a new Financial Services Authority (*Otoritas Jasa Keuangan* or 'OJK'). The formation of the OJK was already envisaged as early as 1999 by art 34(2) of the *Bank Indonesia Law*.[61] However, at the time of writing the OJK has not yet been formally established. The new OJK, which is expected to be modelled after similar agencies in Australia and the United Kingdom, is to be the future umbrella body overseeing all Indonesian financial sectors including banking, capital markets and insurance.

Another body which issues regulations affecting listed companies is the JSX. The JSX is a licensed exchange operated by a limited liability company, PT Bursa Efek Indonesia ('BEJ'). BEJ is empowered to issue regulations governing its activities but these require the approval of Bapepam.[62] There are membership rules governing the rights and obligations of its members and listing rules which specify the rights and obligations of companies whose securities are listed on the JSX. Like Bapepam regulations, BEJ regulations come in two forms. The bulk of these regulations are issued as annexures to decrees of the board of directors of BEJ (*Keputusan Direksi* BEJ).[63] Like Bapepam, BEJ also issues circulars (*surat*

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56 *Capital Market Law 1995* art 100.

57 *Capital Market Law 1995* art 102(1). The administrative sanctions available include written warnings, monetary fines, limits placed on activities and revocation of licences, approvals or registrations.

58 *Capital Market Law 1995* art 111.

59 *Capital Market Law 1995* art 5(o). Although this falls short of granting Bapepam full power to interpret *Capital Market Law 1995* provisions, it does provide Bapepam with significant control over interpretations which involve technical issues in the capital market.

60 *Capital Market Law 1995* art 5. See especially, arts 5(c), (d).

61 Law No 23 of 1999 Concerning Bank Indonesia (*Undang-undang Nomor 23 Tahun 1999 Tentang Bank Indonesia, 'Bank Indonesia Law'*). Article 34(2) stipulates that a new financial services authority would be created by 31 December 2002. See generally J Soedradjad Djiwandono, 'Central Banking Reform in Indonesia' (2000) 28 *Asia Business Law Review* 53.

62 *Capital Market Law 1995* arts 9, 11.

63 As is the case with Bapepam, subsequent BEJ decrees may not only introduce new regulations but also amend, revoke or substitute previous decrees, thus effectively amending, revoking or substituting previous regulations.

edaran) which provide additional guidelines and explanations concerning various stock market matters.[64]

Apart from Bapepam and BEJ, there may be other institutions and agencies which issue sector-specific regulations which govern the individuals and companies operating in that sector. One prime example is the central bank, Bank Indonesia, which issues a host of regulations governing banks and other financial institutions. Although most of these regulations tend to deal with operational issues unique to the particular business sector, from time to time they also contain specific provisions which affect corporate governance directly.

To complete this brief overview of the Indonesian corporate governance framework, the Indonesian Code for Good Corporate Governance should be noted. This Code is the product of the high-level National Committee on Corporate Governance (*Komite Nasional Mengenai Kebijakan Corporate Governance* or 'KNKGC') created in August 1999.[65] Completed in March 2000 and patterned after overseas models, the Code contains a list of guidelines aimed at promoting good corporate governance. This includes guidelines concerning audit committees, the role of the corporate secretary, and corporate disclosure. On the issue of independent board members generally, the Code stipulates that at least 20 per cent of commissioners must be independent of the directors and controlling shareholders and must hold no interests which may impair their ability to perform duties impartially.[66] The same principle applies to directors.[67] At this stage, the Code is not a mandatory instrument. However, there are industry and professional bodies, such as the Forum for Corporate Governance in Indonesia ('FCGI'), which are strongly advocating that the Code be adopted by companies, especially those which are publicly listed.[68]

In summary, the present formal framework for corporate governance of JSX-listed companies comprises the *Company Law 1995* and *Capital Market Law 1995* as the foundation legislation, together with all previous regulations (including a wide range of other rules issued by Bapepam and the JSX) in so far as they are not contrary to or revised by the foundation legislation, as well as all new regulations issued subsequent to the date when the foundation legislation came into operation. In addition, individual companies operating in particular sectors, such as banking, may have extra sector-specific regulations applicable to them. All of this is supplemented by the new Code for Good Corporate Governance the adoption of which is not yet mandatory.

64 Together, these regulations and circular letters may be referred to as 'JSX regulations'.

65 This Committee (*Komite Nasional mengenai Kebijakan Corporate Governance*) was formed through the Decree of the Coordinating Minister for Economics Finance and Industrie No Kep. 10/M.EKUIN/08/1999, 19 August 1999.

66 Indonesian Code for Good Corporate Governance, art II(2).

67 Indonesian Code for Good Corporate Governance, art III(2).

68 See Forum for Corporate Governance in Indonesia <http://www.fcgi.or.id> at 1 September 2002. Established in February 2000, the FCGI appears to be the leading corporate governance advocate at present. For another corporate governance body, see the Indonesian Institute for Corporate Governance ('IICG') <http://www.iicg.org> at 1 September 2002.

IV FAMILY RELATIONSHIPS IN THE BOARDS OF INDONESIAN LISTED COMPANIES

Having sketched the Indonesian corporate regulatory framework, the extent of family relationships in the boards of companies listed on the JSX is now examined. Below, I explain the meaning of family relationships as used in Indonesian legislation, the methodology used in this article to determine the existence of such relationships within the boards of JSX-listed companies, as well as the potential limitations of the findings.

A Family Relationships

In examining family relationships in the Indonesian corporate sector, relevant legislative provisions include those prohibiting family members from sitting on the boards of the same company. Article 22(6) of Bank Indonesia Regulation No 2/27/PBI/2000 prohibits individuals with family relationships (*hubungan keluarga*) from constituting a majority in the board of commissioners of a general bank.[69] Similarly, reg C1(a) of BEJ Securities Registration Regulation I-A[70] ('BEJ Regulation') requires a listed company to have at least 30 per cent of its board of commissioners comprised of independent commissioners. To qualify as an independent commissioner, the BEJ Regulation states, among other things, that the person must have no 'affiliation' with the controlling shareholder or any other director or commissioner of the listed company.[71] There is no definition of 'affiliation' in the BEJ Regulation. If we use the definition of 'affiliation' found in art 1(1)(a) of the *Capital Market Law 1995*, then the coverage is very wide. It encompasses family relationships by marriage or descent to the second level, both horizontally as well as vertically. More specifically, the Elucidation[72] to art 1(1)(a) of the *Capital Market Law 1995* explains that in respect of an individual, family relationships created by marriage include their spouse, parents-in-law, in-laws of children, grandparents of spouse, spouses of grandchildren, their spouse's brothers and sisters (as well as *their* spouses), and the individual's own brothers and sisters-in-law. Family relationship by descent is explained in the

69 Article 22(6) of the Bank Indonesia Regulation No 2/27/PBI/2000 dated 15 December 2000 on General Banks (*Peraturan Bank Indonesia Nomor 2/27/PBI/2000 Tentang Bank Umum*) states that '[t]he majority of members of the Board of Commissioners are prohibited from having family relationships to the second degree among fellow members of the Board of Commissioners'. Interestingly, there is no similar provision for directors. The only provision in this regulation which touches on the independence of directors is art 23(3) which states: 'The President Director of a Bank is obliged to be a party who is independent of the controlling shareholder'.

70 BEJ Securities Registration Regulation I-A Concerning General Provisions for Registration of Equity Securities on the Bourse (*Peraturan Pencatatan Efek Nomor I-A Tentang Ketentuan Umum Pencatatan Efek Bersifat Ekuitas di Bursa*) as amended by Resolution of the Board of Directors of BEJ No Kep-339/BEJ/07-2001, 20 July 2001.

71 BEJ Securities Registration Regulation I-A Concerning General Provisions for Registration of Equity Securities on the Bourse, arts C2(a), C2(b).

72 Indonesian legislation such as Laws and Government Regulations is often accompanied by an Elucidation, or explanatory memorandum. The explanation contained in the Elucidation is generally regarded as authoritative in interpreting specific legislative provisions.

Elucidation to mean an individual's parents and children, grandparents and grandchildren and that individual's own brothers and sisters.

The important point to note in respect of the Bank Indonesia and BEJ Regulations is that both are prohibitory in nature. Neither contains a positive obligation to make explicit disclosure of family relationships among board members. Assuming that the Bank Indonesia Regulation is fully complied with, a general bank should not have a majority of commissioners who are family members. Similarly, assuming that the BEJ Regulation is fully complied with, no listed company can have more than 70 per cent of its commissioners affiliated with one another. This is far from telling us the extent of family relationships which *actually* exist within board members of a company. The current regulations tell us what should not happen but they fail to tell us what is actually happening in relation to family relationships among board members.

The situation would be very different if there was a provision which imposed a positive obligation upon companies to explicitly disclose the existence of family relationships among board members. There does not appear to be such a provision in place at present, based on an examination of the *Company Law 1995*, *Capital Market Law 1995*, the Bapepam regulations and the BEJ regulations.

In the absence of an explicit disclosure requirement, the incidence of family relationships is determined, for the purposes of this study, by the existence of a surname common to two individuals. Using this method, 'family relationship' may mean a blood relationship (for example, as between two siblings sharing one or two common parents) or a spousal relationship (where one spouse adopts the other spouse's surname). It does not necessarily include other family relationships created by marriage (for example, as between in-laws) where such relationships are not characterised by the use of a common surname. It follows that this method uses a narrow rather than broad conception of 'family relationship'. Thus, it is likely to understate the incidence of family relationships within the boards of JSX-listed companies.

There are two additional limitations of using a common surname as the criterion for determining family relationships. One is that it is possible for two individuals to have the same surname but not have a family relationship. If so, the extent of family relationships may be overstated. Based on anecdotal evidence, however, this appears quite unlikely in the Indonesian context. Indonesian surnames, unlike those in other ethnic groups, tend to be different to one another. Among indigenous Indonesians, the variety of surnames is generally more extensive than in other Asian and Western communities. Some surnames (such as Widjaja) are more common than others but, overall, Indonesia has a wide variety of surnames. This is partly due to the fact that Indonesia, with a population of around 210 million, is home to more than 250 ethnic groups with an equally wide variety of languages and regional dialects — and surnames.[73]

A second limitation is that some Indonesians do not have surnames at all. Prime examples are Indonesia's first two presidents, Soekarno and Soeharto. Both are Javanese by ethnic background and, like some other Javanese, have only one name. Their children may or may not bear their name. For example, Megawati Soekarnoputri (the current President of Indonesia and a daughter of Soekarno) and Bambang Trihatmodjo (a prominent businessman and son of Soeharto) both have names which do not bear their father's name as a surname. This demonstrates that two individuals may have a family relationship that is not reflected by a common surname.

In summary, the fact that Indonesian surnames (where they exist) may not necessarily be carried on by subsequent generations will tend to understate the true extent of family relationships in the boards of JSX-listed companies. This will be accentuated by the fact that the term 'family relationship' as used in this study excludes relationships created by marriage. On the other hand, the fact that two unrelated individuals can have the same surname may overstate the findings. Given the low probability of this occurring, it is likely that overall, the findings will be biased towards understatement of the existence of family relationships.

Despite these limitations, the use of surnames as a technique to determine family relationships in the boards of JSX-listed companies is appropriate in the circumstances. An alternative method would be to survey a limited sample of JSX-listed companies through a questionnaire designed to reveal the existence of family relationships. Such an approach, although potentially useful, would be subject to the usual limitations involved in survey-based studies, including issues concerning the representativeness of the sample. A more significant operational issue, given the generally discreet and sometimes secretive attitude of many Asian business families, is the potentially low response rate to such a survey. Thus, the determination of family relationships by using common surnames as described in the preceding paragraphs is a reasonable — albeit imperfect — method, given the limited scope of Indonesian corporate disclosure regulation.

B Data and Methodology

Published data concerning 259 listed companies in mid-1997 and 307 companies in mid-2001 was used. Since 1990, this data has been published annually by the Institute for Economic and Financial Research in the *Indonesian Capital Market Directory* ('*ICMD*'). The *ICMD 1997*[74] contains information on JSX-listed companies as at June 1997, just prior to the onset of the Asian

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73 For an introduction to Indonesian ethnicity and culture by one of Indonesia's leading anthropologists, see Koentjaraningrat (ed), *Manusia dan Kebudayaan di Indonesia* (1971). The size of these ethnic groups vary tremendously, from the Yamdena people in the Tanimbar Islands, south of the Moluccas, numbering around 35 000, to the 80 million (now closer to 120 million) Javanese who constitute the largest and most influential ethnic group in Indonesia: Koentjaraningrat, *Masalah Kesukubangsaan dan Integrasi Nasional* (1993) 16.

74 Institute for Economic and Financial Research ('ECFIN'), *Indonesian Capital Market Directory* (1997).

financial crisis.[75] The *ICMD 2001*[76] contains similar information as at May 2001. From these directories, the number of companies listed in various industry categories in each of the two years is shown in Table A.

TABLE A: NUMBER OF JSX-LISTED COMPANIES IN INDUSTRY CATEGORIES (2001 AND 1997)

	2001	**1997**
Total Number of Listed Companies	307	259
Industry Categories		
Agriculture, Forestry & Fishing	6	3
Animal Feed & Husbandry	7	6
Mining & Mining Services	7	6
Construction	2	2
Manufacturing	155	144
Transportation	8	6
Communication	2	2
Wholesale & Retail Trade	14	8
Banking, Insurance, Finance & Property	90	71
Hotel & Travel Services	5	7
Holding & Investment	2	—
Others	9	4

The information in each directory was extracted and analysed by first compiling a list of individual board members, ordered alphabetically by their surname, in respect of every company listed in each directory. The resulting master list represented an exhaustive list of all individuals who sat as a director or a commissioner in JSX-listed companies.

Where two individuals shared a common surname and also sat on the board of directors and/or board of commissioners of the same company, this was taken as establishing a family relationship between these two individuals. The same applied where there were three or more individuals sharing the same surname.

A complete listing of individuals holding multiple board positions in different companies was also extracted. This revealed the extent to which an individual held simultaneous multiple board positions in JSX-listed companies. Given the

75 The Asian financial crisis was precipitated by the devaluation of the Thai baht on 2 July 1997. It quickly spread to a number of Asian countries. By mid-August 1997, the Indonesian rupiah had lost 27 per cent of its value against the US dollar and the Indonesian monetary authorities abandoned the controlled float of the rupiah and were forced to allow it to float freely: J Thomas Lindblad, 'Survey of Recent Developments' (1997) 33 *Bulletin of Indonesian Economic Studies* 3, 5.

76 ECFIN, *Indonesian Capital Market Directory 2001* (2001).

two-tier board structure of Indonesian companies, the data from this analysis shows how many individuals held multiple executive board positions (ie, directorships) and supervisory board positions (ie, commissionerships). Such data is not readily available to the public. Article 87 of the *Company Law 1995* expressly requires every director to disclose in a Special Register their own and their family's shareholdings in that company as well as in other companies. However, there is no equivalent provision requiring the disclosure of concurrent board positions. The obvious concern is that an individual who holds simultaneous multiple board positions of an executive nature may not be able to concentrate their energies fully, or may not always act in the best interests of all the companies in which they are a board member.

C Results

Based on the master list referred to earlier, the incidence of family relationships within the boards of JSX-listed companies in 1997 and 2001 is summarised in Table B. In reading this table, it should be noted that the numbers in the right-hand column do not necessarily bear any direct relationship with the numbers in the middle column. The right-hand column shows the number of companies with two or more family members in their boards in 1997 and 2001, respectively. The middle column figures show the number of companies having 2–8 family members on their boards. In respect of the relevant year, the sum of the figures in the middle column may not necessarily equal that in the right-hand column. This is because a company may have two (or more) sets of family members from *different* families within their boards. One example is PT Tirta Mahakam Plywood Industry Tbk which, in 2001, had among its board members individuals with two different sets of common surnames: Hariyanto (3 individuals) and Santoso (2 individuals). Such a company would be counted as one company in the right-hand column, but would appear twice in the middle column — once under the sub-column (2) for the surname Santoso and once under the sub-column (3) for the surname Hariyanto.

TABLE B: FAMILY RELATIONSHIPS IN JSX-LISTED COMPANIES (1997 AND 2001)

	Number of Family Members in the Board of a Single Company							Number of Companies with Two or More Family Members
	2	3	4	5	6	7	8	
1997	101	41	13	5	4	4	1	155
2001	90	33	14	3	2	0	1	125

Two key points can be drawn from Table B. Firstly, in 1997, there were 155 listed companies with two or more family members in their boards. This constitutes 59.8 per cent of the total number of 259 listed companies in that year. In 2001, this figure dropped to 125 companies, constituting 40.7 per cent out of the total number of 307 listed companies in that year. In other words, after the

Asian financial crisis, the number of listed companies which had two or more family members within their boards fell by almost 32 per cent. Secondly, the fall in the number of companies with five or more family members in their boards is even more striking. This figure was 14 companies in 1997 but was more than halved to 6 companies in 2001. If this fall is viewed in terms of the percentage of the total number of listed companies in these two years, the figures are even greater — a drop from 0.054 per cent in 1997 to 0.0195 per cent in 2001. In other words, any apparent tendency to stack company boards with family members appears to have been reversed significantly by 2001.

It is tempting to speculate as to why this reversal occurred. One possibility is that there was an increasing consensus among commentators that poor corporate governance was a root cause of the crisis.[77] This may have led to pressure on leading Indonesian corporate players to reduce the number of family members in their listed companies, in order to blunt criticism regarding the prevalence of insider relationships within their companies. However, this is mere speculation. There is as yet no clear evidence as to factors causing this significant fall in the number of family members within Indonesian corporate boards. In particular, there were no new regulations which specifically required JSX-listed companies to reduce the number of family members in their boards.

Nevertheless, after the onset of the Asian financial crisis, and especially after President Soeharto resigned in May 1998, media attention on large Indonesian family businesses reached new heights. For example, in a June 1998 issue of a popular business weekly, *SWA*, there were two extensive features on the corporate groups of the Sudono Salim (Liem Sioe Liong) family and the Habibie family.[78] It is possible that such media spotlight played a significant role in indirectly pressuring Indonesian business families to reduce the number of family members in their corporate boards, despite the absence of explicit regulation to that effect.

The second set of data obtained through the analysis of *ICMD 1997* and *ICMD 2001* was a complete listing of individuals who held multiple board positions in different companies. The number of individuals who held multiple directorships in the two years in question was specifically noted. This information is summarised in Table C. While this data may appear to have little direct relevance to the incidence of family relationships in Indonesian companies, it has been included here for two reasons. Firstly, it may have some indirect relevance to corporate governance of family-controlled companies

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77 See, eg, Simon Johnson et al, 'Corporate Governance in the Asian Financial Crisis 1997–98' (Working Paper No 137, Stockholm Institute of Transition Economics and East European Economies, Stockholm School of Economics, 1998) 53; Department of Foreign Affairs and Trade — East Asia Analytical Unit (EAAU), *Asia's Financial Markets: Capitalising on Reform* (1999) 63–5. See also Kenneth E Scott, 'Corporate Governance and East Asia: Korea, Indonesia, Malaysia and Thailand' in Alison Harwood, Robert E Litan and Michael Pomerleano (eds), *Financial Markets and Development: The Crisis in Emerging Markets* (1999) 335; Michael Pomerleano and Xin Zhang, 'Corporate Fundamentals and the Behavior of Capital Markets in Asia' in Alison Harwood, Robert E Litan and Michael Pomerleano (eds), *Financial Markets and Development: The Crisis in Emerging Markets* (1999) 117.

78 'Mimpi Buruk Grup Salim', *SWA* (Jakarta), 24 June 1998, 69 (Salim family); 'Bisnis Keluarga Habibie', *SWA* (Jakarta), 24 June 1998, 88.

because many listed companies are related to one another by having common individuals or families as substantial or major shareholders. Often such relationships are reflected by the presence of one or more specific family members sitting on the boards of these related companies. All other things being equal, the higher the number of individuals holding multiple directorships in companies, the more likely it is that there are substantial family shareholdings in these companies.

Secondly, the data is interesting in itself: it stimulates discussion as to whether an individual ought to be permitted to hold multiple board positions simultaneously, especially if these are executive positions (ie, directorships). At present, the *Company Law 1995* has no provision which prohibits or limits an individual from holding multiple board positions simultaneously. The obvious question is whether such a provision is necessary, especially with respect to directorships (as opposed to commissionerships). Article 79(1) of the *Company Law 1995* explicitly vests the duty of managing the company on the board of directors and, accordingly, a director is generally understood to be part of the executive management team. In practice, a director is typically a full-time employee of the company. This raises the vexing issue as to whether an individual can simultaneously serve as director in more than one company and fulfil their duties responsibly, especially if the companies are operating in unrelated business sectors.

TABLE C: INDIVIDUALS WITH MULTIPLE BOARD POSITIONS IN JSX-LISTED COMPANIES (1997 AND 2001)

	Number of Concurrent Board Positions									**Number of Individuals with Multiple Board Positions**
	2	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	
1997										
Directorships & Commissionerships	148	58	22	4	7	5	1	0	1	246
Directorships	55	8	2	0	0	0	0	0	0	65
Commissionerships	95	40	8	3	1	1	0	0	1	149
2001										
Directorships & Commissionerships	174	31	11	10	1	1	0	0	0	228
Directorships	42	6	1	1	0	0	0	0	0	50
Commissionerships	90	14	8	5	2	0	0	0	0	119

From the data in Table C, it can be seen that consistent with the decrease in the number of companies with two or more family members in their boards between 1997 and 2001, there was also a fall in the number of individuals who held multiple board positions in these two years. The figure decreased from 246 to 228, a fall of about 7 per cent. More interesting, however, are the numeric ranges where this decline was most pronounced. The change was greatest in the range from three or more concurrent board positions. In contrast to the sharp fall in these ranges, the number of individuals with two board positions actually increased from 148 in 1997 to 174 in 2001. In other words, the figures reflect a twofold movement. On the one hand, there was a general decrease in the number of individuals holding multiple board positions. On the other hand, there was a significantly larger number of such individuals preferring to hold two concurrent board positions.

Additionally, if the data in Table C is juxtaposed with the data in Table B, there appears to be a strong indication that JSX-listed companies show a marked preference for firstly, fewer family members in boards and secondly, individual board members holding fewer multiple board positions. This trend appears clearer if we examine the board positions of specific prominent individuals in the Indonesian corporate scene.[79] For example, in 1997, the individual who held the highest number of multiple board positions was a board member in ten listed companies, holding the position of president commissioner in six, vice-president commissioner in one, and commissioner in three. By 2001, this individual held only four board positions: two as president commissioner, one as vice-president commissioner, and one as commissioner.

A final observation relates to the specific types of board positions held. It is instructive to see how many of these multiple board positions were executive in nature (ie, directorships) and how many were supervisory (ie, commissionerships). Not unexpectedly, the figures for multiple commissionerships were generally higher than those for multiple directorships. In 1997, the highest number of executive positions in listed companies was attributed to an individual holding four directorships comprising one president directorship, two vice-president directorships, and one directorship; he also held two other commissionerships. By 2001, this individual had reduced his total board positions to four, comprising two president directorships, one directorship and one commissionership. In contrast, the highest number of executive board positions in 2001 was held by an individual who was president director of five listed companies.

Clearly, one concern arising from the figures in Table C is whether it is possible for one individual to fulfil their duties effectively if they are a board member of multiple companies. If directorships are to be full-time executive positions, there appear to be strong grounds for arguing that no individual should be permitted to hold more than one directorship (or perhaps, two directorships in two companies operating in the same sector) at any one time. Moreover, it should also be borne in mind that the figures in Table C only reveal multiple board positions in listed companies. It is possible that individuals who hold such multiple board positions in listed companies may also have other board positions in unlisted companies. Based on current legislative provisions, it is impossible to

79 This data, being too detailed in nature, is not shown in Table C.

gauge and verify the extent of this phenomenon. Greater transparency and disclosure are necessary in this area.

V FAMILY RELATIONSHIPS AND INDONESIAN CORPORATE GOVERNANCE

Given that family relationships proliferate in Indonesian listed companies, how does this affect corporate governance? The emerging stream of studies on family capitalism does not appear to focus on this question. Instead, recent studies tend to focus on the broader issue of company performance. For example, a study on family businesses in Taiwan examined, among other things, the relationship between family board representation and return on assets.[80] Similarly, Carney and Gedajlovic sought to explain how the different incentive structures found in the three corporate governance paradigms influence the development of companies' strategic assets and capabilities.[81] A study by Daniel Fitzpatrick focusing on Indonesia examined whether external or independent directors and commissioners can improve corporate governance.[82]

The relationship between family capitalism and company performance is clearly a legitimate area of corporate governance research yielding valuable insights as to the economic efficiency of the family capitalism paradigm. The problem, however, is that such studies may not touch on other fundamental issues of the family capitalism paradigm. They do not reveal the factors and means through which family capitalism affects governance indicators such as transparency and accountability, or performance indicators such as economic efficiency.

For example, Fitzpatrick, in his article on independent directors and commissioners in Indonesia, acknowledged that independent board members will face 'very large informational difficulties' and that any corporate governance reform must be accompanied by continued economic and political reform.[83] However, he gives no additional insight as to what informational difficulties can arise and what factors give rise to these difficulties. Presumably, Fitzpatrick has in mind the possibility that insider board members, including those with family relationships, may monopolise information at the expense of external board members. If this is the case, then transparency in the governance of the company is an issue and it is important to discover what factors cause this informational opacity to occur, what types of information may be withheld, and the scope of such informational opacity. Thus, rather than focusing on performance outcomes, a more interesting — and difficult — area of research is the issue of why and how family relationships affect corporate governance.

80 Yeh, Lee and Woidtke, above n 30.

81 Carney and Gedajlovic, above n 21.

82 Fitzpatrick, 'Indonesian Corporate Governance', above n 19.

83 Ibid 301, 303.

A Family Values

It is here that 'family values' appear to be significant in the workings of family capitalism. By family values I mean the set of social, cultural and ethical values which prevail within a particular family, or which characterise the families of a particular community in general. The question is whether family values affect family capitalism and, if so, how? For example, how families view accountability — a preference towards collective accountability as opposed to individual accountability — will surely affect how family board members view, exercise and accept responsibility for their corporate functions. After all, in many Asian communities, family relationships bring with them family obligations and family-based ethics of right and wrong.[84] In the same way, families' views of transparency may well affect the timeliness and scope of disclosure prevailing in companies under the family capitalism paradigm.

Unfortunately, research concerning the impact of family values on corporate governance is virtually non-existent. However, there appears to be increasing interest in the broader question as to how values in general may affect corporate governance. This interest appears to have its roots in the broader debate concerning norms and their role in corporate law.[85] One particularly interesting proposition within this debate is the thesis put forward by Margaret Blair and Lynn Stout concerning the role of trust, as a social value, in the governance and operation of companies.[86] Elsewhere, and from quite a different perspective, Amir Licht, a Harvard-trained scholar based in Israel, is pursuing another promising line of research, examining how value dimensions from cross-cultural psychology can assist in determining the impact of culture on corporate governance.[87]

Despite these encouraging signs there is still a dearth of research on the specific notion of family values as opposed to values or culture generally. This state of affairs should be addressed as soon as possible because of the potentially significant impact of family values on family capitalism. In the case of Indonesia, the findings discussed in Part IV indicate that a large proportion of Indonesian listed companies has family board members, even after the painful

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84 S Gordon Redding and G Y Y Wong, 'The Psychology of Chinese Organisational Behaviour' in Michael H Bond (ed), *The Psychology of Chinese People* (1986) 267, 284–5. Redding and Wong were writing specifically in relation to companies of Chinese families; however, their observations appear to be applicable to family capitalism generally. For a critique of the culture-based view of a 'Chinese company', see Rupert Hodder, *Merchant Princes of the East — Cultural Delusions, Economic Success and the Overseas Chinese in Southeast Asia* (1996).

85 See 'Symposium: Norms and Corporate Law' (2001) 149 *University of Pennsylvania Law Review* 1607. Previous symposia on the role of norms in law include: 'Symposium, Law, Economics & Norms' (1996) 144 *University of Pennsylvania Law Review* 1643; 'Symposium: Social Norms, Social Meaning, and the Economic Analysis of Law' (1998) 27 *Journal of Legal Studies* 537.

86 Margaret Blair and Lynn Stout, 'Trust, Trustworthiness, and the Behavioral Foundations of Corporate Law' (2001) 149 *University of Pennsylvania Law Review* 1735.

87 See Amir N Licht, 'The Mother of All Path Dependencies: Towards a Cross-Cultural Theory of Corporate Governance Systems' (2001) 26 *Delaware Journal of Corporate Law* 147; Amir N Licht, Chanan Goldschmidt and Shalom H Schwartz, 'Culture, Law and Finance: Cultural Dimensions of Corporate Governance Laws' (2001), <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=277613> at 22 September 2002.

experience of the Asian financial crisis. This appears to confirm the Claessens, Djankov and Lang study which showed, using 1996 data, that the top 15 families in various Asian jurisdictions controlled substantial chunks of the total value of listed assets in their jurisdictions, representing between 21 per cent (in the case of Indonesia) and 84 per cent (in the case of Hong Kong) of GDP.[88] If a handful of families control such a large proportion of listed assets and GDP, it does not seem far-fetched to suggest that entire national economies may be affected by family discussions in the dining room at home as much as by formal discussions in the boardroom at work.

In the case of Indonesia, the concept of family values may have an even greater impact on family capitalism because it appears to be formally recognised at the highest levels. The term *kekeluargaan* (family spirit or brotherhood) appears explicitly in the 1945 *Constitution* as well as in other legislative enactments.[89] According to the noted Indonesian sociologist, Selo Soemardjan, the fundamental concept underlying the notion of *kekeluargaan* is that every Indonesian community, whether social, political or corporate, is seen as an 'enlarged version of a family'.[90]

The roots of the concept of *kekeluargaan* are unclear. Mohammad Hatta, cofounder of the Indonesian Republic and first Vice-President of the new State, expressed the view that *prinsip kekeluargaan* (principle of family spirit) originated from the *Taman Siswa* movement, a native Indonesian social movement active prior to independence.[91] Elsewhere, Hatta also noted the strong connection between *kekeluargaan* and the concept of cooperatives, arguing that 'the spirit of Indonesian collectivism to be revived through cooperatives emphasizes cooperation in an atmosphere of the family spirit among individuals, free from subjugation and cooercion'.[92]

The concept of *kekeluargaan* is not without its critics. Some see *kekeluargaan* as a convenient basis for the political elite, especially during Soeharto's New Order period, to justify 'command capitalism' and cronyism.[93] Others suggest that art 33, which explicitly refers to *kekeluargaan*, contributes to the organisational dysfunction of the entire 1945 *Constitution*.[94] On the whole, given its deep social and cultural roots, there is probably some basis for concluding that the notion of *kekeluargaan* nurtures a sense of familial responsibility and set of values. These uphold the family as a basic unit and mirror of society. As one

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88 Claessens, Djankov and Lang, above n 14, Table 9.

89 The term *kekeluargaan* appears in art 33 of the 1945 *Constitution* and its Elucidation. For a lengthier discussion of *kekeluargaan* within Indonesian corporate governance, see Selo Soemardjan, 'The Cultural Background of the Indonesian Businessman' (1975) 23(2) *Ekonomi dan Keuangan Indonesian* 95.

90 Soemardjan, above n 89, 99.

91 Mohammad Hatta, 'Implementation of Article 33 of the 1945 Constitution' in Z Yasni, *Bung Hatta's Answers* (1981) 186, 187. On the Taman Siswa movement, see Kenji Tsuchiya, *Democracy and Leadership: Rise of the Taman Siswa Movement in Indonesia* (Peter Hawkes trans, 1987).

92 Mohammad Hatta, 'The Ideal of Cooperatives' in Z Yasni, *Bung Hatta's Answers* (1981) 176, 183.

93 Tim Lindsey, 'Black Letter, Black Market and Bad Faith: Corruption and the Failure of Law Reform' in Chris Manning and Peter van Diermen (eds), *Indonesia in Transition* (2000) 278, 281–2.

94 David Linnan, 'Indonesian Law Reform, or Once More unto the Breach: A Brief Institutional History' (1999) 1 *Australian Journal of Asian Law* 1, 4–6.

foreign commentator noted: 'The key word to understand Pancasila [Indonesia's unique set of five basic principles] democracy and human rights lies therefore not in any notion of equality but in the idea of *kekeluargaan*, in functioning as a family'.[95]

If this concept of family spirit is in fact deeply rooted in Indonesian political, economic and social thinking, it suggests that leadership — including, presumably, leadership in a company — may be viewed as being vested in a father figure, creating a patrimonial leadership structure. Patrimonialism, a concept which owes much to the German sociologist, Max Weber, refers to the tendency for relationships within a community of people to be dominated by an individual patriarch or father figure.[96] Various commentators have noted the influence of patrimonialism in many aspects of Indonesian affairs. These include areas as diverse as the armed forces, business, government and legal development.[97] In the same vein, the question is whether patrimonial tendencies, as encapsulated in family values, also affect Indonesian corporate governance.

If *kekeluargaan* is manifested in the corporate sphere, then the relationships among board members may end up being characterised by family values rather than legal values. Legal duties will be superimposed by family obligations. Legal ethics will be superimposed by family ethics. If so, the typical Indonesian company will operate on an 'organisational logic' different from companies in the West.[98] In other words, an Indonesian company may end up operating on a set of institutional authority relations derived from traditional family values rather than from formal legal rules contained in the *Company Law 1995* or the capital market legislation. This is potentially significant considering the empirical data showed that, during 1997 and 2001, 40–60 per cent of JSX-listed companies had two or more family members on their boards.

B Implications for Indonesian Corporate Governance

If family capitalism in Indonesia operates substantially by way of an organisational logic which is influenced by family values, how will this impact the corporate governance of companies operating within this paradigm? I suggest there are at least three aspects of corporate governance which may be affected.

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95 Niels Mulder, 'The Ideology of Javanese-Indonesian Leadership' in Hans Antlöv and Sven Cederroth (eds), *Leadership in Java: Gentle Hints, Authoritarian Rule* (1994) 57, 58.

96 The literature on Weber is extensive: see Max Weber, *Economy and Society* (Guenther Roth and Claus Wittich, trans and eds, 1978) 1006; Max Rheinstein (ed), *Max Weber on Law in Economy and Society* (1969).

97 See, eg, Harold Crouch, 'Patrimonialism and Military Rule in Indonesia' (1979) 31 *World Politics* 571; Andrew MacIntyre, 'Power, Prosperity and Patrimonialism: Business and Government Indonesia' in Andrew MacIntyre (ed), *Business and Government in Industrialising Asia* (1994) 244; Bernard Quinn, 'Indonesia: Patrimonial or Legal State? The Law on Administrative Justice of 1986 in Socio-Political Context' in Timothy Lindsey (ed), *Indonesia: Law and Society* (1999) 258.

98 Nicole Biggart, a professor of management and sociology in the University of California at Davis, uses organisational logic to refer to 'a legitimating principle that is elaborated in an array of derivative social practices … [O]rganizational logics are the ideational bases for institutionalized authority relations': Nicole W Biggart, 'Explaining Asian Economic Organization: Toward a Weberian Institutional Perspective' in Marco Orrù, Nicole W Biggart and Gary G Hamilton (eds), *The Economic Organization of East Asian Capitalism* (1997) 3.

The first aspect is the notion that a company is a separate legal entity. The legal approach prevailing in the West distinguishes between the rights and obligations of shareholders from those of the company. This is at the heart of the limited liability concept. Thus, although shareholders bring the company into being, they are distinct from the company and liable only to the extent of the value of their invested capital. They are generally not responsible for, and do not have to make good, any wrongdoing committed by their company. According to this legal approach, a company may be used by its shareholders as an independent vehicle to maximise profit and minimise personal liability.

From a historical perspective, however, the notion that a company as a corporate entity has a separate legal personality from its members, such that its members enjoy limited liability, is a relatively recent concept. English courts upheld the notion of limited liability around the 15th century.[99] The notion of a family is much older than the notion of a corporation and goes back to the ascent of man. Thus, James Coleman from the University of Chicago wrote that:

> Before [the 14th century], corporate actors ... could be traced to a single person, the head of the family, or of the household or estate or clan ... Law in some parts of the world even today does not recognize corporate actors other than the family and its extensions. For example, in Muslim law, there is no place for corporate actors which cannot be traced to the head of a family or clan.[100]

In other words, the notion of the family unit is much older than that of the corporate unit. Societies which place great emphasis on families may thus view the company as an extension of, and not in contradistinction to, the family unit. Interestingly, as early as 1978, Nono Makarim, an Indonesian lawyer of some repute, had noted that the ethnic Chinese in Indonesia tend to view a company as 'an association of people rather than that of capital'.[101] This suggests that, at least to the Chinese, a corporation may be more a nexus of relationships rather than a nexus of contracts.[102] If so, this clearly strikes a chord with the proposition advanced by Blair and Stout to the effect that trust can play a significant role in moulding the shape of cooperation among key corporate players and their companies.[103] (Incidentally, the ethnic Chinese in Indonesia number only about 3–4 per cent of the total Indonesian population but are estimated to control approximately 73 per cent of the stock market capitalisation.)[104] Similarly, in the context of China, recent scholarship suggests that 20th century transplants of Western company law may have limited success given the traditional Chinese view of the corporation as a kinship or clan group.[105] Family values may

99 Paul L Davies (ed) *Gower's Principles of Modern Company Law* (6th ed, 1997) 21–3.

100 James Coleman, 'Responsibility in Corporate Action: A Sociologist's View' in Klaus J Hopt and Gunther Teubner (eds), *Corporate Governance and Directors' Liabilities: Legal, Economic and Sociological Analyses on Corporate Social Responsibility* (1985) 69, 72.

101 Nono Anwar Makarim, *Companies and Business in Indonesia* (SJD Thesis, Harvard University Law School, 1978) 90. He later became one of the founders of Makarim & Taira, one of Jakarta's leading law firms today.

102 See also Teemu Ruskola, 'Conceptualizing Corporations and Kinship: Comparative Law and Development Theory in a Chinese Perspective' (2000) 52 *Stanford Law Review* 1599.

103 Blair and Stout, above n 86.

104 'Empires Without Umpires', *Asian Business Survey, The Economist* (London), 7 April 2001, S4.

105 See Ruskola, above n 102.

encourage individuals to view a company as part of a family unit in which personal obligations and collective responsibility are paramount.[106] Family values thus gloss over legal theory.

This familial approach does not emphasise the separation between shareholders on the one hand and the corporate entity on the other hand. Rather, what is suffered by the company is felt by the shareholders. Any reproach falling upon the company becomes a reproach to the shareholders. Correspondingly, any assets or gains available for use by the company are assets and gains available for use by the shareholders. All of this appears to be consistent with the insightful observation by Professor Katsuhito Iwai of the University of Tokyo, that a corporation's separate legal personality and the limited liability of its shareholders are simply two sides of the same coin.[107]

This blurring of the distinction between personal assets and corporate assets is not an uncommon phenomenon in Indonesia. Kwik Kian Gie, a well-known economic commentator who is currently the Minister of State for National Development Planning in President Megawati's Cabinet, once criticised prominent Indonesian businessmen who have a penchant for pilfering the assets of their companies which they saw as their personal assets.[108] Similarly, in an article on the corporate governance of Indonesian banks, Daniel Fitzpatrick referred to the tycoons of large Indonesian conglomerates who used 'their banks as private sources of finance' or 'cash cows' during the early years of Indonesian banking deregulation.[109] This 'expropriation' of company assets by majority shareholders at the expense of the interests of minority shareholders, has also been documented elsewhere.[110]

If *kekeluargaan* and family values in Indonesia are blurring the notion of a company as a separate corporate entity, this may significantly impact corporate governance. Not only are company assets at risk from expropriation by the families who control the company, but the entire concept of the company itself flounders. The reason is that the concept of separate corporate personality lies at the heart of the modern company. If this concept is watered down, much of the existing scholarship on companies and company law is undermined. For example, the issue of the separation of ownership and management — fundamental to the Berle and Means analysis of companies — is sidelined simply because in family-controlled companies there is effectively no separation of ownership and management. Similarly, if family board members are concerned with protecting family interests, the tension may be between family

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106 Although at first sight this familial approach appears to be uneconomic in a capitalistic system, there is some evidence that it actually makes business sense in certain environments, such as Hong Kong: Wong Siu-lun, 'Modernization and Chinese Culture in Hong Kong' (1986) 106 *China Quarterly* 306.

107 Katsuhito Iwai, 'Persons, Things and Corporations: The Corporate Personality Controversy and Comparative Corporate Governance' (1999) 47 *American Journal of Comparative Law* 583, 591.

108 Kwik Kian Gie, 'Apakah Perseroan Terbatas Kita Terbatas Pula Hak dan Tanggung Jawabnya?' in Adrianus Meliala (ed), *Praktik Bisnis Curang* (1993) 110.

109 Daniel Fitzpatrick, 'Corporate Governance, Economic Crisis and the Indonesian Banking Sector' (1998) 9 *Australian Journal of Corporate Law* 178, 188–9.

110 See Claessens et al, above n 14. For a more journalistic account, see Michael Backman, *Asian Eclipse: Exposing the Dark Side of Business in Asia* (revised ed, 2001).

board members and independent board members, rather than between shareholders and managers.

A second related aspect of corporate governance that might be affected by family values is the corporate governance principle of accountability. In the family capitalism paradigm, the obligations of the company may become confused with those of its shareholders and officers. Moreover, the notion of individual accountability or responsibility may become intertwined with the collective accountability or responsibility of the family which owns or controls the company. It may then become difficult to instil the idea of individual accountability upon company officers.

One example of the preference for collective accountability over personal accountability is the case of Bank Summa and the Soeryadjaya family.[111] When Bank Summa began to flounder in 1992, there was no legal obligation for the wealthy Soeryadjaya family to take action for the simple reason that the bank was a separate legal entity. Yet the Soeryadjaya family, led by patriarch William Soeryadjaya, valiantly did so. In the course of trying to save Bank Summa, they pledged their Astra International shares to various creditors. The rescue attempt failed, Bank Summa was placed into liquidation, and the Soeryadjaya family eventually lost control of Astra International and hundreds of millions of dollars in the process.

Such an act makes little legal sense. However, viewed from a familial approach, it makes perfect sense since the Soeryadjaya 'family honour' overrode legal duty. In other words, it seems that familial values can potentially reinterpret the notion of accountability. Such a reinterpretation of accountability can be a double-edged sword. On the one hand, the personal accountability of a director may be viewed as a family obligation. So, a family may rescue a family member, or family company of which that family member is a director, when there is no legal duty to do so. On the other hand, the notion of individual accountability may be overshadowed by the notion of collective accountability. So, a director who has committed some wrongdoing may be shielded from the legal process and not be punished.

Such a dilution of individual accountability is contrary to one of the pillars of modern corporate governance. The *OECD Principles of Corporate Governance* explicitly state accountability as one of the key criteria for evaluating the soundness of a corporate governance system.[112] More recently, accountability is very much in the spotlight as a result of the Enron and WorldCom bankruptcies and the overall concern over corporate governance in the United States. New legislation has been enacted there which focuses, among other things, on raising the level of personal accountability of senior executives in listed companies. The new corporate responsibility law signed by President George W Bush on 30 July 2002 provides for, among other things, long prison terms for high-ranking executives as well as accountants who provide false information.[113]

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111 Tabalujan, above n 3, 152–8.

112 OECD, above n 4.

113 *Sarbanes-Oxley Act of 2002*, Pub L No 107–204, 116 Stat 745 (2002). See Elisabeth Bumiller, 'Bush Signs Bill Aimed At Fraud in Corporations', *New York Times* (New York), 31 July 2002, A1.

The point being made by the United States authorities is very clear: one way to improve corporate governance is to make individual executives even more personally accountable. The problem in Indonesia is that if family values and *kekeluargaan* make it difficult to conceptualise let alone enforce personal accountability, how will Indonesian corporate governance improve — at least in the eyes of the rest of the world? New legislation creating higher levels of personal accountability can be enacted in Indonesia, but will such legislation be enforced? The point is that institutional and legislative reforms cannot occur in a social vacuum. Often, such reforms are stillborn because of an inhospitable social context. On this point, one of the doyens of East Asian law, Jerome Cohen, was absolutely correct when he declared that: 'governance can't improve faster than legislation, but legislation can't move faster than social practice'.[114]

A third aspect of corporate governance which may be affected by family values concerns the issue of authority and supervision within a company. It is not uncommon to find examples of family capitalism where individual family members are placed in positions of formal authority although, in practice, they may not exercise their authority on their own volition. This point appears to have been suggested in a recent issue of *The Economist* containing a special survey of Asian business.[115] It described a lunch hosted by Robert Kuok, one of East Asia's legendary tycoons, in the following words:

> At a recent lunch [Robert Kuok] hosted, one of his guests put a question to Mr Kuok's fortysomething, western-educated son Ean, who runs Hong Kong's main English-language newspaper [*South China Morning Post*]. But just as Ean started to answer, his father noted that it was time for another helping of garoupa, Mr Kuok's favourite fish, and sent his son out of the room to order more. The incident left little doubt about who did the talking in the family.[116]

The inference is that, although Robert Kuok formally resigned in 1997 from the chairmanship of South China Morning Post (Holdings) Ltd in favour of his son Ean, the patriarch still 'did the talking'. Whether this occurs only in respect of servings of garoupa or whether it also applies to complex board decisions may, of course, be a different issue altogether.

In Indonesian companies, the impact of family values on authority and supervision is further accentuated by the two-tier boards used by companies. There are cases of family-controlled companies where a younger sister sits as a commissioner while an older brother (typically with an MBA from a United States university) sits as one of the executive directors or perhaps as the president director of the company. In such a situation, given the Asian emphasis on family hierarchy, can the younger sister effectively discharge her duty to advise and supervise her older brother? This is a classic case of family values clashing with legal duties.

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114 'Of Laws and Men', *Asian Business Survey*, *The Economist* (London), 7 April 2001, 5, 15. Cohen was the director of East Asian Legal Studies at Harvard Law School from 1964–79, taught at New York University Law School and is now a lawyer with the New York firm of Paul, Weiss, Rifkind, Wharton & Garrison. The comment was made in respect of China but applies equally to many other countries, including Indonesia.

115 Ibid.

116 Ibid 5.

In summary, Indonesian family values can have a potentially significant impact on corporate governance. Concepts such as the separate legal personality of a company, the accountability of management, and the scope of authority of board members are generally well-known and well-accepted in developed countries. Problems arise with attempts to transplant these concepts into countries like Indonesia, whose social norms and cultural values are at times quite different from and contrary to those prevailing in the societies where these concepts originated. In such situations, the 'transplant effect' — which hinders the smooth acceptance and implementation of foreign laws in a local context — may stunt and even negate well-meaning reforms.[117]

VI CONCLUSION

This article highlights family capitalism as a third paradigm of corporate governance, supplementing the managerial capitalism paradigm in Anglo-American systems, and the alliance capitalism paradigm prevailing in Japan and Germany. Recent research shows exceptionally high levels of family control of listed companies in East Asian jurisdictions. Accordingly, research into the family capitalism paradigm can yield useful insights as to how the corporate governance phenomenon manifests itself in these countries.

In the particular case of Indonesia, an exploratory investigation to determine the extent of family relationships in the boards of JSX-listed companies for 1997 and 2001 revealed a high percentage (59.8 per cent and 40.7 per cent, respectively) of companies having boards with two or more family members. The analysis identified family relationships based on common surnames. Although somewhat rudimentary, this method is one of the few available given the fact that current legislative provisions do not require disclosure of family relationships among board members. Given the assumptions used in the analysis, the real extent of family relationships in the sample companies may be higher.

Such high levels of family involvement in corporate management highlight the potential for the corporate governance of Indonesian companies to be affected significantly by family relationships. Looking deeper into family relationships, I suggest that the notion of family values becomes especially important in Indonesia. In particular, three aspects of Indonesian corporate governance are especially susceptible to the influence of family values: (a) the notion that a company is a separate legal entity from the shareholders and that its assets do not belong to the shareholders; (b) the notion of personal accountability of directors and commissioners; and (c) the exercise of effective supervision and authority by family board members upon other family board members within the same company.

117 Daniel Berkowitz. Katharina Pistor and Jean-Francois Richard, 'Economic Development, Legality and the Transplant Effect' (Working Paper No 195, Columbia Law and Economics, 2001), <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=290000> at 1 September 2002.

This article has shown the potential significance of family relationships and family values in Indonesian corporate governance. Even as more efforts are being made to improve the legal framework of company and capital market legislation in Indonesia, the impact of family values and social culture should not be overlooked. This is putting into practice Professor John Farrar's recent remark on comparative corporate governance research:

> We need to recognise that our conceptions of corporation and corporate governance are cultural constructs rooted in time and to some extent ethnocentric. We need to be aware of our prejudices ... We need to pay more attention to the reasons for differing patterns of ownership and control round the world and their impact on systems of corporate governance as part of a broader concept of social governance.[118]

118 John H Farrar, 'In Pursuit of an Appropriate Theoretical Perspective and Methodology for Comparative Corporate Governance' (2001) 13 *Australian Journal of Corporate Law* 1, 17.