

12-22-2022

LIABILITY RULE PRACTICES AMIDST THE PROPERTY RULE OF INDONESIAN CAPITAL MARKET

Adiwarman Adiwarman

Center for Indonesian Financial And Economic Law Studies, adiwarman2012@gmail.com

Follow this and additional works at: <https://scholarhub.ui.ac.id/ilrev>



Part of the [Civil Law Commons](#), [Commercial Law Commons](#), [Common Law Commons](#), [Comparative and Foreign Law Commons](#), [Consumer Protection Law Commons](#), [Housing Law Commons](#), [Law and Economics Commons](#), and the [Property Law and Real Estate Commons](#)

Recommended Citation

Adiwarman, Adiwarman (2022) "LIABILITY RULE PRACTICES AMIDST THE PROPERTY RULE OF
INDONESIAN CAPITAL MARKET," *Indonesia Law Review*. Vol. 12: No. 3, Article 3.

Available at: <https://scholarhub.ui.ac.id/ilrev/vol12/iss3/3>

This Article is brought to you for free and open access by the Faculty of Law at UI Scholars Hub. It has been accepted for inclusion in Indonesia Law Review by an authorized editor of UI Scholars Hub.

LIABILITY RULE PRACTICES AMIDST THE PROPERTY RULE OF INDONESIAN CAPITAL MARKET

Adiwarman

Center for Indonesian Financial And Economic Law Studies

Article Info

Received : 10 October 22 | Received in revised form : 25 November 22 | Accepted : 5 December 22
Corresponding author's e mail : adiwarman2012@gmail.com

Abstract

Shareholder protection is the most important legal issue in capital market law. Conflict of interest is one of the corporate actions in the capital market. The property rule requires independent shareholders' approval for conflicts of interest transactions. The property rule paradigm empowers independent shareholders in the company's decision-making process. In practice, listed companies violate the property rule and are subject to sanctions, but the rights of shareholders will be reduced due to fines imposed by the capital market authorities. A normative method is used to answer the problem of how does Indonesia enforce the conflict of interest rule in order to protect the independent shareholders? OJK enforces the law and on violations of conflicts of interest transactions. In this perspective, the liability rule principle emerges to execute the conflict of interest transaction. Recommendations from the results of this study: 1) OJK strictly asks the listed company previously to have approval from independent shareholders for conflict of interest transactions. If it does not harm the listed company, then OJK exposes administrative sanctions without a fine. For the repetitive conflict of interest transactions, OJK can give administrative sanctions with a fine to the listed company. 2) If a conflict of interest causes a loss, then OJK does not stop at enforcing the conflict of interest transactions rule, but should also include the implementation of the liability rule and compensation to shareholders. 3) The fairness of conflict of interest transactions is the determinant of the validity of the transaction. Profit and loss analysis and market price can be applied to assess the fairness of the conflict of interest transaction. 4) The Court becomes a forum to determine the value of compensation for detrimental conflicts of interest transactions.

Keywords: *Property Rule, Liability Rule, Shareholders Protection, Conflict Of Interest Transaction.*

I. SHAREHOLDERS PROTECTION

Shareholder protection is the most important legal issue in capital market law. According to Nindyo Pramono and Sofyan Djalil, the facts regarding this matter are illustrated through the implementation of information transparency.¹ Transparency is a major legal issue derived from the principle of information disclosure.² In capital market law terminology, transparency is exchanged with the concept of information disclosure. In practice, the term or concept of information disclosure is better known in the capital market.

The implementation of this principle is to reveal interests other than the interests

¹ Nindyo Pramono, *Hukum PT. Go Public dan Pasar Modal*, (Yogyakarta: Penerbit Andi, 2013), p. 306.

² Iris H-Y Chiu, "Reviving Shareholder Stewardship: Critically Examining The Impact Of Corporate Transparency Reforms in The UK," *Delaware Journal of Corporate Law Vol. 38, (2014):* p. 986-987.

of the company or shareholders who are smuggled into the company's actions. Legal experts, then, try to close the gap between the control of the company and the shareholders as owners of the company through the implementation of the principle of information disclosure.³ In practice, at least, two forms of information disclosure are periodic reports and incidental reports when a corporate action occurs. More specifically, Berle and Means mention five forms of information disclosure, namely, periodic (financial) reports, incidental reports relating to the development of corporate actions, incidental reports issued by company officials relating to specific matters, providing information to protect shareholders from abnormal situations, providing standard or manual financial information, providing information at any time without being accompanied by periodic financial reports.⁴ All such information is the property of the shareholders.

Due to its importance, information disclosure is said as the soul of activities in the capital market.⁵ Without disclosure of information, activities in the capital market have no basis and benefit to enter or spend their money. Information is a guideline for shareholders to make decisions on their securities. In other words, information is an important reference in making decisions to buy securities offered in the capital market. Law Number 8 of 1995 concerning the Capital Market expressly obliges listed companies to carry out material information disclosure. Normatively, the provisions regarding information disclosure in Indonesian capital market law have followed international capital market legal standards. In fact, there is not only disclosure that is very important to shareholders, but also minority shareholder approval for conflict of interest transactions.

Listed companies are required to have approval from minority shareholders, in this term independent shareholders, for conflict of interest transactions. This is a critical and important rule for minority shareholders, considering that the company's ownership structure is concentrated.⁶ Indonesian listed companies generally originate from and are raised by families, so they are still controlled by the founding families. The minority shareholders were the ones who later joined the company. In terms of Capital Market Law, the minority shareholder is called the independent shareholder. In such an ownership structure, the position of independent shareholders is

³ Chiu, "Reviving Shareholder Stewardship...", p. 989.

⁴ Berle, Means, *The Modern Corporation...*, p. 278.

⁵ Bismar Nasution, *Keterbukaan Dalam Pasar Modal*, (Jakarta: Program Pascasarjana Fakultas Hukum Universitas Indonesia, 2001), p. 1. For further analysis of information disclosure by corporations see Kevin S. Haeberle and M. Todd Henderson, "A New Market-Based Approach to Securities Law," *The University of Chicago Law Review*, Vol. 85, No. 6 (October 2018): pp. 1313- 1394, p. 1316. The federal securities laws include a foundational aspect (securities disclosure law) along with two interrelated overlays (securities fraud law and insider trading law). The disclosure regime compels information sharing. The anti-fraud overlay makes disclosures more credible, while restrictions on trading and tipping by insiders encourage timely information release and create incentives for information production outside the firm.

⁶ This term comes from the results of research by Stijn Claessens, et.al., "Expropriation of Minority Shareholders: Evidence from East Asia," *World Bank, Hong Kong University of Science and Technology, The University of Chicago*, 2013.

http://documents.worldbank.org/curated/en/283121468771272365/120520322_20041117181051/additional/multi-page.pdf. Ansgar Richter dan Christian Weiss illustrates the variety of companies with concentrated ownership in countries that adhere to the civil law tradition. *countries with a common law tradition appear to have lower levels of ownership concentration than countries with a civil law tradition. Within the civil law group, those countries that follow the French civil law approach (France, Italy, Brazil) appear to have the highest level of ownership concentration among their large, publicly quoted firms.* Ansgar Richter, Christian Weiss, "Determinants Of Ownership Concentration In Public Firms: The Importance Of Firm, Industry, And Country-Level Factors," *International Review of Law & Economics* Vol. 33, (March 2013): p. 12.

vulnerable in facing the voting power of the majority shareholders in the decision-making process in a listed company.

Under these conditions, the decision-making process will be largely determined by the information in all aspects, starting from the release time, substance, accessibility, completeness, and accuracy. In concentrated listed-company ownership, the majority will easily control the decision-making process. In such conditions, a conflict of interest transaction may arise. Company law acknowledges that shareholders are the owner of the company. In this notion, the majority shareholder is very likely to take “advantage” of the decision-making process.⁷ In the conflicts of interest rule, the behavior of the directors, commissioners, and majority shareholders of listed companies must be in the same position as independent shareholders. On the other hand, some cases even present facts regarding practices in the capital market that are different from what is stipulated in the conflicts of interest transactions rule. It can be said that the approval for corporate actions carried out by listed companies is in the context of protecting the interests of independent shareholders.

This paper highlights the conflicts of interest transactions rule in the Indonesian capital market and its enforcement. The chosen issues as the main theme of this paper are based on two reasons. First, the Indonesian capital market has been running for almost 44 years since it was reactivated in 1977. The ups and downs of the Indonesian capital market cannot be separated from exercising the disclosure principle, of which the conflict of interest is an element. Second, the attractiveness of the Indonesian capital market is related to the consistency of law enforcement.

II. LITERATURE REVIEW

Indonesia is one of the countries with a growing and developing capital market. As of March 2022, there are 783 companies listed on the stock exchange.⁸ As of March 3, 2022, there were recorded 26,073,867,272 trades involving shares with a value of up to Rp. 21,586.7234,060,801.00 through 1,690,937 transactions.⁹ It can be said that the Indonesian capital market is developing well and is able to attract investors. The question then is whether the positive development of the Indonesian capital market is correlated with the implementation protection of independent shareholders.

In 2009, Indra Surya, in his dissertation, concluded that conflicts of interest transactions were carried out by listed companies in Indonesia without the approval of independent shareholders with administrative sanctions in the form of fines so that public companies' compliance did not grow,¹⁰ in this case, Rule Number IX. E.1. 2008 concerning Affiliated Transactions and Conflicts of Interest in Certain Transactions.¹¹ The approval is strategic from two sides, namely, business opportunities and independent shareholders' protection. The business opportunity requires speed of

⁷ M. Bianchi, et.al., “Regulation and self-regulation of related party transactions in Italy: An empirical analysis,” European Corporate Governance Institute (ECGI) - Finance Working Paper No. 415/2014 CONSOB Working Papers No. 75 (2014): p.7.

⁸ “Profil Perusahaan Tercatat”, IDX, accessed October 2022, <https://www.idx.co.id/perusahaan-tercatat/profil-perusahaan-tercatat/>.

⁹ “Ringkasan Perdagangan”, IDX, accessed October 2022, <https://www.idx.co.id/data-pasar/ringkasan-perdagangan/ringkasan-perdagangan/>.

¹⁰ Indra Surya, *Transaksi Benturan Kepentingan Di Pasar Modal Indonesia*, (Jakarta: Pusat Studi Hukum Ekonomi, Fakultas Hukum Universitas Indonesia, 2009), p. 359.

¹¹ The latest is OJK Regulation Number 42/POJK.04/2020 concerning Affiliated Transactions and Conflict of Interest Transactions which is the legal basis for regulating conflict of interest transactions.

decision-making. Meanwhile, the approval of independent shareholders is a form of protection from conflicts of interest transactions.

Approval indicates that independent shareholders have been previously provided with information regarding conflicts of interest transactions. In this context, a listed company respects the legal right of independent shareholders to approve or reject transactions. That is, by submitting material transaction information, it can be said that the transaction is carried out voluntarily.¹² Then, according to Calabresi and Melamed's framework of property and liability rules, transaction costs determine whether it is more efficient to set the price by private negotiation or collective valuation.¹³

Two kinds of challenges were identified in managing a listed company. First, in situations or opportunities that arise in principal-agent relationships that give rise to agency problems,¹⁴ where directors have power and access to company information.¹⁵ With this access, the directors have information that has not been submitted to the public to be used for incentives. Agency problems are known to result from information asymmetries (agent/manager always has more information than shareholders), and potential wealth transfers from debt instrument holders to stockholders through the acceptance of high-risk and high-return projects by managers.¹⁶ The agency theory nevertheless became the most popular theory in corporate governance research and started to influence corporate law scholarship in general.¹⁷ Efficiency is the measure.¹⁸

Second, it relates to the decision-making process in a concentrated shareholding structure where there are majority shareholders with a board of directors and commissioners on the one hand and independent shareholders. In this context, property rule theory finds a *raison d'être* in the management of listed companies by the shareholders.¹⁹ With these legal provisions, independent shareholders have their own legal instruments to protect their interests from acts committed by companies that are supported by the majority shareholder.

Previously, Rafael La Porta et.al research findings showed that 1) Outside the United States, particularly in countries with poor shareholder protection, even the largest firms tend to have controlling shareholders. Sometimes that shareholder is the State; but more often it is a family, usually the founder of the firm or his descendants.

¹² Guido Calabresi, A. Douglas Melamed, "Property Rules, Liability Rules, and Inalienability: One View of the Cathedral," *Harvard Law Review* Vol. 85 No. 6, (1972): p.1089.

¹³ Jake Phillips, "EBay's Effect on Copyright Injunctions: When Property Rules Give Way to Liability Rules," *Berkeley Technology Law Journal*, 2009, Vol. 24, No. 1, *Annual Review of Law and Technology* (2009): p. 411.

¹⁴ An agency problem is a condition where independent shareholders are unable to access information related to the corporate actions of a public company. See Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer, "Agency Problems and Dividend Policy Around the World," *Journal Of Finance* No. 55, 2000; See also John Armour, Reinier Kraakman, Henry Hansmann, "Agency Problems, Legal Strategies, and Enforcement" *John M. Olin Center For Law, Economics and Business, Discussion Paper No. 644, 7/2009. Harvard Law School.*

¹⁵ The inaccessibility of information gave birth to a condition called the agency problem presented by Berle and Means in the 1960s. Adolf A. Berle, Gardiner C. Means, *The Modern Corporation & Private Property*, (New Brunswick, New Jersey: Transaction Publisher, 1991), p. 293.

¹⁶ Meri Boshkoska, "The Agency Problem: A Measure for Its Overcoming," *International Journal of Business and Management*; Vol. 10, No. 1, (2015): p. 205.

¹⁷ Petri M Petri Mäntysaari, *Organising the Firm: Theories of Commercial Law, Corporate Governance and Corporate Law*, (Dordrecht: Springer, 2012), p. 71

¹⁸ Cheng-Li Huang, Ju-Lan Tsai, "Managerial Morality and Philanthropic Decision-Making: A Test of an Agency Model," *Journal of Business Ethics*, December 2015, Vol. 132, No. 4 (December 2015): p. 797.

¹⁹ Vincent S.J. Buccola, "Bankruptcy's Cathedral: Property Rules, Liability Rules, And Distress," *Northwestern University Law Review*, No. 114, (2019): p. 722.

2) The controlling shareholders typically have control over firms considerably in excess of their cash flow rights. As a consequence, large firms have a problem of separation of ownership and control, but not the one described by Berle and Means. 3) Concentrated ownership leads to poor legal protection of minority shareholders compared to dispersed ownership in the United States.²⁰ Indonesia is not fully similar to the United States, but its conflict of interest transaction rule is a property rule which is the same substance. The approval of independent shareholders is ultimate in a conflict of interest transaction.

III.METHOD

This research uses a normative method to see the consistency between the Rule of conflict of interest and its enforcement. Normative legal research is carried out by asking how the law applies to factual legal issues...²¹ Normative legal research is research on rules or regulations that are in the building system related to legal events. This research is intended to provide legal arguments as a basis for determining whether the event was wrong or right, and how the event should be according to the law.²² This research is going to answer the practice of conflict of interest transactions in the Indonesian capital market. Several cases are taken to conform to the rule of conflict of interest. The period of cases taking place between 2000-2022.

IV. PROPERTY RULE IN INDONESIAN CAPITAL MARKET REGULATIONS

Information is the main property in the capital market, so common law considers it as property.²³ Information is property rights as stated in the judge's decision in the case of *Cotton Co., v. Merrill Lynch*, 650F. Supp. 220 (Western District of Texas, 1986). In such a perspective, the regulation of conflict of interest transactions refers to property theory derived from the common law tradition. According to the common law theory, all information that can provide benefits, even if indirectly, is classified as property for the party who owns it. Whenever information serves a certain use and can be transferred, it can also be addressed as a good. The definition of such goods is achieved in the same way information can be defined as an object in general.²⁴

Property is a legal concept relating to the use or utilization of something.²⁵ Thus, a property allows parties who control or utilize, or sell something they own. Shavell said that the concept of property implies two things, namely, the right to control or own and the right to transfer it.²⁶ The right to control or own includes the right to use and the right to prevent other parties from using or exploiting it.²⁷ The right to control or own is a right attached to the property and it implies the owner has the

²⁰ Rafael La Porta, Florencio Lopez-de-Silanes and Andrei Shleifer, "Corporate Ownership around the World," *The Journal of Finance*. 54, No. 2 (Apr. 1999), p. 511-512.

²¹ Munir Fuady, *Metode Riset Hukum: Pendekatan Teori dan Konsep*, (Jakarta: PT. RajaGrafindo Persada, 2018), p. 134.

²² Mukti Fajar and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif dan Empiris*, (Yogyakarta: Pustaka Pelajar, 2017), p. 43.

²³ Arthur B. Laby, "Resolving Conflicts of Duty in Fiduciary Relationship," *Washington: American University Law Review*, Vol.54, (2005): p. 90.

²⁴ Herbert Zech, "Information As Property," *Jipitec Vol. 3, (2015)*: p. 194.

²⁵ Richard Barnes, *Property Rights and Natural Resources*, (Oxford: Hart Publishing, 2009), p. 61.

²⁶ Steven Shavell, *Foundations Of Economic Analysis Of Law*, (Cambridge: The Belknap Press Of Harvard University, 2004), p. 9.

²⁷ Shavell, "Foundations of Economic".

authority to freely transfer it to anyone. Regarding property rights, Dales mentions some common ones. "You can only buy, sell, lease, rent, lend, or borrow things that are owned; and the only things that are owned are property rights."²⁸ Property rights mean the owner's freedom over it.

Factually, majority and non-majority shareholders pointing to Berle and Means' terms, the separation of ownership and control, is the subject of debate and controversy in the corporate decision-making process.²⁹ Directors may have different interests, but they have also a strong incentive to enter into agreements with other parties as long as it reduces their opportunity to depart from the interests of shareholders.³⁰ The property rule theory was then born to overcome this gap. The property rule is determined as a rule in the capital market because of the distance between the owner and the company directors.

Historically, the concept of the property rule was introduced by Guido Calabresi and A. Douglas Melamed in 1972.

*An entitlement is protected by a property rule to the extent that someone who wishes to remove the entitlement from its holder must buy it from him in a voluntary transaction in which the value of the entitlement is agreed upon by the seller. It is the form of entitlement which gives rise to the least amount of state intervention: once the original entitlement is decided upon, the state does not try to decide its value.' It lets each of the parties say how much the entitlement is worth to him, and gives the seller a veto if the buyer does not offer enough. Property rules involve a collective decision as to who is to be given an initial entitlement but not as to the value of the entitlement.*³¹

Calabresi and Melamed's explanation of the property rule contains several things. First, the property rule is associated with entitlement. Rights are the main concepts that have implications for procedures. Second, transactions between owners and buyers of objects that contain a conflict of interest are voluntary. Third, the owner of the object of the conflict of interest transaction has the right to determine the value. Fourth, decisions regarding conflict of interest transactions are collective decisions.

The essence of the property rule theory of Calabresi and Melamed is to place shareholders as owners³² of the company who have the right to be informed of important corporate actions. The fiduciary duty of the board of directors³³ is to bring shareholders closer to such important and influential information. Moreover, it is fair that, as the owner of the company, the shareholders are asked for approval of the company's conflict of interest.

A property rule prevents any contemplated transaction tainted with self-dealing from proceeding without the minority owners' consent. That is, a transaction can only

²⁸ J.H. Dales, *Pollution, Property & Prices: An Essay In Policy-Making And Economics*, (Cheltenham, U.K.: Edward Elgar, 2002), p. 59.

²⁹ William A. Klein, John C. Coffee, Jr. *Business Organization And Finance: Legal And Economics Principles*, (New York: The Foundation Press, Inc., 1996), p. 170.

³⁰ This is termed agency cost, which is a problem inherent in the principal-agent relationship or in this case the relationship between directors and shareholders. Klein, "Business Organization", p. 171.

³¹ Calabresi, Melamed, "Property Rules, Liability," p. 1092.

³² Brian M. McCall, "The Corporation As Imperfect Society," *Delaware Journal of Corporate Law* Vol. 36, (2011): p. 513.

³³ This concept posits that the authority of the board of directors is tied to the interests of the company as an agent which normally relies on collective action in good faith on each member of the board of directors. See Paul L. Davies, *Principles Of Modern Company Law*, (London: Sweet & Maxwell, 1997), p. 599.

be performed with the consent of the disinterested group at a price that is a function of the group's subjective evaluation of its worth. This category includes systems that either deny interested parties a vote in the matter or require the approval of the disinterested majority of the minority.³⁴

The property rule empowers independent shareholders to control the company's corporate actions. In that way, the majority shareholder cannot make unilateral decisions by ignoring the independent shareholders. From a theoretical perspective, it is stated that certain transactions must obtain the approval of independent shareholders as evidence that the transaction is voluntary.

Despite their privileged position, independent shareholders cannot hold the company hostage in the decision-making process for the conflict of interest transactions.³⁵ The requirement to carry out the decision-making process for the conflict of interest transactions is a quorum. Twice the quorum is not met, then the third general meeting of independent shareholders must take place by ignorance of the quorum. Regardless of the number of independent shareholders present, the decision-making process can be carried out. This is a solution given based on capital market law. Thus, the property rule is still enforced.

On the other hand, normatively, the property rule transfers the role of the state, in this case, the Financial Services Authority (OJK), to shareholders in protecting themselves in such conflict of interest transactions. The property rule empowers independent shareholders through the approval for conflict of interest transactions. That way, the state no longer needs to be involved or interfere in the management of the company.

Different legal entitlements are enforced in different ways. Traditionally, rights such as the ownership of real property are generally protected by injunctions, while tort and contract rights are enforced by means of compensatory damages. As famously explained by Calabresi and Melamed, these different remedial options represent alternatives for enforcing a legal entitlement-- a property rule provides for an injunction and a liability rule provides for non-consensual access in return for a payment of monetary damages.³⁶

The problem is how to determine whether the information is incomplete or perfect. While shareholders or investors need complete, accurate, and timely information for delivery, on the other hand, decision-makers need a level of urgency to complete transactions. This condition creates a dilemma. If follow the Pareto optimum, which teaches that there is an irreversible condition regarding the allocation of resources to increase economic actors (better off) without sacrificing other economic actors (worse off).³⁷ That is, the company, supported by the majority shareholder, first takes the initiative to carry out transactions that are possible without risking the rights of shareholders independent of the company's profits. Initiatives taken by public companies are related to rapid business decision-making to secure profit opportunities. These two aspects contradict each other and imply two different things.

³⁴ Zohar Goshen, "The Efficiency Of Controlling Corporate Self-Dealing: Theory Meets Reality," *California Law Review* Vol. 91, (March 2003): p.398.

³⁵ Surya, "Transaksi Benturan Kepentingan", p. 245-250

³⁶ Mark A. Lemley, Phillip J. Wisner, "Should Property Or Liability Rule Govern Information? *Texas Law Review* Vol. 85, (March 2007): p. 786.

³⁷ Robert Cooter, Thomas Ulen, *Law and Economics*, (Massachusetts: Addison-Wesley Longman Inc., 2000), p. 12.

The property rule guarantees the transfer of property rights, in a broad sense, free from infringement by parties who have power.³⁸ If it can be simplified, then the property rule is an ideal regulatory concept in the capital market that upholds the legal standing of independent shareholders, while the liability rule is a regulatory concept of failing to comply with the property rule so that transactions carried out by listed companies still have legitimacy and legality. Fines from the capital market authorities and compensation to independent shareholders are acceptable as long as the majority shareholders support them.

V. LIABILITY RULE IN THE INDONESIAN CAPITAL MARKET

In the economy, environment, or business, the property rule is always juxtaposed with a liability rule, which is believed to be the solution (emergency exit or contingency exit). That is, if the property rule is violated, then the liability rule is raised as a counterbalancing method or mechanism. Of course, this theoretical speculation cannot be separated from the nature of the transaction. Opportunities and interests related to ownership and governance in a broad sense, both are used pragmatically with a clear measure that independent shareholders should not be harmed.

Conceptually, the property rule emphasizes the protection of the right, while the liability rule emphasizes the aspect of compensation for actions that violate the interests of the owner.³⁹ Thus, it can be understood that the liability rule is a way out of the absence of independent shareholders' approval for quick decision-making. But this is not easy to achieve with the fact that independent shareholders can be very dispersed⁴⁰ or concentrated. It takes time to bring shareholders together for a decision-making meeting. Today, technology eases (dispersed) shareholders to have an online meeting via Zoom.

Back to its nature, listed companies are managed by directors with the aim of increasing the value of shareholders' interests.⁴¹ All the authority given by the shareholders to the Board of Directors is to maintain the success of obtaining profits so that the shareholder value in the company has increased. Conflict of interest transactions open up the possibility of a reduction in the company's revenue because the profits flow to parties other than the company. Another possibility is the fine set by the OJK for violating the conflict of interest transactions rule.

The liability rule was born from a potential and factual situation in the agency cost or agency problem.⁴² When bargaining is impossible, a liability rule will result in efficient behavior if the damages injurers must pay are equal to the harm their acts produce, for injurers will then take action if and only if the value of their activity exceeds the harm it causes. By contrast, a property rule protecting victims will prevent

³⁸ Louis Kaplow, Steven Shavell, "Property Rule Versus Liability Rule: An Economic Analysis," *Harvard Law Review* Vol. 109, (February 1996): p. 715.

³⁹ Shavel, "Foundations Of Economic", p. 267.

⁴⁰ *The dispersed-ownership model is characterized by a strong securities market and substantial dispersion of ownership among the public. Securities markets play a major role in providing firms with capital in the dispersed-ownership model. The concentrated-ownership model, on the other hand, is characterized by strong banks and a weak securities market.* Christopher John Gulino, "The Revision Of Taiwan's Company Law: The Struggle Toward A Shareholder-Oriented Model In One Corner Of East Asia" *Delaware Journal of Corporate Law*, Vol. 28, (2003): p. 82.

⁴¹ Lewis D. Salomon, Alan R. Palmiter, *Corporations: Examples And Explanations*, (New York: Little, Brown and Company, 1994), p. 313.

⁴² Klein, Coffee, "Business Organization And", p. 171.

some efficient activity, while a property rule freely permitting injurers to cause harm will allow some inefficient activity to occur. As a consequence, the liability rule is superior to the use of property rules.⁴³

Certainly, the availability of opportunities and the influence of interests (dominance based-ownership) is more directed at the liability rule. This means that violations are carried out consciously and with a full calculation based on profit and loss analysis as a result of transactions carried out by the company without the approval of independent shareholders. In fact, in fact, when referring to the fiduciary duty theory,⁴⁴ then the actions of the board of directors are certainly aimed at the interests of the company, which are in line with the interests of shareholders, without mentioning or relating to the amount of ownership. This means that the purpose of the legal provisions is that the shareholders are in the sense of organs, not due to the number of share ownership.

Liability rules are set when transaction costs are so high that interested parties will not be able to reach an agreement.⁴⁵ The liability rule is a provision that reduces the advantage of certain parties due to access or voting rights for decision-making in a listed company. Thus, the independent shareholder has the authority in the company's decision-making process in conflicts of interest transactions and cannot be ignored without compensation.

On the contrary, the liability rule is a principle that provides opportunities for certain parties to carry out certain transactions, as long as the owner's rights are paid.⁴⁶ "A liability rule allows transactions tainted with self-dealing to be imposed on an unwilling minority, but ensures that the minority is adequately compensated in objective market-value terms. This category includes systems that allow a controlling owner with a conflict of interest to vote, but the transaction should be "fair."⁴⁷ Two things that stand out from the liability rule are compensation and fairness⁴⁸ from transactions without the approval of independent shareholders. Compensation is as close as possible to the best calculation.

Calabresi and Melamed mention the implementation, "liability rules involve an additional stage of state intervention: not only are entitlements protected, but their transfer is allowed on the basis of a value determined by the state, Financial Services Authority (OJK) rather than by the parties."⁴⁹ The executive power can determine

⁴³ Louis Kaplow, Steven Shavell, "Do Facilitate Bargaining? A Reply To Ayres And Talley," *Yale Law Journal* Vol. 102, (October 1995): p. 223.

⁴⁴ *Fiduciary duty* is a principle that puts the interests of the company first. This is confirmed in Law Number 40 of 2007 concerning Limited Liability Companies Article 92 paragraph 1, "The Board of Directors carries out the management of the Company for the benefit of the Company and in accordance with the purposes and objectives of the Company."

⁴⁵ Lemley, Phillip J. Wiser, "Should Property Or," p. 786.

⁴⁶ Henry E. Smith, "Property And Property Rule," *New York University Law Review* Vol. 97, (November 2004, 1719-1797, p. 1797.

⁴⁷ Goshen, "The Efficiency Of," p. 398.

⁴⁸ Louis Kaplow dan Steven Shavell mentions two meanings of fairness. First, fairness as an independent evaluative principle that is in accordance with the burden of individual welfare when assessing legal policies. A legal policy is considered reasonable if we can independently determine whether it is worth it or if we can bear it independently. Second, an attempt to determine whether there is a valid reason to increase the notion of fairness that burdens individual welfare. A legal policy can be considered reasonable if there is a strong reason that fairness can be increased at the expense of the individual. See Louis Kaplow, Steven Shavell, *Fairness Versus Welfare*, Cambridge, (Massachusetts: Harvard University Press, 2002), p. 6-7.

⁴⁹ Calabresi, Melamed, "Property Rules, Liability," p. 1092.

the amount of compensation. The essence of the enforcement of the liability rule, as intended by Calabresi and Melamed, requires the role of the state in relation to determining the value as compensation for violations of the property rule.

Fines and compensation reduce, in turn, the company's profits, so that dividends are reduced, delayed, or even postponed. Because, in the perspective of the liability rule, a listed company can conduct transactions as long as it pays compensation for the absence of independent shareholders' approval. The question is who determines the amount of compensation for the conflict of interest transactions? Kaplow and Shavell mention the court. "Under a liability rule, the injurer is permitted to cause harm but must compensate the victim for the harm, or the court's best estimate of it."⁵⁰ Shavell and Kaplow's opinion is different from the predecessor. In the Indonesian context, who has the authority to determine the amount of compensation? Is it the court? The commercial court chamber can become a forum to determine the amount of compensation if OJK decides to regulate the matter.

VI. THE SUBSTANCE OF APPROVAL FOR CONFLICT OF INTEREST TRANSACTIONS

In a broader sense, shareholder protection refers to the two great traditions, *common law* dan *civil law*. In the legal and financial literature, academics disagree over which factors created different control structures in publicly traded corporations in different countries around the world. One group of scholars argued that the diffuse ownership structure common in Anglo-American jurisdictions developed from historically greater protection for minority shareholders, while concentrated ownership structures generally found in Continental jurisdictions evolved from relatively weak protection of the rights of minority shareholders. Under this theory, the low incidence of concentrated control in Anglo-American jurisdictions is related to the broad protection granted by common law to the rights of minority shareholders--specifically, broad regulation of transactions with interested parties and securities disclosure laws in the financial markets of the United States and England. Another group of researchers has argued that the change in ownership structure came about mainly due to political variables. According to the "path dependence theory," various historical reasons led to differences in the adoption of given ownership structures in public companies in different countries around the world--differences that have persisted to this day despite the fact that corporation laws in most countries of the world are now fairly similar.⁵¹

The common law tradition gives birth to strong shareholder protection, on the other hand, the civil law tradition or Continental Europe inherits weaker shareholder protection, although this, in the Indonesian context, is thought to originate from political, cultural, and historical aspects. Convergence occurs due to the influence of the common law tradition in the financial services sector. This can be seen in the rule of the capital market and the practice of management of listed companies in Indonesia.

The principle of the property rule can be seen in several provisions of the Indonesian Capital Market. Law Number 8 of 1995 concerning Capital Market Article 82 paragraph 2 states Bapepam may require the Issuer or Public Company

⁵⁰ Kaplow, Shavell, "Property Rule Versus," p. 723.

⁵¹ Leon Yehuda Anidjar, "Toward Relative Corporate Governance Regimes: Rethinking Concentrated Ownership Structure Around The World," *Stanford Law and Policy Review* Vol. 30,(2019): p. 202-203.

to obtain the approval of the majority of independent shareholders if the Issuer or Public Company conducts a transaction in which the economic interests of the Issuer or Public Company conflict with the personal economic interests of the director, commissioner, or major shareholder of the Issuer or Public Company.

This provision is facultative. Law Number 8 of 1995 concerning the Capital Market gives regulators the authority to require or not to approve independent shareholders for transactions containing conflicts of interest. With concentrated ownership, it is clear that potential corporate actions are based on opportunities with the approval of independent shareholders. More importantly, conflicts of interest transactions should be approved by independent shareholders. This provision provides the possibility for the OJK (formerly Bapepam-LK) to require independent shareholder approval for conflicts of interest transactions. This was later confirmed through Rule Number IX.E.1 which was first issued in 1996.

Regarding conflicts of interest transactions, Rule Number IX E.1. has been amended several times, the first, in 1997, then in 2000, 2008, 2009, and finally 2020. Latest, OJK Rule Number 42/POJK.04/2020 concerning Affiliated Transactions and Conflict of Interest Transactions with a fixed principle, namely independent shareholder approval for conflict of interest transactions. For Affiliated Transactions, OJK Rule Number 42/POJK.04/2020 Concerning Affiliated Transactions and Conflict of Interest Transactions Article 1 number 3 defines Affiliated Transactions as "Affiliate Transactions are any activity and/or transaction conducted by a public company or controlled company with an Affiliate of public company or Affiliates of members of the board of directors, members of the board of commissioners, major shareholders, or controllers, including any transactions conducted by public companies for the benefit of Affiliates of publicly listed companies or Affiliates of members of the board of directors, members of the board."

OJK Rule Number 42/POJK.04/2020 Concerning Affiliated Transactions and Conflict of Interest Transactions Article 4 requires the Company to announce the disclosure of information on each Affiliated Transaction to the public and submit proof of announcement and supporting documents to OJK no later than the end of the 2nd (second) working day after the Transaction, which at least includes:

A. Description of Affiliated Transactions, containing at least:

1. transaction date;
2. transaction object;
3. transaction value;
4. the name of the party conducting the transaction and relationship with the Public Company; and
5. the nature of the Affiliate relationship of the party conducting transactions with the Public Company;

B. In the event that a Public Company uses an Appraisal to evaluate the object of the transaction, the summary report of the Appraisal shall at least:

1. the identity of the party;
2. the object of assessment;
3. the purpose of the assessment;
4. assumptions and limiting conditions;

5. assessment approaches and methods; and
6. value conclusion;
- C. Summary of the Appraisal's report regarding the fairness of the transaction, at least:
 1. the identity of the party;
 2. the object of assessment;
 3. the purpose of the assessment;
 4. assumptions and limiting conditions;
 5. assessment approaches and methods; and
 6. fairness opinion on the transaction;
- D. pro forma of the impact of transactions on the financial condition of the Listed Company, which is prepared at least based on financial statements with limited review provided that the date of the financial statements is the same as the date of the valuation report, in the event that the transaction has the potential to disrupt the business continuity of the Listed Company;
- E. Explanation, considerations, and reasons for conducting Affiliated Transactions, compared to other similar transactions that are not carried out with Affiliated parties;
- F. The plan of the Listed Company, data on the company being taken over, and other related information, if the Affiliated Transaction is a company takeover transaction;
- G. Summary of reports of independent experts or consultants, if there are reports of independent experts or consultants;
- H. Statement of the board of directors that the Affiliated Transaction has gone through the procedures as referred to in Article 3; and
1. Statement of the board of commissioners and directors that the Affiliated Transaction:
 - a. Does not contain a Conflict of Interest; and
 - b. All material information has been disclosed and the information is not misleading.

OJK Rule Number 42/POJK.04/2020 Concerning Affiliated Transactions and Conflict of Interest Transactions require the approval of independent shareholders as the legal basis for the transactions. This is a translation of the property rule.

Furthermore, OJK Rule Number 42/POJK0.4/2020 concerning Affiliated Transactions and Conflict of Interest Transactions Article 1 number 4 defines "Conflict of Interest is the difference between the economic interests of a listed-company and the personal economic interests of members of the board of directors, members of the board of commissioners, major shareholders, or the Controller which may harm the public company in question." This definition is retained. The relationship between power and capital is illustrated in this definition. In other words, this relationship still exists and is maintained in the management of a public company. What we want to regulate is the agency problem.

OJK Rule Number 42/POJK0.4/2020 Concerning Affiliated Transactions and Conflict of Interest Transactions Article 1 number 5 provides a definition of Conflict of Interest Transactions as "Conflict of Interest Transactions are transactions carried out by a public company or controlled company with each party, both affiliates and

parties other than Affiliates that contain a Conflict of Interest.” In contrast to the previous provisions, Rule Number IX.E.1 of 2009 concerning Affiliated Transactions and Conflicts of Interest in Certain Transactions which in detail mentions transactions that are included in conflict of interest transactions. According to Rule Number IX.E.1 concerning Affiliated Transactions and Conflicts of Interest in Certain Transactions Article 1 letter c, namely Transactions are activities in the context of:

- 1) give and/or get a loan;
- 2) acquire, dispose of, or use assets including in order to guarantee;
- 3) acquire, dispose of, or use the services or Securities of a Company or a Controlled Company; or
- 4) enter into a contract in connection with the activities as referred to in item 1), item 2), and item 3), which are carried out in one transaction or in a series of transactions for a specific purpose or activity.

Those transactions which are qualified contain a conflict of economic interest of the parties with the company. All such transactions must obtain the approval of independent shareholders.

Meanwhile, OJK Rule Number 42/POJK0.4/2020 concerning Affiliated Transactions and Conflict of Interest Transactions simply refers to transactions that are included as Conflict of Interest Transactions, namely transactions carried out by listed companies or controlled companies with each party, with affiliates and not affiliates that contain conflicts interest. Substantially, this last simpler provision makes it easier for OJK to enforce the rule.

VII.LAW ENFORCEMENT ON CONFLICT OF INTEREST TRANSACTION

Property rule is the spirit of the protection of shareholders. Several cases in the capital market show that the property rule is often violated on the one hand, while the liability rule has not been implemented. OJK (formerly Bapepam-LK) decided some listed companies violated the conflict of interest rule and punished them with fines. In addition, OJK asked listed companies to hold an independent shareholder meeting to have approval for the conflict of interest transactions, but OJK did not instruct the listed companies to compensate independent shareholders due to those violations.

There are several cases that point out of the practice liability rule amidst property rule in the Indonesian capital market for more than twenty years.

A. Case of PT. Dharmala Intiland Tbk.(2000)

PT. Dharmala Intiland Tbk is a loan transaction for PT. Dharmala Intiland Tbk with PT. Dharmala Inti Utama in 2000. Providing loans to business groups is a form of conflict of interest transaction. The loan is used for the property business. This transaction has not received approval from the independent shareholder of PT. Dharmala Intiland Tbk as stipulated in the Decree of the Chairman of the Capital Market and Financial Institution Supervisory Agency No. KEP-412/BL/2009 concerning Affiliated Transactions and Conflicts of Interest in Certain Transactions.

B. PT Multipolar and PT Broadband Case Tbk. (2001)

Two companies began with the existence of a deposit guarantee owned by PT Multipolar in the amount of US\$2 million which was used as collateral for PT

Broadband's debt at Lippo Bank in 2000 which matured in 2001 and has been extended until May 12, 2002. in the form of cash amounting to Rp17.38 billion in June 2000 which matured in 2001 and has been extended until May 12, 2002. In addition, PT Multipolar has also provided a deposit guarantee of US\$0.3 million to be used as collateral for PT Broadband's loan at the Bank. Mayapada in May 2000 which matured in 2001 and has been extended until November 11, 2002. As well as a loan of Rp. 10 billion in November 2001 which matured on November 11, 2002. In the case of PT Multipolar, Bapepam imposed a fine of Rp. 500 million on the company. In addition, the directors and commissioners of PT Multipolar are also required to pay a fine of Rp. 500 million for their actions that were not careful enough in managing the company in relation to the guarantee provided for PT. Broadband's debt.

C. PT. Jaya Pari Steel Corp.Ltd. Tbk (2001)

Bapepam pleaded guilty to PT Jaya Pari Corp. Ltd. Tbk due to the sale of MM-2 A assets on December 13, 2001, to related parties at the following GMS without independent shareholders' approval. Bapepam was fined 500 million IDR for that violation of Rule IX.E.1.

D. Case of PT. Bank Mega Tbk (2005)

Conflict of interest transactions carried out by PT Bank Mega, Tbk in the form of office space rental transactions by PT Bank Mega, Tbk to affiliated companies. The conflict of interest transaction has been carried out fairly, at a fair price, and with transparency. This means that this transaction is included in conflict of interest transactions, but does not meet the loss aspect.

E. Case of PT. Kaho (2008)

PT. Kaho purchased assets in the form of production machines from its affiliates, PT. Karwel worth Rp. 10,636,053,000.00, on December 5 and 15, 2008. The transaction contained a conflict of interest because there was a management relationship. PT. Kaho violated Rule Number IX.E.1.

F. Case of PT Bumi Resources (2009)

PT. Bumi Resources Tbk. (Bumi) acquire the shares of Fajar Bumi Sakti. This transaction was classified as a conflict of interest transaction which should have been approved by the independent shareholder. According to Bloomberg, Nalinkant Rathod, president commissioner of PT Fajar Bumi Sakti, was also commissioner of PT Bumi. That was a conflict of interest transaction that required approval from independent shareholders.

G. Case of PT. Sumalindo Lestari Jaya Tbk (2011).

Directors of PT. Sumalindo Lestari Jaya Tbk. made a transaction to purchase Zero Coupon Bond of Rp. 140,254,908,653 with its subsidiary, namely PT. Sumalindo Hutani Jaya. It is suspected a conflict of interest transaction. This transaction occurred in 2011 and was resolved to the level of cassation in the Supreme Court with Decision No. 3017 K/PDT/2011. With the relationship and position of the parties in the transaction, the company had to obtain the approval of the independent shareholders prior to the implementation of the transaction as stipulated in the Decree of the Chairman of the Capital Market and Financial Institution Supervisory Agency No. KEP-412/BL/2009 concerning Affiliated Transactions and Conflicts of Interest in Certain Transactions.

H. PT. Tri Banyan Tirta Tbk. (2013)

PT. Tri Banyan Tirta acquired the PT. Tirtamas Abadi Berjaya. The transaction

contained a conflict of interest according to Rule IX.E.1 which had obtained approval from independent shareholders.

I. PT Tiga Pilar Sejahtera Food Tbk (AISA) (2017)

Ernst & Young Public Accounting Firm (EY) has audited PT. PT Tiga Pilar Sejahtera Food Tbk. The audit results found an alleged flow of funds amounting to Rp 1.78 trillion with various schemes from the AISA Group to parties suspected of being affiliated with the former management, among others by using AISA loan disbursement from several banks, disbursement of time deposits, transfer of funds to bank accounts. and the financing of the costs of Affiliated Parties by the AISA Group. This transaction includes a conflict of interest of certain parties and must obtain approval from independent shareholders as stated in the Decree of the Chairman of the Capital Market and Financial Institution Supervisory Agency No. KEP-412/BL/2009 concerning Affiliated Transactions and Conflicts of Interest in Certain Transactions.⁵²

J. Case of PT Jouska Finansial Indonesia (2019)

Jouska was thought to have directed his client to sign an investor fund account management (RDI) contract with a company affiliated with Jouska Indonesia, PT Mahesa Strategis Indonesia (MSI), regarding the management of investment funds. It was later discovered that MSI is a company whose shares are affiliated with Jouska.

K. In the agreement, one of the clauses authorizes MSI to place funds into a number of investment portfolios.

In its development, the clients' funds were used to buy several stocks and mutual funds, one of which was the purchase of shares of PT Sentral Mitra Informatika Tbk (LUCK).⁵³ There was no independent shareholders' approval for the conflict of interest transaction.

L. The Allegation in the Merger of Gojek and Tokopedia GoTo (2022)

The latest is the merger of Gojek and Tokopedia. Capital Market Observer Yanuar Rizki reminded that OJK needs to oversee the process before, during, and after the IPO from GOTO, because there are many allegations of violations of the Capital Market Law and OJK's rules.⁵⁴ He said that GOTO itself is a company under OJK supervision, so it should pay attention to affiliated transactions. Wishnutama is the President Commissioner of Telkomsel and also Commissioner of GOTO in the prospectus that was submitted there were Telkomsel transaction bonds.⁵⁵ This is a conflict of interest transaction that requires independent shareholders' approval.

Referring to those cases, there are some inferences. First, the liability rule still exists and is adopted by the listed companies in order to have a quick business decisions. Second, independent shareholders are detrimental due to the fine as a form of law enforcement. It is understood that the liability rule is only a consequence of the absence of independent shareholders' approval for conflicts of interest transactions. In fact, a fine actually reduces the rights of shareholders to dividends. While the

⁵² "Banyak Dugaan Pelanggaran di Tiga Pilar AISA, Investor Minta Perlindungan OJK", Kontan, accessed October 2022, <https://investasi.kontan.co.id/news/banyak-dugaan-pelanggaran-di-tiga-pilar-aisa-investor-minta-perlindungan-ojk>.

⁵³ "Parut-parut di Wajah Pasar Modal", Stabilitas, accessed October 2022, <https://www.stabilitas.id/parut-parut-di-wajah-pasar-modal/>.

⁵⁴ "OJK Dinilai Lamban Tanggapi Dugaan Transaksi Benturan Kepentingan Telkomsel - Goto", Pasardana.Id, <https://pasardana.id/news/2022/6/2/ojk-dinilai-lamban-tanggapi-dugaan-transaksi-benturan-kepentingan-telkomsel-goto/>.

⁵⁵ Pasardana.Id, "OJK Dinilai Lamban".

liability rule perspective requires that when the property rule is violated, there will be compensation to independent shareholders because of conflict interest transactions in order to have benefits for the company so that the rights of shareholders are not reduced by it.

VIII. POST FACTS AND RECOMMENDATIONS

A. Post Facts

Normatively, Indonesia has regulated conflicts of interest transactions since the late 1990s. Substantially, the conflicts of interest transactions rule previously requires the approval of independent shareholders. This means that the regulation adheres to the property rule paradigm which empowers independent shareholders in the company's decision-making process. OJK (former Bapepam-LK) continues to enforce the law and on violations of conflicts of interest transactions. It is in this perspective that an offer from the liability rule principle emerges. Every action or decision taken by a listed company without approval from independent shareholders will be compensated. If it is returned to the purpose of establishing the company, then the main purpose of managing the company is to make a profit. Conflicts of interest transactions taking place without the approval of independent shareholders are a violation of the company's objectives, but the violation is considered reasonable and still in accordance with the company's objectives.

B. Recommendation

There are several things that can be recommended from this study:

1. OJK strictly asks the listed company previously to have approval from independent shareholders for the conflict of interest transactions. If the transaction does not harm the company, then OJK exposes administrative sanctions to the listed company without a fine. For the repetitive conflict of interest transactions, OJK can give administrative sanctions with a fine to the listed company.
2. If a conflict of interest causes a loss, then OJK does not only enforce the conflict of interest transactions rule but should also include the implementation of the liability rule, and compensation to shareholders.
3. The fairness of conflict of interest transactions is the determinant of the validity of the transaction. Profit and loss analysis and market price can be applied to assess the fairness of the conflict of interest transactions.
4. The (Commercial) Court becomes a forum to determine the value of compensation for conflicts of interest transactions that are detrimental to the company.

BIBLIOGRAPHY

A. Legislation

- Indonesia, Law Number 8 of 1995 concerning the Capital Market, State Gazette of the Republic of Indonesia of 1995 Number 64.
- Indonesia, Law Number 40 of 2007 concerning Limited Liability Companies State Gazette of the Republic of Indonesia of 1995 Number 106.
- Indonesia, Decree of the Chairman of the Capital Market and Financial Institution Supervisory Agency No. KEP-412/BL/2009 concerning Affiliated Transactions and Conflicts of Interest in Certain Transactions.
- Indonesia, Financial Services Authority Rule Number 31/POJK.04/2015 concerning Disclosure of Material Deed Information by Issuers or Public Companies.
- Indonesia, Financial Services Authority Rule Number 42/POJK.04/2020 concerning Affiliated Transaction and Conflict Of Interest Transaction

B. Books, Journals, and Academic Manuscripts

- Armour, John Reinier Kraakman, Henry Hansmann, "Agency Problems, Legal Strategies, and Enforcement" *John M. Olin Center For Law, Economics And Business, Discussion Paper No. 644, 7/2009. Harvard Law School.*
- Adiwarman, "Juridical Review of Transactions Containing Conflicts of Interest according to Legislation in the Capital Market Sector," Undergraduate Thesis, Faculty of Law, University of Indonesia, 2001.
- Anidjar, Leon Yehuda. "Toward Relative Corporate Governance Regimes: Rethinking Concentrated Ownership Structure Around The World," *Stanford Law and Policy Review Vol. 30, 2019, 197-261.*
- Barnes, Richard. *Property Rights and Natural Resources*, Oxford: Hart Publishing, 2009.
- Berle, Adolf A. Gardiner C. Means, *The Modern Corporation And Private Property*, New Jersey: Transaction Publisher, 2007.
- Bianchi, M. A. Ciavarella, L. Enriques, V. Novembre, R. Signoretti, "Regulation and self-regulation of related party transactions in Italy: An empirical analysis," Consob, 2014.
- Boshkoska, Meri. "The Agency Problem: A Measure for Its Overcoming," *International Journal of Business and Management; Vol. 10, No. 1; 2015.*
- Buccola, Vincent S.J. "Bankruptcy's Cathedral: Property Rules, Liability Rules, And Distress," *Northwestern University Law Review, No. 114, 2019.*
- Calabresi, Guido. A. Douglas Melamed, "Property Rules, Liability Rules, and Inalienability: One View of the Cathedral," *Harvard Law Review Vol. 85 No. 6, 1972.*
- Cooter, Robert. Thomas Ulen, *Law and Economics*, Massachusetts: Addison-Wesley Longman Inc., 2000.
- Dales, J.H. *Pollution, Property & Prices: An Essay In Policy-Making And Economics*, Cheltenham, U.K.: Edward Elgar, 2002.
- Davies, Paul L. *Principles Of Modern Company Law*, London: Sweet & Maxwell, 1997.
- Fajar. Mukti and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif dan Empiris*, Yogyakarta: Pustaka Pelajar, 2017.
- Fuady, Munir. *Metode Riset Hukum: Pendekatan Teori dan Konsep*, Jakarta: PT. RajaGrafindo Persada, 2018.
- Goshen, Zohar "The Efficiency of Controlling Corporate Self-Dealing: Theory Meets Reality," *California Law Review Vol. 91, March 2003.*

- Gulinello, Christopher John. "The Revision Of Taiwan's Company Law: The Struggle Toward A Shareholder-Oriented Model In One Corner Of East Asia" *Delaware Journal of Corporate Law*, Vol. 28, 2003.
- Haeberle Kevin S. and M. Todd Henderson, "A New Market-Based Approach to Securities Law," *The University of Chicago Law Review*, Vol. 85, No. 6 (October 2018), pp. 1313-1394.
- Huang, Cheng-Li. Ju-Lan Tsai, "Managerial Morality and Philanthropic Decision-Making: A Test of an Agency Model," *Journal of Business Ethics*, December 2015, Vol. 132, No. 4 (December 2015), pp. 795-811.
- Kaplow, Louis. Steven Shavell, "Property Rule Versus Liability Rule: An Economic Analysis," *Harvard Law Review* Vol. 109, February 1996, 713-790.
- _____, Louis. Steven Shavell, "Do Facilitate Bargaining? A Reply To Ayres And Talley," *Yale Law Journal* Vol. 102, October 1995, 221-233.
- _____, Louis. Steven Shavell, *Fairness Versus Welfare*, Cambridge, Massachusetts: Harvard University Press, 2002.
- Klein, William A. John C. Coffee, Jr. *Business Organization And Finance: Legal And Economics Principles*, New York: The Foundation Press, Inc., 1996.
- La Porta, Rafael. Florencio Lopez-de-Silanes and Andrei Shleifer, "Corporate Ownership around the World," *The Journal of Finance*, Apr. 1999, Vol. 54, No. 2 (Apr. 1999), pp. 471-517.
- Lemley, Mark A. Phillip J. Wiser, "Should Property Or Liability Rule Govern Information?" *Texas Law Review* Vol. 85, March 2007, 783-841.
- Mäntysaari, Petri. *Organising the Firm: Theories of Commercial Law, Corporate Governance and Corporate Law*, Dordrecht: Springer, 2012.
- Mayson, Stephen W. Derek French, Christopher Ryan, *Company Law*, London: Blackstone Limited Press, 1989.
- McCall, Brian M. "The Corporation As Imperfect Society," *Delaware Journal of Corporate Law* Vol. 36, 2011, 509-574.
- Nasarudin, Irsan, Indra Surya, Ivan Yustiavandana, Arman Nefi, Adiwarmarman, *Aspek Hukum Pasar Modal Indonesia*, Jakarta: Prenada, 2004.
- Nasution, Bismar. *Transparency in the Capital Market*, Jakarta: Publisher of the Graduate Program, Faculty of Law, University of Indonesia, 2001.
- Odang, Mudita Chitta. "Conflict of Interest Transactions in the Indonesian Capital Market (Case Study of PT Bank Mega Tbk). Master's Thesis of Notary, Faculty of Law, University of Indonesia, 2008.
- Ott, Claus, Hans-Bernd Schäfer, "The Dichotomy Between Property Rules And Liability Rules: Experiences From German Law," *Erasmus Law Review Volume 01 Issue 04, 2008*.
- Phillips, Jake. "EBay's Effect on Copyright Injunctions: When Property Rules Give Way to Liability Rules," *Berkeley Technology Law Journal*, 2009, Vol. 24, No. 1, *Annual Review Of Law And Technology (2009)*, pp. 405-435.
- Pramono, Nindo. *Hukum PT. Go Public and Pasar Modal*, Yogyakarta: Andi Publishers, 2013.
- Richter, Ansgar. Christian Weiss, "Determinants Of Ownership Concentration In Public Firms: The Importance Of Firm, Industry, And Country-Level Factors," *International Review of Law & Economics* Vol. 33, March 2013, 1-13.
- Salomon, Lewis D. Alan R. Palmiter, *Corporations: Examples And Explanations*, New York: Little, Brown and Company, 1994.

- Shavell, Steven. *Foundations Of Economic Analysis Of Law*, Cambridge: The Belknap Press Of Harvard University, 2004.
- Sherwin, Emily, "Property Rules as Remedies," *The Yale Law Journal Vol. 106: 1997*.
- Smith, Henry E. "Property And Property Rule," *New York University Law Review Vol. 97*, November 2004, 1719-1797.
- Soekanto, Soerjono, Sri Mamudji, *Penelitian Hukum Normatif*, Jakarta: Rajawali Press, 1989.
- Surya, Indra. *Transaksi Benturan Kepentingan Di Pasar Modal Indonesia*, Jakarta, Pusat Studi Hukum Ekonomi, Fakultas Hukum Universitas Indonesia, 2009.
- Surya, Indra, Ivan Yustiavandana, Arman Nefi, Adiwarmanto, Rosewitha Irawaty, *Pasar Modal: Perspektif Hukum Indonesia*, Depok, Badan Penerbit FHUI, 2021.
- Suta, I Putu Gede Ary. *Kinerja Pasar Perusahaan Publik di Indonesia: Suatu Analisis Reputasi Perusahaan*, Jakarta: Yayasan SAD Satria Bhakti, 2005.
- Sterk, Stewart E., "Property Rules, and Uncertainty About Property Rights," *Michigan Law Review*, 106, September 2007.
- Zech, Herbert "Information As Property," *Jipitec Vol. 3*, 2015.

C. Websites

- https://ojk.go.id/id/kanal/pasar-modal/berita-dan-kegiatan/siaran-pers/Documents/FINALSIARANPERS37HUTPM_1408003019.pdf#search=penegakan%20hukum%20pasar%20modal.
- <https://www.idx.co.id>.
- <https://pasardana.id/news/2022/6/2/ojk-dinilai-lamban-tanggapi-dugaan-transaksi-benturan-kepentingan-telkomsel-goto/>
- <https://ojk.go.id/id/kanal/pasar-modal/berita-dan-kegiatan/siaran-pers/Documents/Pages/Siaran-Pers-Peringatan-38-Tahun-Diaktifkannya-Kembali-Pasar-Modal-Indonesia/siaran-pers-peringatan-38-tahun-diaktifkannya-kembali-pasar-modal-indonesia.pdf#search=penegakan%20hukum%20pasar%20modal>.
- <https://investasi.kontan.co.id/news/banyak-dugaan-pelanggaran-di-tiga-pilar-aisa-investor-minta-perlindungan-ojk>.
- <https://www.stabilitas.id/parut-parut-di-wajah-pasar-modal>.
- <http://documents.worldbank.org/curated/en/283121468771272365/12052032220041117181051/additional/multi-page.pdf>.