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TRANSFER OF SHARES TO THIRD PARTIES AS AN EVENT OF FAILURE OF REPO TRANSACTIONS ACCORDING TO POJK NUMBER 9/POJK.04/2015

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ABSTRACT

According to Article 1 number 1 of POJK No. 9/POJK.04/2015, the *Repurchase Agreement* Transaction hereinafter referred to as the Repo Transaction, is a contract to sell or buy securities with the promise of buying or selling again at a predetermined time and price. The essence of a repo transaction, that is, the Seller can buy back the securities he has sold to the Buyer at the price and at the specified time. However, such securities have often been sold by the Buyer to a Third Party before the expiration of the repurchase period. In this journal research, the author uses a case approach with a juridical-normative method, namely legal research carried out by examining library materials or secondary data as basic material for research by conducting a search for regulations and literature related to the subject matter under study. The results showed that the mechanism for transferring shares of Public Companies through repo transactions according to POJK No. 9 / POJK.04 / 2015 consists of 2 buying and selling transactions known as *the first* leg and *second leg* and is generally carried out through the negotiation market. Furthermore, the results showed that the transfer of MYRX shares by buyers to third parties was an event of repo transaction failure. The explanation of Article 3 paragraph (3) of POJK No. 9/POJK.04/2015 has outlined several circumstances that are classified as *events of default*, one of which is the failure to fulfill its obligations related to Repo Transactions. This is because the transfer of shares by the buyer to a third party causes the seller to be unable to repurchase the shares he has sold, so the Buyer fails to fulfill his obligation to resell the securities in the repo transaction to the Seller.

Keywords: *MYRX, transaksi repo, failure event*

INTRODUCTION

One of the instruments in business activities is the capital *market (capital market*) (Mar'ati, 2012). The capital market consists of the words market and capital. The capital *market* is a means of bringing together fund owners (*suppliers* of funds) with fund users (users of funds) with the aim *of* medium-term investment (middle-term investment) and long-term investment (*long-term investment*) (Anggusti, 2020). Nasarudin (2014), Capital Market is an activity related to the Public Offering and trading of securities, Public Companies, and Securities issued by them, as well as institutions and professions related to Securities. Securities are securities, namely debt recognition letters, commercial securities, stocks, bonds, proof of debt, collective participation units, futures contracts on securities, and any derivatives of Securities.

Indonesian stock trading activities or the Indonesia stock exchange are specially organized by the Indonesia Stock Exchange (IDX) or often called Indonesia Stock Exchange (IDX) which was established in 2007. If classified securities are issued and traded on the IDX, securities are equity and securities are debt in nature (Rokhmatussa'dyah, 2010). *Equity* securities are securities that are equity securities in the sense that by buying these securities, the owner of the securities becomes a financier or investor who invests or includes a certain amount of capital into the issuer. Equity securities are commonly traded in the capital market, namely stocks and

derivatives. *Debt securities* are basically the debt of the issuer to the financier, namely proof of the debt issued by the issuer to the lender (Talipi, 2018). Debt securities are commonly traded in the capital market, namely bonds and so on (Balfas, 2017).

One of the investment activities that can be carried out in the capital market is the transaction of buying and selling securities with the promise of buying back the securities at a price and on a mutually agreed date (Rahmawati & Suhardini, 2019). Such a transaction is also called *a Repurchase Agreement* Transaction (Repo Transaction) (Ginting et al., 2017). A repo transaction in practice in the capital market is a dual transaction with objects traded by buyers and sellers in the form of equity securities or debt securities (Sakirin, 2018). This discussion will be focused on equity securities, namely stocks.

In the mechanism of securities trading on the IDX, access to the stock exchange is limited so that only securities companies that are participants or Members of the Exchange can enter and trade on the exchange (KANAWA, 2017). Therefore, securities companies that carry out business activities as securities trading intermediaries that have been listed as Members of the Exchange are the entry gate for conducting securities transactions on the IDX, including stock repo transactions (Rahadiyan, 2014).

From the Seller's perspective, a repo transaction appears as an alternative to obtaining funding but he can buy back his ownership of the company until the buyback date (Wijaya & Kansil, 2019). From the Buyer's perspective, a repo transaction can interest the Buyer because the Buyer holds the securities that are used as the object of the Seller's repo transaction. In overcoming the adverse impacts that can arise due to the unregulated repo transaction specifically, in 2015 the Financial Services Authority (OJK) issued a regulation regarding repo transactions contained in OJK Regulation Number 9 / POJK.04 / 2015 concerning Guidelines for Repurchase Agreement Transactions for Financial Services Institutions (hereinafter referred to as POJK No. 9 / POJK.04 / 2015) and equipped with OJK Circular Letter Number 33 / SEOJK.04 / 2015 concerning *Global Master Repurchase Agreement* Indonesia (hereinafter referred to as SEOJK No. 33/SEOJK.04/2015). These legal provisions become standard guidelines for repo transactions that refer to internationally applicable repo transaction practices.

Legal certainty normatively is when a rule is made and promulgated definitively because it regulates definitively and logically. The issuance of POJK No. 9/POJK.04/2015 and SEOJK No. 33/SEOJK.04/2015 is intended, to provide standard guidelines for repo transactions that refer to internationally applicable practices and provide legal certainty for financial service institutions that conduct repo transactions. Any mandatory repo transaction results in a change of ownership of the securities and must be made under a written agreement (Asikin, 2004).

In practice, the problems of repo transactions have led to the court table up to the cassation level as in case number 1142 K/Pdt/2019. Before being decided by the Supreme Court, the case had been decided by the South Jakarta District Court Judge Panel with case number 618/Pdt.G/2016/PN. Jkt.Sel and the Panel of Appeal Judges at the DKI Jakarta High Court with case number 314/PDT/2018/PT. It was the DKI that upheld the verdict in the first instance. In the cassation level, the judgment of the court at the previous level was overturned due to a lack of parties so the suit in the subject matter of the case was inadmissible. The case relates to a repo transaction between Benny Tjokrosaputro (Seller/Plaintiff's original Appeal) and Platinum Partners Value Arbitrage Fund, L.P (Buyer) of 425,000 shares of PT Hanson

Internasional Tbk, of which 425,000 shares of PT Hanson Internasional Tbk were transferred to a Third Party, namely Goldman Sachs International before the expiration of the repurchase date by Benny Tjokrosaputro (Seller). As a result, Benny Tjokrosaputro (Seller/Plaintiff original Appeal) felt aggrieved because he was unable to repurchase the shares of PT Hanson Internasional Tbk that he had sold with a repo transaction mechanism on the repurchase date agreed in the contract with Platinum Partners Value Arbitrage Fund, L.P (Buyer).

On the other hand, Goldman Sachs International (Second Buyer/Defendant's original Comparator) has sold the shares to several parties. Benny Tjokrosaputro (Plaintiff's original Seller/Appellant) considered that the sale and purchase transaction was unlawful because he considered that the shares traded by Goldman Sachs International (Second Buyer/Defendant's original Comparator) belonged to him assuming the previous repo transaction did not transfer his ownership rights to the shares. In addition, he also never had any contractual relationship with Goldman Sachs International (Second Purchaser/Defendant's original Comparator), so the shares could not have transferred ownership to Goldman Sachs International (Second Purchaser/Defendant's original Comparator).

This then becomes interesting to study because in practice the shares that are the object of a repo transaction can be traded by the Buyer to a Third Party before the expiration of the period of the Seller's right to repurchase. As a result, the Seller is at a disadvantage because it is unable to repurchase the shares that he has sold with the repo transaction mechanism on the previously agreed repurchase date.

METHOD

The research method used by the author in this study is a juridical-normative research method, namely legal research carried out by examining library materials or secondary data as basic material for research by conducting a search for regulations and literature related to the problem under study, the research results are then processed and analyzed for conclusions. Juridical-normative research is also called *doctrinal research* that analyzes the law as written in the book (law as it is written in the book) and the law that results from the judge's decision through the court process (law it is decided by the judge through the judicial process). (Amiruddin & Asikin, 2004).

RESULTS AND DISCUSSION

A. Sale and Purchase Agreement According to the Civil Code

In Indonesian civil law, sale and purchase agreements are generally regulated in Articles 1457 to 1546 of the Third Book on the Binding of the Civil Code (hereinafter referred to as the Civil Code). Buying and selling transactions are a form of agreement. Under Article 1457 of the Civil Code, "*A sale and purchase is an agreement, by which the one party binds himself to surrender a treasury, and the other party to pay the price that has been promised*." Buying and selling is a reciprocal agreement in which one party (the Seller) promises to give up ownership of an object, while the other party (the Buyer) promises to pay a price consisting of a certain amount of money in exchange for the acquisition of the property rights (Subekti, 2020).

According to **R. Subekti**, a covenant is an event in which one promises to another or where two people promise each other to do something. The agreement issues the agreement. An agreement is a legal relationship between two parties where one party has obligations towards

the other party who acquires the right to the achievement. In addition to the cause of the agreement, the agreement can also be born out of the law. As an agreement, in order for a sale and purchase transaction to be said to be valid and binding on the parties, it is necessary to fulfill the valid conditions of an agreement. Article 1320 of the Civil Code specifies that For the validity of an agreement four conditions are required: (Subekti, Law of Treaties, Cet. 20, 2020)

1. agreed on those who bind themselves;
2. capable of making a covenant;
3. on a particular point; and
4. a lawful cause.

In a sale and purchase agreement that is directly binding when the parties submit an "agreement", rights and obligations will arise both for the Seller and for the Buyer. For the Seller, there are two main obligations, namely: (Subekti, Miscellaneous Agreements, Cet. 11, 2014)

1. Surrendering property rights to the goods being traded

In essence, the delivery of the object that is the object of the sale and purchase agreement depends on the type of object being traded as regulated by Article 612, Article 613, and Article 618 of the Civil Code. Ownership of the object is acknowledged to have passed to the Buyer when the Seller has surrendered the object as the nature of the sale and purchase agreement as an "obligatory" agreement, meaning that the new sale and purchase agreement lays down mutual rights and obligations between the two parties.

2. Bear the serene enjoyment of the goods and bear against hidden defects

The Seller cannot just leave himself, he needs to guarantee that when the Buyer enjoys the object he has sold, the Buyer will not get interference from other parties, especially the demands regarding the ownership of the object. It is also that the Buyer can wear the goods he has purchased safely from the danger of hidden defects in the object.

The main obligation of the Buyer is to pay the purchase price at the time and place as stipulated in the agreement. According to **M. Yahya Harahap**, price means an amount that must be paid in the form of money. Although the harmony between the price and value of the goods in the sale and purchase is not a condition of the validity of a sale and purchase agreement, the purpose of the sale and purchase itself is to obtain a reasonable payment for the goods sold. The necessity of harmony between the price and the goods sold can also be used to protect the Seller against the coercion of low prices carried out by the Buyer. On the other hand, for the Buyer, the compatibility can be used to protect himself from mistakes and fraud (*bedrog*) committed by the Seller (Harahap, 1982).

There is a type of buying and selling transaction in the Civil Code known as a sale and purchase agreement with the right to repurchase. According to **R. Subekti**, based on the provisions of Article 1519 and Article 1532 of the Civil Code, a sale and purchase agreement with the promise of repurchase i.e., the power to buy back the goods that have been sold ("*Recht van wederinkoop*", "right to *repurchase*") is issued from a promise where the Seller is given the right to take back his goods that have been sold, by returning the purchase price he has received, accompanied by all costs that have been incurred (by the Buyer) to carry out the purchase and delivery, as well as the costs necessary for corrections and expenses that cause the goods sold to increase in price (Subekti, Miscellaneous Agreements, Cet. 11, 2014).

According to **Ridwan Khairandy**, a sale and purchase agreement with the right to buy back (*koop en verkoop met beding van* wederinkoop) is a sale and purchase agreement in which there is an agreement that the Seller is given the right to buy back (*recht vederinkoop, rights to repurchase*) goods that have been sold by returning the purchase price it has received accompanied all costs that have been incurred by the Buyer for the execution of the sale and purchase and delivery (Khairandy, 2016).

From the two views above, it can be seen that the main obligation of the Seller in buying and selling with the right to repurchase if he wants to use the right is to return the original sale price to the Buyer, with an agreement that the Seller pays compensation for all purchase and delivery costs incurred by the Buyer that are lawful.

A sale and purchase agreement with the right to repurchase is allowed, but the agreement must meet the conditions set out in Article 1520 of the Civil Code namely, the right to repurchase must not be promised for a time longer than five years, if it is more than that then the time is shortened to five years. Furthermore, Article 1521 of the Civil Code confirms that the Judge does not have the power to extend the term of the right to repurchase by more than five years. The provisions of Article 1520 and Article 1521 of the Civil Code basically aim to provide legal certainty for the Buyer for the goods he has purchased. If the period of the right to repurchase is not limited, the item will be difficult to sell by the Buyer because the item can be repurchased by the Original Seller at any time.

Article 1521 of the Civil Code stipulates that, in the event that the Seller neglects not to claim his right to repurchase the goods he sold within a predetermined period of time, then the Buyer will become the permanent owner of the goods. This is because the basic purpose of the sale and purchase transaction itself is to transfer property rights to the object of a sale and purchase agreement to the Buyer. The Buyer enters into a sale and purchase agreement to obtain ownership of an item by giving a certain amount of money according to the agreed price of the object to the Seller in return (Subekti, Miscellaneous Agreements, Cet. 11, 2014).

According to **R. Subekti**, a sale and purchase agreement with a repurchase rights agreement shows that basically the Buyer acquires title to the goods he bought, but by assuming the obligation to at any time within a period of time the right to repurchase the agreed to hand back the goods to the Seller. As long as the Seller has not exercised its right to buy back, the Buyer has the position of the perfect owner to obtain all rights that were original with the Seller. (Subekti, Miscellaneous Agreements, Cet. 11, 2014).

Within the period of the repurchase period, the Buyer is not actually allowed to sell the object to another party because he still bears the obligation to resell the object to the Seller. However, if the Buyer sells the object, and an object is a movable object, even though it is still within the grace period of the repurchase period to another party, then the other party who bought the object is safe, meaning that it cannot be required to hand over the goods to the Original Seller. The Initial Seller may only claim damages from the Initial Buyer who has brought himself into a state of inability to fulfill his or her achievements (Subekti, Miscellaneous Agreements, Cet. 11, 2014).

Based on the provisions of Article 1977 paragraph (1) of the Civil Code it is stated, "*Whoever controls movable goods that are not in the form of interest or receivables that do not have to be paid on the appoint, is considered the owner in full.* " Then in accordance with the provisions of Article 1977 paragraph (1) of the Civil Code, Third Parties who buy movable

objects are protected by law and are not bound by a sale and purchase agreement with the right to repurchase with the Initial Seller. However, if the object is an immovable object, according to Article 1523 of the Civil Code, the Third Party is bound by a sale and purchase agreement with the right to repurchase and he must sell to the Initial Seller.

According to Article 1338 paragraph (3) of the Civil Code, an agreement must be executed in good faith (in Dutch it is called *Tender Trouw*; in English, it is called *good faith*; in French, it is called *de bonne foi*). On the principle of good faith, the parties must carry out the achievements rationally and reasonably (Subekti, Law of Treaties, Cet. 20, 2020) *reasonable in equity*). A Buyer of goods in good faith is a person who buys goods with full confidence that the Seller is the true owner of the goods he bought. He is an honest Buyer if he is completely unaware that he is buying from a person who is not the owner and/or is unaware of any hidden defects inherent in the item he purchased. If it is later found that there is bad faith from one of the parties to the agreement, both in making and in the implementation of the agreement, the party in good faith will receive legal protection (Rijan & Koesoemawati, 2008).

B. Legal Arrangements of Repo Transactions

Article 1 number 1 of POJK No. 9/POJK.04/2015 states that "The Repurchase Agreement transaction, hereinafter referred to as the Repo Transaction, is a contract to sell or buy securities with the promise of buying or reselling at a predetermined time and price." Therefore, a repo transaction is a form of agreement to buy and sell securities with the promise of buying or reselling later at a predetermined time and price. The securities that can be transacted here refer to securities, namely debt recognition letters, commercial securities, stocks, bonds, proof of debt, Participation Units of collective investment contracts, futures contracts on Securities, and any derivatives of securities, as referred to in the Capital Market Law.

Based on the provisions of Article 2 paragraph (1) and paragraph (2) of POJK No. 9/POJK.04/2015, Financial Service Institutions are required to follow the provisions of this Financial Services Authority Regulation when conducting repo transactions on securities without scrip regulated and supervised by the OJK and registered with and the settlement is carried out through Bank Indonesia and/or the Depository and Settlement Institution, for its own interests or acting as an intermediary (agent) for the benefit of and/or on behalf of the customer or party other. The non-bonded securities regulated by the OJK are corporate bonds, corporate Sukuk, Government Securities, and stocks and derivatives of Securities.

Securities transactions in the capital market are basically related to the binding law contained in Book III of the Civil Code (hereinafter referred to as the Civil Code). The law of engagement adheres to an open system that contains the principle of freedom of contract as stipulated in Article 1338 paragraph (1) of the Civil Code which states, "All agreements made validly apply as laws to those who make them." The phrase 'all agreements' in Article 1338 paragraph (1) of the Civil Code indicates that an agreement of any form or content that complies with the provisions of Article 1320 of the Civil Code regarding the valid terms of the agreement is valid and binding as long as it does not conflict with the law, decency, and order. A repo transaction is a development in practice in the capital market in which, if you pay attention, a repo transaction has something in common with a sale and purchase agreement with the right to buy back as regulated by Articles 1519 to 1532 of the Civil Code.

Based on the provisions of Articles 1519 to 1532 of the Civil Code, buying and selling with the right to buy back is buying and selling with the power to buy back the goods sold under an agreement where the Seller is given the right to buy back the goods he sold, by returning the original purchase price accompanied by reimbursement of costs, which has a maximum period of 5 (five) years and cannot be extended. In the event that the Seller wishes to exercise the right to repurchase, there are various obligations that must be fulfilled first, including returning the price of the entire original purchase price, replacing all legal costs that have been incurred (by the Buyer) to carry out the purchase and delivery, the cost of rectification, and the costs that cause the goods sold to increase in price (this increased value).

Prior to the issuance of POJK No. 9/POJK.04/2015, there have been efforts towards standardization of repo transactions, including the implementation of the Master Repurchase Agreement (MRA) by the Association of Government Bond Traders (HIMDASUN) and the Mini Master Repurchase Agreement by industry players in the Banking sector. Repo transactions were regulated in the Decree of the Chairman of the Capital Market and Financial Institutions Supervisory Agency Number KEP-132 / BL / 2006 dated November 28, 2006 concerning the Treatment of Repurchase Agreement (Repo) Accounting Using the Master Repurchase Agreement (MRA) and Regulation Number VIII.G.13 which is its appendix. The decision was actually only made for repo transactions of Government Bonds outside the Stock Exchange that had obtained permission from Bapepam-LK. In answering the needs of repo transaction practices carried out on other types of securities, POJK No. 9/POJK.04/2015 was issued and the decision of Bapepam-LK and its attachments was revoked and declared invalid based on Article 16 of POJK No. 9/POJK.04/2015. Thus, there are comprehensive, standardized, and specific arrangements regarding repo transactions in the Indonesian Capital Market.

There is an arrangement regarding the ownership of the securities that are the object of repo transactions in Article 3 paragraph (1) of POJK No. 9/POJK.04/2015, "Every Repo Transaction must result in a change of ownership of Securities." With a change of ownership, the securities transacted are not collateral in the transaction so they are not subject to recharacterization that eliminates the principle of change of ownership. The change of ownership from the Seller to the Buyer is also accompanied by inherent rights to the Securities such as dividends, coupons, voting rights, and Pre-emptive Rights. The utilization of the rights attached to such Securities follows the agreement of the parties as agreed in the repo transaction agreement.

In POJK No. 9/POJK.04/2015, there is no provision that stipulates that repo transactions on shares listed on the IDX must be crossed on the stock exchange. The crossing is a share buying and selling transaction carried out by one member of the same Exchange, for the same stock, the same number of shares, and the same price. So crossing is a transaction of buying and selling shares in the negotiation market between customers which is carried out through one Exchange Member Broker.

According to the provisions of the capital market, be it the Capital Market Law and its implementing regulations to the Exchange Regulations, there is no provision that requires that the process of buying and selling securities in the Negotiation Market must be preceded by due diligence. In POJK No. 9/POJK.04/2015, there is also no specific provision that requires that repo transactions must be preceded by due diligence.

Referring to the provisions of Article 4 paragraph (1) and paragraph (2) of POJK No. 9/POJK.04/2015, every repo transaction must be based on a written agreement that contains at least the following provisions:

1. transfer of ownership rights of securities;
2. the obligation to adjust the value of securities to fair market value (mark-to-market);
3. initial margin and/or haircut of securities in repo transactions;
4. margin maintenance including margin effect substitution;
5. the rights and obligations of the parties regarding the ownership of securities in the repo transaction including the timing of their execution and taxation obligations;
6. failure events;
7. procedures for resolving events of failure and the rights and obligations that follow;
8. the agreement is subject to Indonesian law;
9. the position of a Financial Services Institution in a repo transaction as an agent or acting for itself; and
10. procedures for confirming repo transactions and/or material changes related to such repo transactions.

A repo transaction agreement is often misinterpreted as a guarantee agreement, even though the repo transaction agreement is a sale and purchase agreement. A guarantee agreement is an accessory agreement. A new accessory agreement will exist if there is a principal agreement. For example a credit agreement then it is the underlying agreement, while the accessory agreement is the guarantee of that credit agreement. This is not in the repo transaction agreement because the repo transaction agreement itself is a principal agreement, there are no guarantees. Repo transaction agreements are generally confidential, not even in the exchange terms of the Repo Transaction Disclosure Notice. It is therefore not common for a Third Party to be aware of a repo transaction agreement as it is generally confidential.

A repo transaction is an agreement that gives rise to a contractual relationship, it is not impossible for failures in the implementation of the contents of the agreement. In POJK No. 9/POJK.04/2015 there is a setting of failure events (event of default) in Article 3 paragraph (3) which reads, "In the event of an event of default in a Repo Transaction, the parties are obliged to settle their obligations in accordance with the procedure for resolving the failure event and the rights and obligations that follow it as contained in the Repo Transaction agreement." Referring to the provisions of Article 4 paragraph (1) and paragraph (2) of POJK No. 9/POJK.04/2015 as outlined earlier, each repo transaction agreement must contain provisions regarding failure events and procedures for resolving failure events and the rights and obligations that follow.

Provisions of POJK No. 9/POJK.04/2015 are further followed by SEOJK No. 33/SEOJK.04/2015 concerning the Global Master Repurchase Agreement Indonesia. The Global Master Repurchase Agreement (hereinafter referred to as SEOJK No. 33/SEOJK.04/2015) or commonly abbreviated as GMRA is a standard guideline for internationally applicable repo transaction agreements, issued by the International Capital Market Association (ICMA). These international provisions were then adopted and adjusted to the contours of Indonesia so that it was stated that SEOJK No. 33 / SEOJK.04 / 2015 regulates the Global Master Repurchase Agreement Indonesia. GMRA Indonesia is a standard written agreement on repo transactions prepared based on the 2000 version of GMRA and its

appendices issued by ICMA and has been adapted to the specific characteristics of the repo market, applicable laws, and market needs in Indonesia.

C. Mechanism for Transferring Shares of Public Companies through Repo Transactions According to POJK No. 9/POJK.04/2015

Article 1 number 1 of POJK No. 9/POJK.04/2015 concerning Guidelines for Repurchase Agreement Transactions for Financial Services Institutions (hereinafter referred to as POJK No. 9/POJK.04/2015) states that "The Repurchase Agreement Transaction, hereinafter referred to as the Repo Transaction, is a contract to sell or buy Securities with the promise of buying or reselling at a predetermined time and price." The securities that can be transacted here refer to securities, namely debt recognition letters, commercial securities, stocks, bonds, proof of debt, Participation Units of collective investment contracts, futures contracts on Securities, and any derivatives of securities, as referred to in Law Number 8 of 1995 concerning the Capital Market (hereinafter referred to as the Capital Market Law).

In buying and selling transactions, in general, the parties involved are basically only Sellers and Buyers. However, in the repo transaction of shares of public companies that are actively traded on the Indonesia Stock Exchange (IDX), there are intermediaries who also have a role in the implementation of stock repo transactions, including Financial Services Institutions as intermediaries/brokers/agents Clearing and Guarantee Institutions, Depository and Settlement Institutions, Securities Administration Bureaus. This is because stock transactions on the stock exchange cannot be directly carried out by individuals, but must go through Financial Services Institutions that are members of the stock exchange as holders of access to the IDX. Then the securities company that plays a role in the Clearing and Guarantee Institution system is the Indonesian Clearing and Guarantee Corporation (KPEI). Meanwhile, securities companies that play a role in the Depository and Settlement Institution system are securities companies that administer customer securities accounts organized by PT Kustodian Sentral Efek Indonesia (KSEI).

Stock repo transactions on the IDX are usually carried out by investors in the negotiation market. The Seller in trading securities in the negotiation market can offer its predetermined share price freely to prospective Buyers because it does not have to be bound by the standardization of stock prices like trading in the regular market. In the negotiation market, individual securities transactions are carried out through bargaining without including selling offers and buying requests in the Jakarta Automated Trading System (JATS) system.

JATS is an automated system with computer means in securities trading that applies on the IDX. JATS can provide facilities such as: (Nasarudin & et al, 2014)

1. Placing information (sell orders and buy orders in non-regular markets).
2. Include the final outcome of the agreed negotiations on the negotiating board.
3. Receive information related to corporate action.
4. Receive messages or announcements from the stock exchange.

The prospective Seller will submit a share repo transaction offer regarding the number and price of shares, the period of execution of the repo transaction, and the share repurchase price that is the object of the repo transaction to the prospective Buyer in the negotiation market, if the offer is deemed unsuitable, the prospective Buyer will usually submit a counter offer to the offer submitted by the prospective Seller, resulting in a bargain or negotiation. In the event of

acceptance of the offer by both parties then an agreement will be formed and the repo transaction will be followed up.

The agreement to hold repo transactions needs to be stated in the form of a written agreement guided by the provisions of the Global Master Repurchase Agreement Indonesia (GMRA Indonesia) as stipulated in Article 4 paragraph (1) and Article 5 paragraph (1) of POJK No. 9 / POJK.04 / 2015. Upon signing, the share repo transaction agreement becomes valid and binding on the parties.

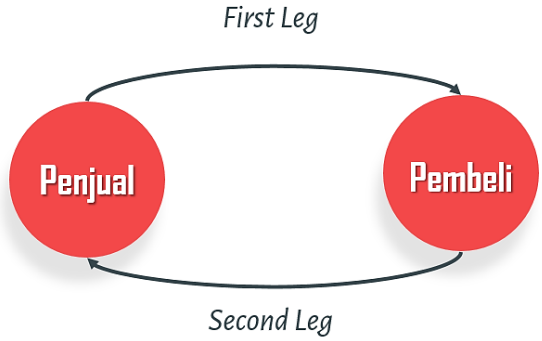

Figure 1. Stages of Stock Repo Transactions

The implementation of the share repo transaction agreement in principle consists of 2 (two) stages, namely the first leg and second leg stages. At the first leg stage, the Seller hands over the shares to the Buyer and the Buyer pays the price of the shares agreed upon in the repo transaction agreement. Whereas in the second leg stage, the Buyer hands over the shares to the Seller and the Seller buys the shares that have previously been sold to the Buyer by paying the price of the shares and the agreed fees before or on the due date of the right to repurchase. Therefore, repo transaction agreements are often also called multiple agreements because there are 2 times the sale and purchase transactions. This is the essence of the purpose of the repo transaction, which is that the Seller can buy back the goods he has sold to the Buyer at a specified time. Therefore, a share repo transaction can be said to have been successful when the parties carry out their obligations in both the first leg and second leg settlement process at the maturity of the repurchase.

Stock repo transactions carried out in the negotiation market are not carried out by entering sell or buy orders in the JATS system but in accordance with Provision VII.4.1 Regulation Number II-A concerning Equity Securities Trading in the Annex to the Decree of the Board of Directors of PT Bursa Efek Indonesia Number: Kep-00061 / BEI / 07-2021 dated July 23, 2021, the results of the negotiation agreement of the parties in Equity Securities Trading in the subsequent negotiation market must still be processed through the system JATS. Once the supply and demand process by the JATS system is declared "matched", it means that the transaction is valid as an exchange transaction, this refers to Regulation Number II-A of the Indonesia Stock Exchange and the provisions of the validity of the agreement as per Article 1320 of the Criminal Code. When declared "matched, the shares are free from any collateral charges. If it is not "matched", there is a system mechanism known as auto reject.

KPEI will then clear the transactions made by the parties systemically on IDX information. The clearing is carried out in order to determine the rights and obligations arising from the share repo transaction carried out by the parties and what to do after the transaction is completed. This is contained in the Clearing Results List (DHK) published by KPEI. The DHK

also contains details regarding the code and number of shares traded, the funds to be paid by the Buyer, and the date of the transaction. DHK shall be informed to Members of the Exchange who make transactions no later than 19.30 WIB on the relevant day. DHK in printed form must also be delivered no later than 09.00 WIB the next day.

In contrast to the clearing carried out by KPEI in the regular market and the cash market for stock exchange transactions, namely by netting with novation, KPEI clears stock repo transactions in the negotiation market, namely on a per-transaction basis between members of the selling exchange and members of the buying exchange. According to Provision 1.8 of KPEI Regulation Number II-5 concerning Clearing and Guaranteeing of Exchange Transaction Settlement of Equity Securities in the Annex to the Decree of the Board of Directors of PT Kliring Penjaminan Efek Indonesia Number: KEP-027 / DIR / KPEI / 1118 dated November 22, 2018, what is meant by trade for trade (TFT) is the determination of the fulfillment of rights and obligations for each transaction by the Clearing Member which is carried out directly on the Securities transacted.

After the clearing process is complete, the settlement process will continue. The settlement process is the process of exercising the rights and obligations of each party. The Securities Depository and Settlement Institution organized by KSEI will settle securities transactions on the stock exchange by book-entry with a scriptless trading system or bonded transactions through book-entry settlement, which is often referred to as The Central Depository and Book Entry Settlement System (C-BEST).

Based on the provisions of Article 10 paragraph (3) and paragraph (4) of POJK No. 9/POJK.04/2015, Financial Services Institutions that conduct repo transactions on equity securities are required to report to the Depository and Settlement Institution no later than the next working day after the repo transaction occurs. C-BEST is a system provided and used to settle such transactions by KSEI. The system provided by KSEI will issue an external reference number of each repo transaction reported by it for the settlement process. The reference number (external reference) as referred to must be used to carry out book-entry instructions in the context of settling repo transactions by subtracting securities or shares from the Seller's account and then adding to the Buyer's account. And vice versa, the fund account of the Buyer through the Members of the Stock Exchange will be deducted and added to the fund accounts of the Members of the Seller's Stock Exchange. After the transfer of securities, the legal consequence is that the rights of ownership of the securities have been legally transferred to the Buyer.

Provision 2.10 in KSEI Regulation No. V-G on Reporting and Settlement of Repo Transactions (Appendix to the Decree of the Board of Directors of PT Kustodian Sentral Efek Indonesia Number: KEP-0036/DIR/KSEI/1215 dated December 17, 2015), KSEI does not guarantee the fulfillment of the rights and obligations of the parties (or related parties) conducting repo transactions, as it is only responsible for providing a reporting system and carrying out the transfer of securities and/or funds based on the instructions of the parties holding repo transactions. After that, KSEI will inform the securities administration bureau of the shares that are the object of the repo transaction to make changes to the Shareholders' Register form on behalf of the Seller to on behalf of the Buyer.

If the Seller wishes to repurchase the shares that he has sold to the Buyer by the mechanism of a share repo transaction, the Seller will submit a Purchase Request to the Buyer to carry out the repurchase before or on the due date of the right to repurchase as agreed in the repo

transaction agreement. The price to be paid by the Seller at the time of the repurchase or the repurchase price in a repo transaction of shares traded on the IDX shall take into account the total Purchase Price and Price Difference on that date. Equity securities that are actively traded on the IDX must be adjusted to the value of the securities to the mark-to-market value which is the last trading price on the IDX.

Furthermore, the costs that have been incurred by the Buyer will be taken into account when carrying out the previous sale and purchase transaction. The obligations of the parties with respect to the first leg will be set off to their obligations in respect of the delivery of the Equivalent Securities and the payment of the Repurchase Price at the time of the second leg with the adjustment of the previously agreed Repurchase Price. Thus only a net amount shall be paid in cash by one party to the other. Then the transaction is again processed through the JATS system, cleared by KPEI, and completed by KSEI.

In the case analyzed, the repo transaction on August 20, 2014, between Benny Tjokrosaputro (Plaintiff's original Seller/Appellant) and Platinum Partners Value Arbitrage, L.P (Buyer) had transferred ownership of 425,000,000 shares of MYRX shares from the share account of Benny Tjokrosaputro (Seller/Plaintiff's original Appeal) to the share account of Platinum Partners Value Arbitrage, L.P (Buyer). Furthermore, it can be seen from the Monthly Report of Hanson Securities Holder Registration, Hanson Annual Report, and Report of the Securities Administration Bureau of PT Ficomindo Buana Registrar that when there were three purchase transactions of MYRX shares by Goldman Sachs International (Second Buyer/Defendant's original Comparator), there was no reduction in the number of shares owned by Benny Tjokrosaputro (Seller/Plaintiff's original Appeal) in accordance with the number of shares transacted.

Based on Article 48 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies as amended by Law Number 11 of 2020 concerning Job Creation (hereinafter referred to as the Limited Liability Company Law), "The Company's shares are issued on behalf of the owner." Thus, in the Public Company, the name of the party listed in the Shareholders' Register book is the one who is entitled.

In addition, if the Shares that are the object of the repo transaction are actually used as collateral, the Shares will not be held in Collective Depository by KSEI. Referring to Provision 2.2.2 in the Appendix to the Decree of the Board of Directors of PT Kustodian Sentral Efek Indonesia Number: KEP-0013/DIR/KSEI/0612 dated June 11, 2012:

"The collateralized effect will:

a) recorded in the Sub Securities Account in the name of the collateral provider, which is specifically used for the recording of Securities collateral. As long as it is recorded as collateral, the Securities cannot be withdrawn or transferred for the completion of Securities transactions; or

b) a freeze is made of a certain amount of Securities collateralized in the Sub Securities Account in the name of the collateral provider. During the freezing process, the Securities cannot be withdrawn or transferred for the completion of the Securities transaction. "

In fact, the Shares used to complete the transaction between Platinum Partners Value Arbitrage, L.P (Buyer) and Goldman Sachs International (Second Buyer/Defendant's original Comparator) are stored in the Collective Depository and can then be settled by KSEI, and therefore, legally, free from charges or interests of other parties.

Furthermore, every transaction has been legally cleared by KPEI and completed by KSEI, all rights and obligations in connection with the Shares (including title to shares) passed from Platinum Partners Value Arbitrage, L.P (Buyer) to Goldman Sachs International (Second Buyer/Defendant's original Comparator).

D. Failure to Surrender MYRX Shares in Repo Transaction

According to Article 3 paragraph (3) of POJK No. 9/POJK.04/2015, "In the event of an event of default in a Repo Transaction, the parties shall settle their obligations in accordance with the procedure for resolving the failure event and the rights and obligations that follow it as contained in the Repo Transaction agreement." In the explanation, it is outlined that what is meant by "failure event" includes but is not limited to:

a. failure to fulfill its obligations in connection with the Repo Transaction;
b. Financial Services Institutions are in a condition of temporary suspension of their business activities (suspension);
c. a statement made by Seller or Buyer is materially incorrect or incorrect at the time it is given or reaffirmed, and the non-defaulting party sends a notice of failure event to the defaulting party; and
d. the parties to the Repo Transaction are in bankruptcy condition.

In the case analyzed it is clear that there has been a failure of either party to fulfill its obligations in relation to the Repo Transaction, where Platinum Partners Value Arbitrage Fund, L.P. (Buyer) transferred MYRX shares purchased from Benny Tjokrosaputro (Seller/Plaintiff/Appellant and Comparator) with a repo transaction mechanism to a Third Party, namely Goldman Sachs International (Second Buyer/Defendant/Comparator as well as Comparator) before the due date of repurchase. This can be classified as an event of default in the repo transaction as outlined in Article 3 paragraph (3) of POJK No. 9/POJK.04/2015.

In the event of a failure event, the parties shall settle their obligations in accordance with the procedure for resolving the failure event and the rights and obligations that follow it as contained in the repo transaction agreement as soon as possible. As outlined in the Explanation of Article 4 paragraph (2) letter g of POJK No. 9 / POJK.04 / 2015, procedures for resolving failure events and the rights and obligations that follow include, among others, the settlement of obligations (close-out) and mutual elimination of obligations (set-off) in full from claims between the parties:

1. Notification from the non-defaulting party to the defaulting party.
2. The decision to settle is based on individual transaction failures (single trade default) or all trade defaults.

In the settlement of failure events, usually, the parties have obligations including calculating the net exposure result of the repo transaction at the time the failure occurs as agreed in the contract, including repo interest, top-up, price difference, and penalty for failure to complete the transaction.

The most important thing in a stock repo transaction at the time of the second leg is that the Seller who wants to exercise the right to buy back can receive back the shares that have been sold to the Buyer. Please note that the theory of fungibility can be used. This means that the shares do not have to be the same shares sold in the first leg but most importantly the shares to be resold in the second leg are commensurate or identical (the classification and amount are the same) as the shares sold in the first leg. But of course, it would be more ideal if the shares

traded during the second leg are shares that are indeed the object of repo transactions during the first leg.

If that Buyer is unable to return or resell shares commensurate with those traded on the first leg, then it means a failure event. In the general civil law provisions the event of such a failure indicates that the Buyer has defaulted.

According to R. Subekti, if the debtor (the debtor) does not do what he promised, then it is said that he defaulted; he was alpha or "negligent" or broke promises; or also he breaks the covenant if he does or does something that he is not allowed to do. In this case, Platinum Partners Value Arbitrage Fund, L.P. (Buyer) did not do what it promised so it has neglected to carry out its obligation to resell the shares of MYRX to Benny Tjokrosaputro (Seller/Plaintiff/Appellant and Comparator) on the agreed date (Subekti, Law of Treaties, Cet. 20, 2020).

The term "Default" comes from the Dutch language which means poor achievement. The default of a debtor can be in four categories, namely: (Sari & Simanunsong, 2007)

a. not doing what it was willing to do;
b. carrying out what he promised, but not as promised;
c. did what he promised but was late; and
d. doing something that according to the agreement he is not allowed to do.

Upon the debtor's negligence, the creditor may choose between the following claims:

a. fulfillment of agreements;
b. fulfillment of the agreement accompanied by compensation;
c. indemnity only;
d. cancellation of the agreement;
e. cancellation of the agreement accompanied by indemnification.

For the negligence or negligence of the debtor as a party who is obliged to do something, the debtor may be threatened with several sanctions or penalties consisting of 4 (four) types, namely:

a. pay losses suffered by creditors (indemnification);
b. cancellation of the agreement;
c. risk switching;
d. pay the costs of the case if it is brought before the Magistrate.

The purpose of the prosecution for the fulfillment of the agreement is whether the debtor who has been negligent (has been warned and still does not keep his obligations) is still allowed to fulfill his obligations. This issue is commonly referred to as the issue of the possibility of the debtor neglecting to rid himself of his negligence. It is necessary to be warned not to consider the fulfillment of the Agreement as a sanction for negligence because it has been from the beginning a matter that must be denied by the debtor (Subekti, Law of Treaties, Cet. 20, 2020).

In this case, Benny Tjokrosaputro (Seller/Plaintiff/Appellant and Comparator) sold 425,000,000 shares of his MYRX to Platinum Partners Value Arbitrage, L.P on a repo mechanism under the Sale and Repurchase Agreement between Newrick Holdings Ltd. and Platinum Partners Value Arbitrage Fund, L.P. (Buyer) dated August 20, 2014. The repurchase due date was agreed to be August 31, 2015. However, prior to the maturity date of the Platinum Partners Value Arbitrage Fund purchase, L.P. (Buyer) sold 425,000,000 shares of MYRX

shares in several transactions to a Third Party, namely Goldman Sachs International (Second Buyer/Defendant/Comparator as well as Comparator). When Benny Tjokrosaputro (Seller/Plaintiff/Appellant and Comparator) wants to repurchase the shares during the second leg, Platinum Partners Value Arbitrage Fund, L.P. (Buyer) defaults because it cannot resell the shares or commensurate shares to Benny Tjokrosaputro (Seller/Plaintiff/Appellant and Comparator). This is an event of failure as described in the letter an Explanation of Article 3 paragraph (3) of POJK No. 9/POJK.04/2015, namely failure to fulfill its obligations related to Repo Transactions.

CONCLUSION

Based on the description of the background, problem formulation, and the author's analysis in the previous section, this study draws 2 (two) conclusions as follows:

1. The mechanism for transferring shares of Public Companies through repo transactions according to POJK No. 9 / POJK.04 / 2015 consists of 2 buying and selling transactions known as the first leg and second leg. The transfer of shares of the Public Company through repo transactions according to POJK No. 9/POJK.04/2015 is generally carried out through the negotiation market. So that the transfer of shares of the Public Company through a repo transaction at the time of the first leg is carried out by the process of (1) Offer/negotiation between the prospective Seller and the prospective Buyer; (2) The signing of the share repo transaction agreement set forth in the written agreement; (3) Clearing by KPEI; and (4) Settlement by KSEI. After that, KSEI will inform the Securities Administration Bureau of the shares that are the object of the repo transaction to change the seller's name in the Shareholders' Register to the name of the Buyer. At the time of the second leg, the Seller who wishes to exercise the right to repurchase sends a Purchase Request to the Buyer for further processing as during the first leg. The repo transaction is said to be successful if the second leg is also reached. In the case of analysis, the sale and purchase transaction on the second leg was not achieved because the shares that were the object of the repo had been transferred to a third party.
2. The transfer of MYRX shares by the buyer to a third party is an event of failure of the repo transaction according to POJK No. 9/POJK.04/2015. The explanation of Article 3 paragraph (3) of POJK No. 9/POJK.04/2015 outlines several circumstances classified as an event of default, one of which is the failure to fulfill its obligations related to Repo Transactions. This is because the transfer of shares of the repo object by Platinum Partners Value Arbitrage Fund, L.P. (Buyer) to Goldman Sachs International (Third Party/Second Buyer) caused Benny Tjokrosaputro (Seller) to be unable to repurchase the shares he had sold with the repo mechanism on the agreed date, so the Buyer failed to fulfill his obligations related to the repo transaction to resell the securities in the repo transaction to the Seller (which can be called default in general civil law).

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