

Share Ownership Structure and Its Implication towards Directors Independency in Conflict of Interest Transaction in Indonesia and Australia

Agus Riyanto

Lecturer, Business Law Department
Faculty of Humanities
Bina Nusantara University
Jakarta, Indonesia

agusriyanto@msn.com, agus.riyanto@binus.ac.id

Miranda Carolina

Business Law Department, Faculty of Humanities
Bina Nusantara University
Jakarta, Indonesia

miranda.carolina@binus.ac.id

Abdul Rasyid

Lecturer, Business Law Department
Faculty of Humanities
Bina Nusantara University
Jakarta, Indonesia

arasyid@binus.edu cc

Abstract

The Board of Directors is an essential part in running a company, especially because of its authority over the control and management of company activities, which involves a lot of information. Directors drive the company towards its goals and visions, by moving it to accomplish its missions. One of the manifestation of its importance can be seen in the aspect of disclosure. As the one who manages important information, disclosure is undeniably critical, either for the shareholders, government, or the people. The directors' ability to disclose important information is one of the benchmarks for the independence of the directors. This independence is influenced by shareholders, whose composition is defined through a share ownership structure. The share ownership structure itself can be classified according to the legal system in that country, which makes the different share ownership structure could be identified through a country's legal system. Whereas directors' independency can be identified through a conflict of interest transaction, where the directors play a significant role in preventing potential losses, namely through disclosure. This paper aims to show the relationship between share ownership structure and the independence of directors from the perspective of conflict of interest transactions in Indonesia and Australia to show which share ownership structure is better to be implemented. The results found are that a dispersed share ownership structure that exists in common law countries implies better directors' independency, and that directors in Australia show better disclosure accompanied by greater responsibility based on conflict of interest regulations.

Keywords

Share Ownership Structure, Disclosure, Directors, Independency and Conflict of Interest.

Biography

Agus Riyanto is a senior lecturer in the Business Law Department, Faculty of Humanities, Bina Nusantara University, Jakarta, Indonesia. He earned his Bachelor of Laws (International Law) from the Faculty of Law, Parahyangan Catholic University (UNPAR), Bandung. He then obtained a Master of Law (LL.M) from the School of Law, University of Technology Sydney (UTS), Australia (Corporate Law). Currently, he is a student of the Doctoral Program in Law (PDIH), Diponegoro University (UNDIP). He has teaching experience since 2003 until now, with the expertise in the fields of Corporate Law, Capital Market Law, and Investment Law.

Miranda Carolina is a student majoring in Business Law Department, Faculty of Humanities, Bina Nusantara University, Indonesia. She was involved in some organizations throughout her first and second year in university and has just finished her internship for 4 months at Armand Yapsunto Muharamsyah and Partners (AYMP Atelier of Law). Passionate about business and finance, she became the secretary and treasurer of the 2020 BNEC Social Event and 2021 Asian English Olympics, the biggest English Olympics in Asia held annually by BNEC (Bina Nusantara English Club). Her interest in social interactions and law has motivated her to pursue a scholarship to Taiwan in her 7th semester. She is currently in her third year and has wrote a few law articles, as well as participated in three international publications about blockchain.

Abdul Rasyid is a senior lecturer in the Business Law Department, Faculty of Humanities, Bina Nusantara University, Jakarta, Indonesia. He completed his undergraduate degree at the Sharia Faculty of UIN Imam Bonjol Padang majoring in Ahwal Syakhshiyah in 2002, graduating in 3.5 years with a cum laude predicate. He then completed his master and doctoral studies at the Faculty of Law, International Islamic University Malaysia (IIUM) in 2005 and 2013 with a concentration in sharia business law. During college, he was active in various organizations, among others, active in the Islamic Student Association (HMI), as General Chair of the Indonesian Student Association throughout Malaysia (PPIM) in 2006-2007, Founder/Chairman, Division of Utilization, Zakat Service Unit - National Amil Zakat Agency Republic of Indonesia (UPZ-BAZNAS) in Malaysia in 2007-2008, and founding coordinator/General Secretary, Association of Indonesian Sharia Scientists and Scholars (HISSI) Malaysia Branch in 2009-2011. Lecturer at the 2014 Tazkia Islamic Institute, and since 2015 has worked as a permanent lecturer (faculty member) at the Department of Business Law, Bina Nusantara University, Jakarta and teaches several subjects including: Islamic law; sharia business law; banking and finance law; legal research methods and legal aspects in economics. In 2018 the author was involved as a Legal Consultant in the preparation of the 2019-2024 Indonesian Sharia Economic Masterplan. The author is currently also a senior researcher at the Islamic Economic Forum for Indonesia Development (ISEFID).