

Declaration of Directors as an Alternative to Substitute for GMIS in Conflict-of-Interest Transactions: Comparative Study

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Abstract

In Indonesia, the GMIS is used as an instrument to determine the implementation of Conflict-of-Interest Transactions attended by Independent Shareholders. However, in practice, it is found that there are many weaknesses in the implementation of the GMIS, so it becomes questionable whether the GMIS has protected the Independent Shareholders by the provisions in Article 11 paragraph (1) POJK No. 42/POJK.04/2020 and has prevented the occurrence of violations of Conflict-of-Interest transactions. Thus, research is carried out using a normative juridical method through legal comparisons with the United Kingdom as a country that uses the Board of Directors Declaration instrument which does not involve shareholders in its approval, but from Directors who do not have a conflict-of-interest. The Board of Directors' statement is considered to have advantages that the GMIS does not have in terms of character, procedures, and approvals. This paper aims to determine whether the instrument of the GMIS has protected the Independent Shareholders and to find out whether the Declaration of the Board of Directors can be used as an alternative to the GMIS in Indonesia. The results found from this research can be used as a reflection for each stakeholder on the Conflict-of-Interest Transaction regarding the instruments used before the Conflict-of-Interest Transaction is carried out.

Keywords

Conflict-of-Interest, Independent Shareholders, GMIS, Director's Declaration.

Biographies

Agus Riyanto is a senior lecturer in the Business Law Department, Faculty of Humanities, Bina Nusantara University, Jakarta, Indonesia. Earned his Bachelor of Laws (International Law) from the Faculty of Law, Parahyangan Catholic

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Naurah Impies Aurellia 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 continuing her second period of internship at FAR Partnership. Her interest in social interactions and law has motivated her to pursue some of national competition organized by Universitas Indonesia The 11th Business Law Competition Hafni Sjahruddin as a finalist. she has also published legal articles on the campus website of capital market law. She is currently in her third year and has written a legal paper with her colleague, as well as participated in national conferences proceeding.

Abdul Rasyid is a senior lecturer in the Business Law Department, Faculty of Humanities, Bina Nusantara University, Jakarta, Indonesia. Completed his undergraduate degree at the Sharia Faculty of UIN Imam Bonjol Padang majoring in Ahwal Syakhsiyah 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. 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.