

# **Regulation of Conflict of Interest Transaction and Implications for the Position of Independent Shareholders in the Indonesian Capital market**

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## **Abstract**

In the Indonesian Capital Market, normatively, the position of independent shareholder in conflict-of-interest transaction is as strong party that approves or disapproves the conflict of interest transaction. However, the substance of the regulation regarding to conflict of interest transaction from 1991 to 2020 has not protected independent shareholders. Where, the approval of independent shareholders is not always identical to their strong position, which in practice the Director, Commissioner, or Major Shareholder overrides the provisions of the conflict of interest transaction, namely without prior approval from independent shareholders. Apart from that, there are six other factors that indicate that independent shareholder in conflict-of-interest transaction have a weak position. The weakness arises usually because the independent shareholders only learn about the loss of the transaction after the conflict-of-interest transaction has been carried out. These weakness include: 1) the concentrated shareholdings system that adopted by indonesia; 2) the difficulty of Bapepam (now Financial Service Authority) FSA)) to monitor the public company before conducting a conflict of interest; 3) the occurrence of nominee practices in conflict of interest transaction; 4) no matter how many independent shareholders are present, they are unable to affect the continuity of general meeting of shareholder (GMS) and voting keep been carried out; 5) not fulfilling the applicable conflict of interest procedures and regulations, especially the approval of independent shareholders in the GMS; and 6) law enforcement against public companies who violate the provisions of conflict of interest transaction so far does not provide a deterrent effect. Thus, it is urgent for Capital Market regulators to be able to make a clear and specific arrangement for independent shareholders to be protected from all transaction decisions containing conflict of interest that are dominated by subjective elements of the Board of Directors to the detriment of independent shareholders and the company.

## **Keywords**

Indonesian Capital Market, Conflict of Interest, Independent Shareholder

## **1. Introduction**

In the Capital Market, conflict of interest transactions was born with the spirit to protect independent shareholders. This seriousness occurred from 1991 to 2020 with several changes in accordance with the dynamics that occurred on the trading floor. Starting in 1991, the Decree of the Chairman of Bapepam number 5 No. S-456/PM/1991 concerning Purchase of Shares or Participation in Other Companies was the first regulation, but it did not yet use the terminology of conflict-of-interest transactions, but already required a General Meeting of Shareholders (GMS) with no independent shareholders to decide. Then Bapepam in 1993 reissued the regulation as a correction to the previous one. It was from the provisions of Article 2 of Regulation No. IX.D.1 of 1993 that provided significant changes to the authority of shareholders who did not have a conflict of interest to give their decision in the GMS. One year after Regulation No. IX.D.1 of 1993 was issued, Bapepam made improvements through number 2 of Regulation No. IX.D.1 of 1994 which explained that the existence of independent shareholders in a conflict-of-interest transaction is the determinant of whether or not the conflict-of-interest transaction is allowed to be carried out. One year after the issuance of Regulation No. IX.D.1 Year 1994, Bapepam again updated the regulation through the Decree of the Chairman of Bapepam No. Kep-84/PM/1996, namely in number 2 of Regulation No. IX.E.1-year 1996 which reads the article refines the definition of conflict of interest. Renewal of the regulation continued with the Decree of the Chairman of Bapepam No. Kep-12/PM/1997, namely the changes that occurred in terms of the provisions of the announcement and summoning of the GMS in transactions containing conflicts of interest. In this regulation, the authority of independent shareholders is affirmed who are entitled to decide on transactions containing conflict of interest is one of the requirements that must be fulfilled by the public company as stipulated in number 2 of Regulation No. IX.E.1 of 1997.

Three years later, Bapepam made improvements to transactions containing conflicts of interest with the issuance of Bapepam Chairman Decree No. Kep-32/PM/2000, where the regulation expanded the definition of conflicts of interest and independent shareholders as well as arrangements in the exclusion of transactions containing conflicts of interest. Followed by eight years after the Kep-32/PM/2000 regulation, then replaced by the Decree of the Chairman of Bapepam and LK No. Kep-521/PM/2008, Regulation Number IX.E.1. concerning Affiliated Transactions and Conflict of Interest of Certain Transactions, precisely in number 3 letter b of regulation IX.E.I mentioned about the improvement of the regulation of affiliated transactions which in the previous regulation was not regulated, as well as independent shareholders remain a party that can decide on the implementation of transactions containing conflicts of interest. Before it ended, there was another change in 2009 through the Decree of the Chairman of Bapepam and LK No. Kep-412/BL/2009, Regulation Number IX.E.1 concerning Affiliated Transactions and Conflict of Interest of Certain Transactions in which it was confirmed that transactions containing conflicts of interest could not only come from affiliated transactions but also could come from transactions with third parties. Thus, the meaning of transactions containing conflicts of interest that must be approved in advance by independent shareholders as stipulated in number 3 letter a of Regulation IX.E.I of 2009 has expanded. Until it was refined again by the Financial Services Authority (Substitute for Bapepam since the enactment of Law of the Republic of Indonesia Number 21 of 2011 concerning the Financial Services Authority) in 2020 as the latest amendment to Article 11 paragraph (1) letter d of Financial Services Authority Regulation No. 42/POJK/04/2020 concerning Affiliated Transactions and Conflict of Interest Transactions (POJK No. 42) affirmed "Public companies that conduct conflict of interest transactions are required to obtain prior approval from independent shareholders in the GMS." This regulation shows that independent shareholders are very decisive. This means that without approval, public companies are prohibited from carrying out conflict of interest transactions to the next stage and if they do so without approval, they are categorized as violating the provisions of Article 11 paragraph (1) letter d.

The eight refinements of the conflict-of-interest transaction regulations show that the aim is to protect independent shareholders. However, the good intention of regulating to protect it is not directly proportional to the reality. The provisions are widely circumvented or violated by either the board of directors, board of commissioners, or major shareholders who conduct conflict of interest transactions without the approval of independent shareholders. Even if the transaction can benefit the company, the prescribed procedures must still be carried out. This means that the non-implementation of the Independent GMS indicates that there is no information disclosure on the transaction. Regulations that require the approval of independent shareholders through an Independent GMS before conducting a conflict-of-interest transaction do not always make or are identical to the position of independent shareholders to be strong. This is because there are several weaknesses in the implementation of the Independent GMS experienced by independent shareholders. First, Indra Surya through his dissertation entitled "Protection of Independent Shareholders in Conflict-of-Interest Transactions in the Indonesian Capital Market" states that independent shareholders tend to

have a weak position due to the fact that usually independent shareholders only realized after the conflict-of-interest transaction has been carried out. Secondly, the implementation of nominee agreements on share ownership is one of the problems in the implementation of the Independent GMS representing the interests of independent shareholders.

Third, the concentrated shareholding system adopted by Indonesia. Concentrated ownership is defined as a situation where most of the shares are controlled by a group or individual who has a dominant number of shares compared to other shareholders. Mentioned in Article 53 paragraph (2) of Law Number 40 Year 2007 on Limited Liability Companies, where each shareholder can vote depending on the number of shares they own. The greater the shareholding composition of a shareholder, the greater the opportunity to determine a particular transaction or corporate action. Fourth, although transactions containing conflicts of interest require the approval of independent shareholders, in practice it is difficult for the Financial Services Authority (FSA) to monitor that public companies before carrying out conflict of interest transactions have obtained independent shareholder approval through the Independent GMS, therefore usually independent shareholders do not use the opportunity to attend the first GMS so that the second independent GMS is required with a lower quorum obligation. Compared to minority shareholders, majority shareholders have a stronger and more dominating position. This is also supported by the principle of one share one vote adopted by the Company Law. Fifth, there was an abuse of power as a form of violation in conflict-of-interest transactions carried out by major shareholders, the board of commissioners or directors of the company in transactions containing conflicts of interest to realize the wishes of majority shareholders. Sixth, law enforcement against public company that have committed many violations in transactions containing conflicts of interest so far has not provided a deterrent effect, which in reality gives the impression that Capital Market regulators are more in favor of majority shareholders.

By using the 6 (six) factors of the weak position of independent shareholders mentioned above, in practice it was also found in 21 cases of public companies that violated conflict of interest transactions by not obtaining the approval of independent shareholders. This phenomenon has shown that regulations are not sufficient to be used as an equivalent or implemented for public companies to realize their transparency towards the implementation of conflict-of-interest transactions. This problem makes the constellation in decision-making at the GMS of independent shareholders a minority, so that their position is weak to influence the management's decision in deciding the conflict-of-interest transaction plan. So that independent shareholders should be given adequate protection. Based on the problems in the background above, the author will raise the main problems in writing this journal as follows: (1) What is the substance of conflict-of-interest transaction regulations (1991-2020) that intend to protect independent shareholders? (2) What are the implications of conflict-of-interest transaction regulations on the position of independent shareholders from cases that occur in the Capital Market?

## **2. Methods**

In this research, the author uses normative research methods and a case approach with the aim and use for empirical, rational, and systematic science. Empirical means that the method used can be accepted by the human senses, rational means that the activity is carried out in ways that make sense, and systematic means that the process carried out in the research uses logical steps.

## **3. Result and Discussion**

Independent shareholders can be said to be (eigenaar) which means as owners of proof of their participation in the capital of a company, trade partnership, or limited liability company and Independent which means that they do not have a personal economic interest in connection with a certain transaction, which in this case is a conflict-of-interest transaction. Conflict of interest transaction is any interest or financial relationship either directly or indirectly or in other situations that may give rise to a personal relationship in a commercial transaction or source of funding. Which, based on the history of regulations regarding conflict-of-interest transactions from 1991 to 2020, the role of Independent Shareholders determines whether or not a conflict-of-interest transaction can be carried out. Likewise, it is also clearly stated in Article 82 paragraph (2) of Law No. 8 of 1999 concerning the Capital Market that Bapepam may require the public company or public company to obtain the approval of the majority of independent shareholders if the public company or public company conducts a transaction in which the economic interests of the Public company or public company conflict with the personal economic interests of directors, commissioners, or major shareholders. Although apparently, the word "may require" referred to in the Article still raises questions until now. Where, the word "may require" cannot be said to be an "obligation" for the public company to obtain approval from the majority of independent shareholders in the GMS.

Thus, actually the weakness of Independent Shareholders is clearly seen in the UUPM as the legal basis of the Capital Article in Indonesia and the approval of strong independent shareholders for Public companies in the Capital Market sector to be able to determine whether or not a conflict of interest transaction is valid in order to minimize certain parties to take personal economic benefits that end up harming the company, as shareholders who have a conflict of interest within the framework of the GMS also approve the decision approved by independent shareholders or shareholders who do not have a personal interest in the transaction..

Based on the historical development of conflict-of-interest transaction regulations in Indonesia, it is quite evident that the position of independent shareholders in conflict-of-interest transactions is very strong. However, behind it all, independent shareholders are very weak parties considering the six factors that cause the weakness of independent shareholders and seen from the public company cases that have been handled by Bapepam and FSA in transactions that contain conflicts of interest. This happens because the public company or public company has ignored the applicable conflict of interest regulation procedures, especially ignoring the approval of independent shareholders through the Independent GMS which should be done first. Based on the explanation above, it is found that many public companies have violated conflict of interest transactions by not obtaining independent shareholder approval. The following begins with a table of the history of the development of conflict-of-interest transaction regulations that have undergone eight changes: (Table 1)

Table 1. Regulation of Conflict of Interest Transactions Since 1991 – 2020

No.	Regulatory read	Changes of substance
1.	<p><b>Point 5 of the Decree of the Chairman of Bapepam No. S-456/PM/1991 on the Purchase of Shares or Investments in Other Companies, dated 12 April 1991:</b></p> <p>"The purchase or participation of shares can only be carried out after the approval of the General Meeting of Shareholders in accordance with the Articles of Association. In the agenda of the General Meeting of Shareholders, there must be a special event regarding the explanation of the Company whose shares will be purchased or established. Data on the Company to be purchased or established must be made available to shareholders before the General Meeting of Shareholders begins."</p>	<p>This regulation does not recognize the term conflict of interest transaction, but the terminology used is the purchase of shares or participation in other companies. The position of independent shareholders cannot determine whether or not the transaction containing conflict of interest is valid because the principle used is simple majority.</p>
2.	<p><b>Point 2 of Regulation No. IX.D.1 of 1993:</b></p> <p>"Except as stated in point 3 of this regulation, a transaction in which a member of the Board of Commissioners, a member of the Board of Directors or a Major Shareholder has a conflict of interest, the transaction must be approved by more than 50% (fifty per cent) of the votes of shareholders who do not have a conflict of interest in relation to the transaction. The provisions regarding this matter must be confirmed in the form of a notarial deed."</p>	<p>The regulation on conflict of interest transactions involving every public company that has made a public offering was issued by the Decree of the Chairman of Bapepam No. KEP-01/PM/1993, Regulation No. IX.D.1 on Conflict of Interest in Certain Transactions, dated 29 January 1993 (hereinafter referred to as "Regulation No. IX.D.1 of 1993"). With the issuance of this regulation, there has been a regulation that specifically regulates transactions that contain conflicts of interest.</p>
3.	<p><b>Number 2 of Regulation No. IX.D.1 of 1994:</b></p> <p>"If a Transaction in which a Commissioner, Director or Major Shareholder has a Conflict of Interest, the Transaction must be approved by the Independent Shareholders or their representatives authorized to do so as provided for in this regulation. Such approval must be confirmed in the form of a notarial deed."</p>	<p>In this regulation, there are improvements in the procedures for holding the public company's GMS, including the determination of the attendance quorum and validity of the meeting required to make decisions on transactions that contain conflicts of interest. In addition, this regulation recognized the term independent shareholder, which was previously unknown and has the same meaning as shareholders who have no conflict of interest.</p>

4.	<b>Number 2 of Regulation No. IX.E.1 of 1996:</b> "If a Transaction in which a Commissioner, Director or Major Shareholder has a Conflict of Interest, the Transaction must be approved by the Independent Shareholders or their representatives authorized to do so as provided for in this regulation. Such approval must be confirmed in the form of a notarial deed."	In Regulation No. IX.E.1 of 1996 there are differences regarding the definition of conflict of interest with the previous regulation. In this regulation, independent shareholders still have an important role in determining whether or not a transaction contains a conflict of interest.
5.	<b>Number 2 of Regulation No. IX.E.1 of 1997:</b> "If a Transaction in which a Commissioner, Director or Major Shareholder has a Conflict of Interest, the Transaction must be approved by the Independent Shareholders or their representatives authorized to do so as stipulated in this regulation. Such approval must be confirmed in the form of a notarial deed."	One of the changes that occurs is in terms of the provisions of announcements and GMS calls on transactions that contain conflicts of interest. In this regulation, the authority of independent shareholders to decide on transactions containing conflicts of interest is one of the requirements that must be fulfilled by the public company.
6.	<b>Number 2 of Regulation No. IX.E.1 of 2000:</b> "If a Transaction in which a director, commissioner, major shareholder or Affiliated Party of a director, commissioner, or major shareholder has a Conflict of Interest, the Transaction must first be approved by the Independent Shareholders or their representatives authorized to do so in the General Meeting of Shareholders as stipulated in this regulation. Such approval must be confirmed in the form of a notarial deed."	There is an expansion of the definition of conflict of interest and the definition of independent shareholders in this regulation, which has the impact that there is a wider range of transactions that contain conflicts of interest that must be approved by independent shareholders.
7.	<b>Number 3 letter b of the Decree of the Chairman of Bapepam and LK No. Kep-521/PM/2008:</b> "Transactions containing Conflict of Interest must first be approved by the Independent Shareholders or their representatives authorized to do so in the General Meeting of Shareholders as stipulated in this regulation. Such approval must be confirmed in the form of a notarial deed."	A significant change is the regulation of related party transactions, which was not regulated in the previous regulation. In this Regulation, independent shareholders are still the party that can decide the implementation of transactions that contain conflicts of interest.
8.	<b>Number 3 letter a of the Decree of the Chairman of Bapepam and LK No. Kep-412/BL/2009:</b> "Transactions containing Conflict of Interest must first be approved by the Independent Shareholders or their representatives authorized to do so in the General Meeting of Shareholders as stipulated in this regulation. Such approval must be confirmed in the form of a notarial deed."	There is an expansion of understanding in Regulation No. IX.E.1 of 2009 where the changes are in terms of the definition of transactions, affiliated transactions and exempted transaction provisions regarding transactions that contain conflicts of interest.
9.	<b>Article 11 paragraph (1) letter d No. 42/POJK /04/2020 concerning Affiliated Transactions and Conflict of Interest Transactions:</b> "Public companies that conduct conflict of interest transactions are required to obtain prior approval from independent shareholders in the GMS."	There is an expansion of the definition in this Regulation, where the procedural implementation of transactions that contain conflicts of interest must obtain the approval of independent shareholders in the GMS.

Furthermore, the following are cases that occurred for violations committed by public companies against the provisions of conflict-of-interest transactions: (Table 2)

Table 2. Cases of Conflict-of-Interest Transactions Since 1991 – 2020

No.	Public company	Year	Bapepam/FSA Decree
1.	PT Indocopper Investama Tbk	1998	In accordance with Article 5 letter n of Law No. 8 of 1995 on Capital Market, Indocopper (Board of Directors and Commissioners) is required to pay a sum of Rp 500,000,000,- (five hundred million rupiah) to be deposited to the state treasury for its negligence in conducting conflict of interest transactions without first obtaining the approval of independent shareholders and imposed with an administrative fine of Rp 500,000,000,- (five hundred million rupiah) by Bapepam based on the decision of the court of appeal that Bapepam in issuing administrative sanction decision has been in accordance with the authority and general principles of good governance.
2.	PT Medco Energi Corporation Tbk	1999	A sanction in the form of a fine of Rp 500,000,000. - (five hundred million rupiah) to the company and Rp 250,000,000.00 to the Board of Directors and Commissioners for not obtaining independent shareholder approval when conducting conflict of interest transactions.
3.	PT Super Mitory Utama Tbk	2000	A fine of Rp 500,000,000. - (five hundred million rupiah) was imposed on the Company and ordered the company to organize an Independent GMS, and bear all registration costs. for the Board of Directors and Commissioners, a fine of Rp 250,000,000. - (two hundred and fifty million rupiah) was imposed on each for neglecting to carry out their duties and obligations to obtain the approval of independent shareholders.
4.	PT Hanson Industri Utama Tbk	2000	Administrative sanctions in the form of a fine of Rp 500,000,000 (five hundred million rupiah) to the Company and also to each of the Directors and Commissioners, as well as an order to bear all registration fees in the context of scripless share trading and independent shareholder approval.
5.	PT Asuransi Bina Dana Arta Tbk (PT ABDA)	2001	The Board of Directors and Commissioners are required to pay to the state treasury Rp 500,000,000.- (five hundred million rupiah) and the Company is required to hold a GMS and pay registration fees in the context of scripless trading and approval of independent shareholders.
6.	PT Djakarta International Hotel & Development Tbk (PT JIHD)	2001	Sanctions in the form of a fine of Rp 500,000,000.- (five hundred million rupiah) to the company and the obligation to pay Rp 500,000,000.- (five hundred million rupiah) by the Directors and Commissioners of the company did not obtain the approval of independent shareholders when conducting conflict of interest transactions.
7.	PT Multipolar Corporation Tbk & PT Broadband Multimedia Tbk	2000	A fine of Rp 500,000,000.- (five hundred million rupiah) was imposed on PT Multipolar Corporation Tbk and each of its Directors and Commissioners, as well as PT Broadband Multimedia Tbk. for not obtaining independent shareholder approval when conducting conflict of interest transactions.
8.	PT Myohdotcom Indonesia Tbk	2001	Referring to the case of violation of the provisions of material transactions, and what was violated was not information disclosure but the late submission of independent appraisal report documents, especially it could harm the company and also the independent shareholders were not asked for independent shareholder approval when conducting the transaction and were given a fine of IDR 358,000,000.00.
9.	PT Jaya Pari Steel Tbk (PT JPS)	2001	Penalized with a fine of Rp 500,000,000.- (five hundred million rupiah) and obliged to schedule the accountability and submission of information on the MM-29 A asset sale transaction on 13 December 2001 to a party with a special relationship, at the next GMS. This is because it has not obtained the approval of independent shareholders when conducting conflict of interest transactions.
10.	PT Asia Inti Selera Tbk	2003	A fine of Rp 500,000,000.- (five hundred million rupiah) and is obliged to adjourn the meeting that there has been a loan transaction to a party with

			a special relationship, as well as the deadline for the settlement of the receivable, as well as provide an explanation to shareholders regarding changes in the use of proceeds from the public offering, in the next GMS.
11.	PT Astra Graphia Tbk	2004	Has obtained approval from independent shareholders.
12.	PT Bank Mega Tbk (MEGA)	2005	A fine of Rp 500,000,000.- (five hundred million rupiah) which was later reduced to Rp 100,000,000.- (one hundred million rupiah) for its good faith efforts to obtain approval from independent shareholders.
13.	PT HM Sampoerna Tbk (HMS)	2006	Has obtained approval from independent shareholders.
14.	PT Karwell Indonesia Tbk	2008	A fine of Rp 50,000,000.- (fifty million rupiah) for transactions that have not been approved by independent shareholders.
15.	PT Bakrie & Brothers Tbk (BNBR)	2008	A fine of Rp 307,000,000 (three hundred and seven million rupiah) for transactions that have not been approved by independent shareholders.
16.	PT Sumalindo Lestari Jaya Tbk (SLJ)	2009	Bapepam did not impose any sanctions on violations committed by PT Sumalindo Lestari Jaya Tbk.
17.	PT Central PRoteina prima Tbk	2009	Has held an Independent GMS, but does not fulfil the quorum in the corporate action of Pre-emptive Rights or a rights issue.
18.	PT Matahari Putra Prima Tbk (MPPA)	2010	MPPA has conducted an Independent GMS and obtained approval from independent shareholders for the sale transaction of 90.7% shares of PT Matahari Department Store Tbk (MDS) to PT Meadow Indonesia (MI) by MPPA.
19.	PT Garuda Indonesia	2011	There was an independent AGM in awarding the two Boeing aircraft, as PT Garuda Indonesia is affiliated with the TNI-AU.
20.	PT SMR Utama Tbk (SMRU)	2015	A fine of IDR 754,000,000 (seven hundred and fifty-four million rupiah).
21.	PT Wilmar Cahaya Indonesia Tbk (CEKA)	2015	Written warning with Letter Sanction Letter No. S-16/PM.1/2017 by Bapepam for its transactions that have not yet received approval from independent shareholders.

By adhering to the above 6 factors and cases, the implementation of Independent GMS is very important and it is necessary to make special regulations on top of the Financial Services Authority Regulation, namely the Law and other regulations above it, to strengthen the position of independent shareholders. A person or legal entity is said to have a conflict of interest when it is in a relationship with another person that requires it to exercise judgement on behalf of another person, or has a special interest that tends to interfere with a particular relationship. As such, the Independent GMS is an obligation that should be implemented. Firstly, the founders of a PT with Shareholders who have agreed on the main objective to carry out business activities and have contributed to the implementation of the objective, should make every decision relating to the main objective of the founders to conduct a GMS to appoint and even dismiss a Board of Directors and Commissioners who will manage the company. In which case, all decisions are in the hands of the GMS.

Given, there are losses that will be suffered by Independent Shareholders and also have an impact on the company. In daily operations, this conflict-of-interest transaction often occurs by itself, so some companies have begun to create an internal guideline for conducting this conflict-of-interest transaction. Not only that, but information disclosure in the public company is also an obligation. Public companies are obliged to conduct an information disclosure to the public as affirmed in Article 85 to Article 89 of UUPM. Even in the explanation of Article 11 paragraph (3), information disclosure is an effort so that public shareholders can obtain complete information regarding the transaction implementation plan, so that the submission of information disclosure announcement and GMS announcement needs to be done simultaneously. Considering that Conflict of Interest Transactions are included in Capital Market activities, the principle of disclosure is at the core of all Capital Market issues.

In addition, there is a need for fairness in conflict-of-interest transactions which has been regulated in Article 11 paragraph (1) letter a of POJK No. 42 of 2020 concerning Affiliated Transactions and Conflict of Interest Transactions.

This article confirms that a public company conducting a conflict-of-interest transaction is required to use an appraiser to determine the fair value of the object of the Conflict-of-Interest Transaction and/or the fairness of the transaction. This fairness requires a professional, namely an institution and supporting profession in the Capital Market, one of which is an appraiser. The appraiser is a party that can provide an assessment of the company's assets if it has been registered with FSA. However, Sri Indrastuti Hadiputranto's opinion is correct, the appraiser itself is less independent, it can be selected based on and at the behest of the Board of Directors and its staff, namely the Commissioner and the GMS which prioritized the votes of the Major Shareholders. Thus, in terms of fairness determined by the Appraiser, the subjectivity between the Appraiser and the Board of Directors and Commissioners is still dominated by the votes of the Majority Shareholders and the Appraiser's results are always taken into consideration by the Board of Directors even though the value may harm the Independent Shareholders and the Company.

Likewise, law enforcement on violations of the provisions regarding conflict-of-interest transactions is still repressive, where the act has occurred first so that the loss has been experienced. Sanctions against the perpetrators of conflict of interest transactions can be given after losses have befallen the company and or Independent Shareholders whose voices are most decisive towards the implementation of the transaction and sanctions against perpetrators of conflict of interest transactions are not enough to make the perpetrators regret their actions to the detriment of independent shareholders and the company.

#### **4. Conclusion**

It can be concluded that, the history of the regulation of conflict-of-interest transactions was actually made to protect independent shareholders, but along with the development of changes in these regulations in practice, many of them are overridden by the interests of the Board of Directors, Commissioners and Major shareholders. As the Board of Directors and its staff are an extension of the majority shareholders. To straighten out the purpose of regulating conflict of interest transactions to protect independent shareholders, two things are needed:

1. It is urgent for Capital Market regulators to make more specific laws and regulations regarding conflict-of-interest transactions, learning from conflict-of-interest transaction cases that have occurred since 1991 until 2020. Namely by not to favor of majority shareholders whose votes can dominate company decisions through the GMS.
2. Realizing transaction transparency, transaction fairness and changing the repressive law enforcement system for violators of Capital Market regulations, especially conflict of interest transactions, to preventive as an effort to fulfil the rights and protect independent shareholders from their weak position.

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- Struktur kepemilikan perusahaan di Indonesia yang di dominasi oleh pemegang saham atau pendiri. Dimana, di negara-negara Asia salah satunya Indonesia lebih kurang dua pertiga perusahaan dikendalikan oleh pemegang saham dari keluarganya sendiri. Sangat jarang pemisahan antara manajemen dengan pemilik pengendali, dan manajemen tertinggi dari 60% perusahaan di negara-negara tersebut diduduki oleh keluarga pemegang saham mayoritas.
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