

## LEGAL PROTECTION OF INDEPENDENT SHAREHOLDERS AFFECTED BY SUSPENSION FROM THE INDONESIA STOCK EXCHANGE

Erlina, Darminto Hartono Paulus

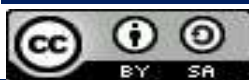
Universitas Diponegoro Semarang, Indonesia

Email: triesmalina@gmail.com, darrmintohart@gmail.com

### ABSTRACT

*Sanctions for temporary suspension (suspense) of trading against the company PT. Garuda Indonesia which receives sanctions from the Indonesia Stock Exchange (IDX) if it is related to the regulation of stock suspense in IDX Regulation Number 1-H concerning sanctions (Appendix to the Decree of the Director of PT Bursa Efek Jakarta Number: Kep-307 / BEJ / 07-2004. The regulation regarding incomplete stock suspense sanctions in IDX regulation Number 1-H regarding sanctions has the potential to cause losses to independent shareholder investors because it is not equipped with violation criteria that can be subject to stock suspense sanctions. Based on this background, there is a formulation of the problem as follows: How to regulate stock trading suspense sanctions for companies subject to suspense sanctions; How is the legal protection for shareholders who are subject to stock trading suspense sanctions by the Indonesia Stock Exchange. This research uses normative juridical research methods, with a statutory approach and a conceptual approach, using primary, secondary and tertiary legal materials which are analyzed using descriptive techniques and interprestaaion techniques. The results of this study show that legal protection for investors affected by stock suspense consists of preventive legal protection and repressive legal protection. Preventive legal protection is preventive, namely by implementing the principle of openness (Disclosure Principle). Meanwhile, repressive legal protection is to provide recovery in the form of compensation where independent shareholders can file a lawsuit if the company's directors are deemed negligent and cause losses to the company.*

**KEYWORDS** *Suspension Sanctions, Stock Trading, Legal Protection*



This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International

**How to cite:**

**E-ISSN:**

**Published by:**

Erlina, Darminto Hartono Paulus. (2022). Legal Protection of Independent Shareholders Affected By Suspension From The Indonesia Stock Exchange. Journal Eduvest. Vol 2 (11): 2347-2361  
2775-3727

<https://greenpublisher.id/>

## INTRODUCTION

The capital market is a place where investors and issuers meet as a means of financing for the business world and plays an important role in national development efforts. In order to achieve this goal, a legal order is needed that can encourage and provide direction for the business world, this is a determining factor for the success or failure of a development. (Pramono, 2013). Through law No. 8 of 1995 concerning the capital market which regulates the capital market in which it regulates capital market activities in detail in the form of the authority of the capital market authority, the stock exchange and the rights and obligations of parties involved in the capital market, as well as violations and sanctions for parties who violate and those who commit criminal acts therein. Its relation to the listed obligations emphasizes its implementation in fulfilling the principle of transparency in realizing legal protection for investors in the capital market. Regarding the regulation of company obligations, it must convey the business conditions of several (Darmadji & Fakhruddin, 2001) matters namely in terms of finance, management, production and other matters related to its business activities. Based on this, it has an important meaning as a material consideration for investors in investment decisions. In Law no. 8 of 1995 there are criminal sanctions as well as administrative sanctions for those who violate regulations in the capital market sector. Usually companies that have made public offerings have been listed on the stock exchange (listing). The company that has been registered is called a listed company or (listed company) (Jakarta, 2004).

An investor is someone who invests their capital to be managed by a company (issuer) in the hope of getting benefits from the company's business results. Independent shareholder investors are shareholders who are not related or affiliated with the main, controlling shareholders or with the directors and board of commissioners of the company. OJK Regulation Number 42/POJK.04/2020 concerning "Affiliated Transactions and Transactions with Conflicts of Interest". Investors or independent shareholders have the following definition: "shareholders who have no personal economic interest in connection with a particular transaction and: a). not a member of the board of directors, member of the board of commissioners, major shareholder and controller; or b). is not an affiliate of the members of the board of directors, members of the board of commissioners, major shareholders and controllers.(Sy, 2022)"

Companies that are already listed on the stock exchange are required to comply with the regulations on the stock exchange as a Self Regulatory Organization (SRO) (Iswi & Serfianto, 2010). The stock exchange as the SRO has the authority to make regulations for all activities within it, the regulations that have been made are intended to protect the interests of investors and the public by creating fair, orderly and efficient trading. Regulations made by the stock exchange have legal force in them which are binding for capital market participants (Darmadji & Fakhruddin, 2001). One of the regulations issued by the Indonesia Stock Exchange is regarding the provision of sanctions for temporary suspension of stock trading or suspension. These provisions are regulated in the Decree of the Board of

Directors of the Indonesia Stock Exchange Number: Kep-307/BEJ/07-2004 concerning Regulation Number I-H concerning Sanctions. Suspension refers to a temporary suspension of a listed company's securities trading activities (Jakarta, 2004). The suspension sanction given by the IDX resulted in listed company securities not being able to be traded as usual. However, problems arise because the IDX Regulations only regulate types of sanctions and do not regulate the criteria for violations to apply sanctions. The ambiguity in the legal provisions governing the criteria for a listed company having suspension or trade prohibition has resulted in legal uncertainty regarding when and under what conditions a company may be subject to a suspension sanction and how long the maximum imposition of the sanction will be. This regulation causes investment uncertainty for public investors where they cannot carry out buying and selling activities and get profits that are shared by the company every year or commonly referred to as dividends until an undetermined time limit. Independent shareholder investors also cannot predict when and under what conditions the company may be subject to sanctions in the form of a stock suspension so that this cannot be avoided along with the possible losses it will face. As an example case is PT. Garuda Indonesia, which has been subject to a share suspension sanction since June 2021. According to calculations, the imposition of sanctions by the Indonesia Stock Exchange on the company has been going on for almost 24 months and there is no certainty regarding when the sanctions will be from the OJK. Calculation of the imposition of suspension sanctions in succession without any certainty of when the suspension will end has caused unrest among investors or independent shareholders of PT. Garuda Indonesia because there is no legal certainty regarding the development of investment funds that cannot generate profits as they should. During the suspension process, independent shareholders cannot buy and sell their shares and must experience a loss (capital loss). Even though this is a risk in the world of capital market investment, independent investors feel that there is no legal certainty for their investment. Investors assess that there should be clear rules regarding the criteria and maximum time for them to consider the decision to keep or sell their shares. Regulations regarding the criteria, classification and period of suspension, regulations regarding the capital market also do not specifically regulate legal protection and what legal remedies investors can take during the period of validity of the suspension as happened with PT shares. Garuda Indonesia Tbk, with the GIAA stock codet.

## RESEARCH METHOD

The approach used in this study is a normative juridical approach, using secondary data based on legal sources in the civil sphere, especially regarding the capital market, namely the laws and regulations that underlie it, legal actions related to the problem under study.

This research is descriptive analytic, the organizational design is developed from the specified categories and the relationships suggested or emerging from the data (Moleong, 2021). The author will describe and explain the results of the research or legal facts obtained, both those obtained from literature studies and those derived from the opinions of the informants, as is depending on the research

results obtained and linking them with predetermined legal theories and applicable regulation.

In this study the object to be taken is about "Legal Protection of Investors of Independent Shareholders who are suspended from the Indonesian Stock Exchange". Using data collection methods carried out by the author by examining secondary data obtained through library research.

## **RESULT AND DISCUSSION**

### **Arrangements for Suspension of Stock Trading Sanctions for Companies Subject to Suspense Sanctions**

Pengenaan sanksi suspense perdagangan saham PT. Garuda Indonesia Tbk stipulated based on an announcement by the Indonesia Stock Exchange with Number: No. Peng-SPT-00011/BEI.PP2/06-2021 concerning Temporary Suspension of Securities Trading where trading in securities (stocks and bonds) was temporarily suspended since session 1 on 18 June 2021. PT Garuda Indonesia Tbk had previously postponed the payment of listed global sukuk coupons from grace period of 14 days and ends on 17 June 2021, the payment is a periodic distribution which matures on 3 June 2021, based on USD 500 million, namely the Garuda Indonesia Global Sukuk Limited Trust Certificate which matures in 2023, this occurs due to conditions divisions that have been significantly impacted by covid 19. The announcement was submitted through the Singapore Exchange Announcement and the Indonesian Stock Exchange Electronic Reporting System and the Financial Services Authority, it can be said that the company failed to fulfill administrative obligations as a listed company as stipulated in OJK provisions Number 7/POJK.04/2018. When it is related to the Indonesia Stock Exchange regulation Number 1-H regarding sanctions stipulated in the Decree of the Directors of the Jakarta Stock Exchange Number Kep-307/BEJ/07-2004 ("IDX Regulation Number 1-H) as the legal basis for sanctions for listed companies, in cases of default by companies against securities holders are not listed as types of violations that are subject to suspension of shares. The IDX regulation does not regulate the types of listed company violations and the types of sanctions for each type of violation committed. The IDX decision No. 1-H does not specifically regulate the type of violation but is contained in various stock exchange regulations outside IDX regulations 1-H.

The ambiguity of the legal provisions (uncomplete norms) regarding the sanctions for suspension of shares, especially regarding the types of violations by listed companies in IDX regulations No. 1-H, causes legal uncertainty that risks harming the economic interests of independent shareholders because independent shareholders do not clearly know the size in the assessment of the authority holder. stock exchange on the implementation of the suspension of listed company shares. Shareholders cannot overcome the possibility of capital loss or large losses even though this is an investment risk which is the shareholder's personal responsibility. According to Jan Michiel Otto, there are four things related to the meaning of legal certainty:

1. The law is positive, the meaning is legislation (gesetzliches Recht).

2. The law is based on facts (tatsachen), not a formula about an assessment that will later be made by a judge, such as "good will", "decency".
3. Facts must be formulated in a clear way so as to avoid misunderstandings in meaning, besides that they are also easy to implement.
4. The positive law should not be changed frequently (Rahardjo, 2006).

In the application of sanctions for suspension of shares against companies listed on the stock exchange, the legal rules that form the basis should be recorded clearly, which regulate the reasons for a listed company to be subject to suspension of shares. Law enforcement against a statutory regulation related to sanctions must have a measure that is a requirement for a party to be subject to said sanction. Regarding legal sanctions, both criminal, civil and administrative sanctions, officials who have authority must be based on legal reasons that have been stipulated in an effective statutory regulation. In the concept of a welfare state, drafting legislation is a government intervention because the government is the party responsible for realizing welfare and prosperity. The principle of legality in state administrative law states that every action taken by the government must have a legal basis in a statutory regulation. The principle of legality means that in an administrative administration the government must prioritize the legal basis of an action made by a government agency or official (Harjiyatni & Suswoto, 2017). Such actions or decisions cannot be made arbitrarily. The ambiguity of a legal norm (uncomplete norm), in the opinion of Sudikno Mertokusumo "in the case of unclear laws and regulations, a method of interpretation or method of legal interpretation is available, which is commonly called hermeneutic juridical (Mertokusumo, 2006). In fact, on the stock exchange, the causes of a listed company experiencing suspension are as follows:

1. Unusual Market Activity (UMA), namely trading activities that are out of the ordinary where stock prices experience a very significant increase or decrease in price in a short time.
2. There was an error in recording the financial statements
3. There is a discrepancy between the corporate action announcement and the actual event.
4. Issuer's failure to pay debts or bonds
5. Misuse of funds obtained by the issuer from a public offering (IPO)
6. Indications of insider trading (Insider trading).

In applying the rules regarding sanctions for suspension of shares, the types of listed company violations that can be subject to sanctions of suspension are actually found in the Circular Letter of the Director of the Jakarta Stock Exchange Number SE-008/BEJ/08-2004, Regarding; Temporary Suspension of Securities Trading (Suspension) of Listed Companies ("IDX Circular Letter Number SE-008/BEJ/08-2004"). This circular letter is an explanation of the Stock Exchange regulations Number 1-E concerning Obligations for Submitting Information as stated in the decision of the Board of Directors of the Jakarta Stock Exchange Number Kep-306/BEJ/07-2004 in the circular it stipulates that the IDX can suspend the trading of issuer securities if:

1. The Listed Company's Audited Financial Statements obtained 2 (two) consecutive Disclaimer opinions (not giving an opinion) or 1 (one) Adverse opinion;
2. The Listed Company is filed for bankruptcy by its creditors or voluntarily submits an application for Postponement of Debt Payment Obligations (PKPU);
3. The Listed Company does not disclose information, where the Listed Company has important information that is relevant/experiences important events which, according to the Exchange's consideration, can materially affect investors' investment decisions as required by Rule Number I-E concerning Obligation to Submit Information and the applicable laws and regulations in the field of Capital market;
4. There has been a significant increase/decrease in price and/or an unusual transaction pattern for the Listed Company's Securities.

Based on the Regulation of the Minister of Home Affairs Number 54 of 2009 concerning Scripts in the Regional Government Environment, what is meant in this circular letter is an official document that contains notifications, explanations of how to carry out certain matters that are considered important and also urgent. In the opinion of M. Solly Lubis, circular letters are not statutory regulations because circular letters do not contain norms of behavior (prohibitions, orders, permits and also exemptions), powers (authorized and not authorized), and stipulations (Lubis, 1919). Referring to Law Number 21 of 2011 concerning the Establishment of Legislation, circular letters are not included in the type of legislation (regelding), bikam are also state administrative decisions (beschikking) but circular letters are policy regulations (beleidsregel) or it can be said that they are regulations pseudo-law (pseudo wetgeving). The content of the circular letter usually explains the procedures in clarifying the regulations that must be implemented. Its clarifying nature means that circular letters are not allowed, let alone collide with the laws and regulations above it which are based on the hierarchy of laws as set forth in Article 7 paragraph (1) of Law Number 12 of 2011 concerning Formation of Legislation. (Syahrin, 2018). Circulars in government practice raise polemics, formally, circulars comply with the rules of official document, but from a material aspect they sometimes contain norms that are regulatory (regeling) and stipulating (beschkking) so as to create a contradiction with the original purpose of its function as an information instrument of the rules existing legislation. In the opinion of the researcher, the Indonesian Stock Exchange needs special regulations governing sanctions for listed companies and for investors or independent shareholders in a systematic, complete and more comprehensive manner that provides legal certainty. Specific regulations governing these sanctions should be prepared in a measurable manner so that investors get clarity regarding the criteria for violating a listed company so that they can be subject to suspension sanctions.

The Indonesia Stock Exchange is in control of the timing of the suspension of listed company shares. This depends on violations that have been committed by listed companies. If the violation is minor, the IDX will revoke the suspension of shares after the company has fulfilled its reporting obligations (submission of

financial reports, payment of fines or fulfillment of other administrative obligations). If the listed company's violation is classified as serious, the duration of the share suspension sanction will last a long time. Until now, there are no IDX regulations governing stock suspension sanctions. The suspension sanction continues for a period of 24 (twenty four) months and can continue with the action of delisting shares by IDX based on circular letter Number SE-008/BEJ/08-2004 which regulates the opening of suspensions for listed companies. that fulfills IDX obligations include:

1. If the audited financial statements of a listed company obtain 2 (two) consecutive disclaimer opinions (not giving an opinion) or 1 (one) adverse opinion, then the listed company is required to submit:
  - a. Audited financial statements of listed companies that obtain an unqualified accountant's opinion (WTP or
  - b. The audited financial statements of listed companies that have received a qualified opinion (WDP), and the stock exchange has received the explanation as referred to in provision III.1.9. Regulation Number I-E concerning the obligation to submit information, namely:
    - (i) Delivering the rights that are qualified by the Public Accountant, and
    - (ii) Delivering a written explanation to the stock exchange regarding the amount of Total Assets, Liabilities, Equity, Gross Profit, Net Profit, Earnings Per Share if the qualifying matters relate to the application of PSAK.
    - (iii) Providing reasons regarding the qualifications of the Public Accountant is deemed not to affect the balances of the accounts mentioned above.
2. If a listed company is filed for bankruptcy by its creditors or voluntarily submits a request for postponement of debt payment obligations (PKPU), IDX can revoke the suspension sanction if the listed company has submitted:
  - a. Keputusan pengadilan yang memiliki kekuatan hukum tetap yang menolak permohonan pailit atau menyatakan sahnya perjanjian perdamaian antara perusahaan tercatat dengan krediturnya, dan
  - b. Bursa memperoleh dan mengumumkan di bursa atas dokumen-dokumen sebagai berikut:
    - (i) A copy of the court decision and a complete explanation of the efforts that must be made by the listed company in accordance with the court decision (if any);
    - (ii) Copy of the peace agreement that has been ratified by the Commercial Court and a summary of the peace agreement;
    - (iii) Plans for holding a Public Expose complete with the following date where it will be held in order to provide an explanation to the public regarding the matters mentioned above.
3. If the listed company has fulfilled the obligation to disclose information and provided an explanation regarding the reasons for not fulfilling the obligation to disclose information and provided an explanation regarding the reasons for not fulfilling the obligation to disclose information as well as other explanations requested by the exchange, the exchange may consider revoking the suspension of listed shares.

Listed companies whose shares are in a suspended position will continue to have the potential to harm the economic interests of independent shareholders as investors. Shareholders have the potential to experience losses as a result of capital losses and may not be able to receive profits in the form of dividends from the company. IDX should re-regulate firmly and clearly regarding the criteria for imposing sanctions in the form of suspension of shares in a more binding legal regulation so that they can be used as a guideline for all parties involved in trading activities on the stock exchange. Legal certainty in laws and regulations in the capital market sector is a strong foundation for national development where stakeholders can carry out and implement the rule of law in an orderly and consistent manner. Legal certainty is a prerequisite in economic development (Rajagukguk & Agustina, 2013). Laws on capital markets and legal instruments in the capital market sector play a major role in creating an orderly, efficient and fair capital market in protecting the interests of investors.

### **Legal Protection for Independent Shareholders Subject to Suspension of Stock Trading by the Indonesia Stock Exchange**

Regarding stock trading suspension sanctions, in practice it is a form of protection so that listed companies comply with and carry out the obligations set by the capital market authorities so that stock exchange activities run in an orderly, fair and efficient manner. In the context of the imposition of shares suspension sanctions, it can be concluded that the cause of the imposition of sanctions is:

1. The Company's inability to pay bond interest and fees on sukuk ijarah that are due to the Company's securities holders; and
2. The Company's non-compliance in fulfilling the obligation to submit reports to the OJK in the form of periodic (semi-annual) financial reports and the issuer not fulfilling the obligation to carry out a public expose.

In the imposition of a share suspension sanction against the company, it creates economic consequences for independent shareholders as investors who do not have the ability to control the company. Most of the independent shareholders are the general public who buy shares of a listed company after obtaining an overview of the performance of a listed company through information contained in the prospectus, annual financial reports or in the public expose released by the company. Regarding stock suspension sanctions that cause losses for independent shareholders will lose the opportunity to gain profits (capital gains) even though this is an investment risk for each shareholder. According to Widodoatmodjo, independent shareholders can benefit from investments in the form of:

1. Dividends, namely the portion of the company's profits that will be distributed to shareholders proportionally according to the portion of their share ownership;
2. Capital gain, namely profit from the sale or purchase of shares in the form of the difference between the selling price which is higher than the buying value of the shares (Widoatmodjo, 2004).

In addition to obtaining profits, losses that may be experienced by capital market investors are:

1. Capital loss, which is a loss from the sale/purchase of shares in the form of the difference between the selling price which is lower than the buying value of the shares; and



2. Opportunity loss, a loss in the form of the difference in deposit interest rates minus the total return on investment, if there is a price reduction and no dividends are distributed.

Termination of trading in a company's shares causes independent shareholders to experience losses, including losing the opportunity to obtain capital gains, experiencing opportunity losses and not receiving dividends due to poor company performance. Authority holders should protect the economic rights and interests of independent shareholders. According to Satjipto Rahardjo, legal protection is to provide protection for human rights (HAM) that are harmed by other people and that protection is given to the community so they can enjoy all the rights granted by law. "Salim HS and Erlies septiana Nurbani, define the theory of legal protection as a theory that examines and analyzes the form of protection objectives, protected legal subjects and objects of protection provided by law to their subjects. The following are the elements listed in the definition of legal protection theory, including:

1. There is a form or form of protection or the purpose of protection;
2. Legal subject;
3. Objects of legal protection.

According to Phillipus M. Hadjon, theoretically the forms of legal protection are divided into two forms namely:

1. Preventive protection; and
2. Repressive protection (Raharjo, 2014).

In the capital market sector, legal protection for capital market investors is very important because it concerns the interests of the parties, including as independent shareholders in companies (issuers). Therefore, supervision from OKL is needed as the highest authority in the capital market sector to enforce the law as a form of legal protection for investors.

### **Preventive legal protection**

Preventive legal protection is preventive in nature where the protection is provided by authorized institutions in the capital market sector to prevent violations that are detrimental to investors. Preventive legal protection can be carried out in the form of establishing legal rules, guidelines and supervision of the implementation of legal rules stipulated by the capital market authority for the parties involved. OJK's authority to stipulate legal regulations that have been stipulated by legal regulations in the financial sector is a manifestation of the implementation of OJK's regulatory authority based on Law Number 21 of 2011. Based on the provisions of Article 8 and Article 9 of Law Number 11 of 2011 concerning the Financial Services Authority ("Law No. Financial Services Authority Law"), OJK has the authority to stipulate regulations regarding procedures for imposing sanctions and to determine administrative sanctions for parties who violate capital market regulations. As a follow-up to the implementation of this authority, OJK gave approval to the regulations stipulated by the IDX which included regulations regarding sanctions. Included as financial service institutions are the banking sector, capital markets, insurance, pension funds, financing institutions and other financial services institutions.

Preventive protection for independent shareholders of listed companies is the implementation of the Disclosure Principle by listed companies. The principle of openness is a guideline that requires issuers and other parties subject to UUPM to provide material information about the public in a timely manner, all material information regarding securities businesses can affect investors' decisions in making investments. The principle of transparency according to Article 1 Number 25 of the Capital Market Law is a general guideline that requires Issuers, Public Companies, other Parties subject to this Law to provide information to the public in a timely manner on all material information regarding business or securities that may influence decisions investors to the securities in question or the price of the securities. Law Number 8 of 1995 concerning the capital market requires all listed companies whose registration statements have been effective to provide information to the public through periodic reports in order to comply with the principle of openness of the capital market, including information regarding material events that may affect the price of securities no later than no later than the 2nd (two) working day after the occurrence of the material event. The principle of openness is a real form of efforts to prevent losses for capital market investors carried out by the authorities in every transaction in the capital market. This has the intention that investors who choose to invest are not deceived. There are 4 (four) main types of stipulation of the Disclosure Principle, viz:

1. Disclosure of information that must be announced to the public immediately;
2. Disclosure of information for certain shareholders;
3. Disclosure of information for issuers or public companies that are filed for bankruptcy declarations;
4. Disclosure of information regarding public offering costs.

Implementation of the Disclosure Principle based on the provisions of Article 86 paragraph (1) letter a of the Capital Market Law requires listed companies to submit reports in the form:

1. Periodic reports covering:
  - a. Semi-annual Financial Report (Regulation of Chairman of Bapepam LM Number: KEP-346/BL/2011 concerning Submission of Periodic Financial Reports of Issuers or Public Companies, Appendix to Regulation Number X.K.2);
  - b. Annual Report according to Rule Number X.K.6 (Decision of Chairman of Bapepam LK Number: KEP431/BL/2012 concerning Submission of Annual Reports of Issuers or Public Companies)
2. Incidental reports, namely non-routine and limited reports related to material information experienced or carried out by issuers or public companies, including:
  - (i) Reports regarding disclosure of material information or facts as stipulated in OJK Regulation Number 31/POJK.04/2015 concerning Disclosure of Material Information or Facts by Issuers or Public Companies. Material information or facts are important and relevant information or facts regarding events, incidents, or facts that may affect the price of Securities on the Stock Exchange and/or the decisions of investors, prospective investors, or other

Parties having an interest in such information or facts. Material information or facts in OJK Regulation Number 31/POJK.04/2015 include among others:

- (i) business merger, business separation, business consolidation or establishment of a joint venture;
  - (ii) purchase or sale of company shares with a material value;
  - (iii) distribution of interim dividends;
  - (iv) changes in direct or indirect control over Issuers or Public Companies;
  - (v) changes in members of the Board of Directors and/or members of the Board of Commissioners;
  - (vi) there is an event that will cause an increase in financial obligations or a material decrease in the income of the Issuer or Public Company;
  - (vii) a material impact on the Issuer or Public Company due to a force majeure event; and/or
  - (viii) Other Material Information or Facts.
- (ii) Reports regarding affiliated transactions and conflicts of interest as stipulated in OJK Regulation Number 42 /POJK.04/2020 concerning Affiliated Transactions and Transactions with Conflicts of Interest, include:
- (i) Affiliated Transactions are any activities and/or transactions carried out by public companies or controlled companies with Affiliates of public companies or Affiliates of members of the board of directors, members of the board of commissioners, major shareholders, or Controllers, including any activities and/or transactions that carried out by a public company or a controlled company for the benefit of an affiliate of a public company or an affiliate of a member of the board of directors, member of the board of commissioners, major shareholder, or controller. Referred to as a controlled company is a company that is controlled either directly or indirectly by a public company. In principle, issuers conducting affiliated transactions are required to announce information disclosure on each affiliated transaction to the public. Issuers are also required to use the services of an appraiser to determine the fair value of the object of the affiliated transaction and/or determine the fair value of the affiliated transaction.
  - (ii) Conflict of Interest is the difference between the economic interests of a public company and the personal economic interests of members of the board of directors, members of the board of commissioners, major shareholders or controllers which can be detrimental to the said public company. Conflict of Interest Transactions are transactions carried out by public companies or controlled companies with each party, both Affiliates and parties other than Affiliates that contain Conflicts of Interest. Public Company that conducts Conflict of Interest Transactions is required:
  - (iii) Using an Appraiser to determine the fair value of the object of a Conflict of Interest Transaction and/or the fairness of a transaction that contains a conflict of interest;
  - (iv) Announce the disclosure of information on each Conflict of Interest Transaction to the public;

- (v) Submit disclosure of information on conflict of interest transactions and their supporting documents to the OJK; and
- (vi) First obtain the approval of the Independent Shareholders at the GMS.
- (vii) Other incidental reports that must be reported by issuers or public companies (OJK Regulation Number 7/POJK.04/2018 concerning Submission of Reports Through the Electronic Reporting System of Issuers or Public Companies)

### **Repressive legal protection**

According to R. La Porta in the Journal of Financial Economics, the form of legal protection provided by a country has two characteristics, namely legal protection that is prevented (prohibited) and legal protection that is punitive (sanction). (La Porta et al., 2000). Law enforcement in the form of legal protection in business economic activities, especially the capital market, cannot be separated from the legal aspects of the company (Salim & SH, 2021), especially regarding limited liability companies because legal protection in the capital market involves capital market players including issuers which are legal entities in the form of limited liability companies and investors who are members of the public who hold independent shares. A limited liability company (PT) is a legal entity whose existence is recognized as a legal subject that supports rights and obligations. In the English-language literature, legal entities are often referred to by the following terms: legal entity, juristic person, or artificial person. Black's Law Dictionary defines an artificial person as "persons created and devised by human laws for the purposes of society and government, as distinguished from natural persons." While a legal entity is defined as "an entity, other than natural person, who has sufficient existence in legal contemplation that it can function legally, be sued or sue and make decisions through agents as in the case of corporation." (Black, 1990)

Furthermore, Black's Law Dictionary, provides a legal entity definition as: "(a) body, other than a natural person, that can function legally, sue or be sued, and make decisions through agents." (Garner, 2009) While a legal person is defined as "an entity such as a corporation, created by law given certain legal rights and duties of a human being; a being, real or imaginary, who for the purpose of legal reasoning is treated more or less as a human being."

Another form of legal protection that can be given to independent shareholders is the imposition of sanctions in accordance with Article 90 juncto Article 104 of the Capital Markets Law. According to Article 90 of the Capital Market Law, a Public Company is required to provide actual material information and facts regarding the internal condition/financial condition of the Company so that there are no losses on the part of investors, in this case independent shareholders. In Securities trading activities, each Party is prohibited directly or indirectly:

- a. deceive or deceive other Parties by using any means and or methods;
- b. participating in deceiving or tricking other Parties; and
- c. make untrue statements regarding material facts or fail to disclose material facts so that the statements made are not misleading regarding the circumstances that occurred at the time the statement was made with the intention of benefiting or

avoiding loss for oneself or other Parties or with the aim of influencing other Parties to buy or selling Securities.

According to Article 104 of the Capital Market Law, any Party that violates the provisions of Article 93 of the Capital Markets Law may be subject to criminal sanctions in the form of imprisonment for a maximum of 10 (ten) years and a fine of up to Rp.15,000,000,000.- (fifteen billion rupiah).

Based on this explanation, it can be concluded that legal protection for independent shareholders can be carried out through 2 (two) efforts, namely preventive and repressive. Preventive legal action is an emphasis on efforts so that the authorities in the capital market have a warning system as early as possible to control and supervise the performance of companies listed as stock exchange members. The warning system as early as possible will have an impact on independent shareholders getting earlier information about the performance of the listed company so that the financial condition of the listed company can be monitored properly, while repressive legal remedies place more emphasis on remedial legal remedies in the form of filing lawsuits against parties that have caused losses to the company.

## CONCLUSION

The Financial Services Authority (OJK), which is the highest authority in the capital market, has the authority to regulate and supervise parties and activities in the financial sector which includes the capital market. The capital market law gives authority to the Indonesia Stock Exchange as the capital market organizing institution to apply administrative sanctions. The Indonesia Stock Exchange as a Self Regulatory Organization (SRO) is given the authority to set regulations and regulate itself and its members. Administrative sanctions that become the IDX's authority are to stipulate sanctions for temporary suspension (suspense) of listed company securities trading as stated in IDX Regulation Number 1-H concerning sanctions in the decision of the Board of Directors of the Jakarta Stock Exchange Number: Kep-307/BEJ/2004 whose implementation reaffirmed in the circular letter of the Director of the Jakarta Stock Exchange Number SE-008/BEJ/08-2004, regarding: Temporary Suspension of Securities Trading (Suspension) of Listed Companies.

In the context of implementing the rules regarding sanctions for suspension of shares, the types of violations by listed companies that can be subject to suspension can be seen in the Circular Letter of the Director of the Jakarta Stock Exchange Number SE-007/BEJ/08-2004, concerning: Temporary Suspension of Securities Trading (Suspension) of Listed Companies (“IDX Circular Letter Number SE-008/BEJ/08-2004”). The circular letter was stipulated as an explanation for the Stock Exchange Regulation Number I-E concerning the obligation to submit information as stated in the Decree of the Board of Directors of the Jakarta Stock Exchange Number: Kep-306/BEJ/07-2004. Although circulars are not included in the type of statutory regulations (regeling), they are not state administrative decisions (beschikking), but circular letters are policy regulations (beleidsregel) or can be said to be pseudo legislation (pseudovetgeving). The

contents of circular letters usually explain or create procedures to make it easier or clarify the regulations that must be implemented. In terms of applying the share suspension sanction, IDX Circular Letter Number SE-008/BEJ/08-2004 explains the terms or criteria regarding stock suspension sanctions for listed companies, as stipulated in IDX Regulation Number 1-H.

Legal protection that can be given to independent shareholders who are affected by stock suspension sanctions is through preventive legal protection and repressive legal protection. Preventive legal efforts focus on efforts for capital market authorities to improve an early warning system that can enable shareholders to obtain earlier information regarding the performance of listed companies so that investors can find out about the performance of listed companies. Meanwhile, repressive legal efforts focus more on recovery efforts in the form of filing lawsuits against parties that have caused losses to the company.

## REFERENCES

- Black, H. C. (1990). *Black's Law Dictionary*, St. Paul, Mn: West.
- Darmadji, T., & Fakhruddin, H. M. (2001). *Pasar Modal Di Indonesia: Pendekatan Tanya Jawab*.
- Garner, B. A. (2009). *Black's Law Dictionary*. St. Paul, Mn: Thomson/West.
- Harjiyatni, F. R., & Suswoto, S. (2017). Implikasi Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan Terhadap Fungsi Peradilan Tata Usaha Negara. *Jurnal Hukum Ius Quia Iustum*, 24(4), 601–624.
- Iswi, H., & Serfianto, R. (2010). *Buku Pintar Hukum Bisnis Pasar Modal (Strategi Tepat Investasi Saham, Obligasi, Waran, Right, Opsi, Reksadana & Produk Pasar Modal Syariah)*. Visimedia, Jagakarsa.
- Jakarta, B. E. (2004). *Keputusan Direksi Pt Bursa Efek Jakarta Nomor: Kep-305. Bej/07-2004 Tentang Peraturan Nomor Ia Tentang Pencatatan Saham Dan Efek ....*
- La Porta, R., Lopez-De-Silanes, F., Shleifer, A., & Vishny, R. (2000). Investor Protection And Corporate Governance. *Journal Of Financial Economics*, 58(1–2), 3–27.
- Lubis, M. S. (1919). *Pergeseran Garis Politik Dan Perundang-Undangan Mengenai Pemerintahan Daerah*. -.
- Mertokusumo, S. (2006). *Metode Penemuan Hukum*.
- Moleong, L. J. (2021). *Metodologi Penelitian Kualitatif*. Pt Remaja Rosdakarya.
- Pramono, N. (2013). *Hukum Pt Go Public & Pasar Modal*. Penerbit Andi.
- Rahardjo, S. (2006). *Hukum Dalam Jagat Ketertiban (Bacaan Mahasiswa Program Doktor Ilmu Hukum Universitas Diponegoro)*. Uki Press.
- Raharjo, S. (2014). *Ilmu Hukum*, Citra Aditya Bakti: Bandung. *Salim Dan Erlies*.
- Rajagukguk, E., & Agustina, R. (2013). *Hukum Investasi Dan Pasar Modal*. Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia.
- Salim, H. S., & Sh, M. S. (2021). *Pengantar Hukum Perdata Tertulis (Bw)*. Bumi Aksara.
- Sy, R. K. A. (2022). *Kepastian Hukum Atas Ketentuan Afiliasi Pengambilalihan Saham Perusahaan Dilihat Dari Undang-Undang Nomor 5 Tahun 1999*

*Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat (Studi: Putusan Kppu Nomor: 27/Kppu-M/2019). Hukum.*

Syahrin, M. A. (2018). Mengukur Kekuatan Hukum Surat Edaran. *Bhumi Pura*, 6(1), 48–50.

Widoatmodjo, S. (2004). Cara Cepat Memulai Investasi Saham. *Jakarta: Pt Gramedia*.