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Information Asymmetry in Preemptive Rights seen from the Legal Perspective of the Indonesian Capital Market

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Abstract

Asymmetric information in corporate action in the capital market can occur, not least in the preemptive rights (HMETD). The purpose of this article is to find out whether the disclosure of information in regulations in Indonesia is under the disclosure principle and does not contain asymmetric information. This article uses the juridical-normative method by reviewing POJK No. 14/POJK.04/2019 and other regulations related to corporate action. This article found that the disclosure of information from various regulations related to capital addition and others is still in the disclosure of company profile pictures and proforma after the implementation of HMETD, not counting the costs of the action.

Keywords: *Asymmetric Information; Ideology; HMETD; Corporate Governance*

Introduction

Trading activities in the capital market have a relationship of interest so problems with information will always exist (Peng Du, et al, 2020). Differences of opinion on the expected value of securities often result from the same information (Susilawati, 2020). Asymmetric information is one of the triggers for inefficiencies in transactions in the capital market. Corporate actions related to Preemptive Rights are also subject to asymmetric information. The purpose of legal protection in the form of HMETD in Indonesia is to prevent dilution when issuers increase capital. The granting of rights is under the goals of the state, however, what needs to be considered is the process and mechanism of implementation which still creates problems. According to the research results of Kim and Samsudin in Cicilia (Susilawati, 2020), Indonesia has an inefficient capital market. Regulations in Indonesia have

adopted a principle in the Organization for Economic Cooperation and Development (OECD) where legal protection for minority shareholders is protected. The application of this principle has been manifested in various forms of regulations in the capital market, however, the principle of issuer transparency has not shown the existence of the actual condition of the company. Therefore it is necessary to thoroughly monitor corporate actions in the form of Pre-emptive Rights. Research and analysis of related regulations also need attention to create justice for minority shareholders.

Article writing related to asymmetric information on Preemptive Rights has never been done. Author Chen-Wen Chen (Chen & Liu, 2013) discusses and explores three situations under asymmetric information namely (1) companies with higher levels of corporate governance provisions provide compensation to owner-managers with higher managerial rewards for information disclosed; (2) There is a positive significance between the information disclosed and corporate governance and between corporate values and corporate governance; (3) The audit of a company increases the moral hazard when outside investors are informed about the company's poor performance by underestimating the stock price. The author Jeffrey (Macher, et al, 2011) examines that the asymmetric information gap is actively trying to be closed by regulators depending on the special training and experience of each regulator. The author Iacobbuci (Iacobucci, 2004) explains the fundamental difference between agency costs and an asymmetric information approach.

The purpose of this paper is to review and provide recommendations on existing regulations related to the existence of asymmetric information. Detailed arrangements will provide legal certainty which in the end can achieve justice in transactions in the Indonesian capital market. Legal arrangements related to Preemptive Rights must operate under the constitution of the Republic of Indonesia, namely that the national economy is organized based on economic democracy with the principles of togetherness, efficiency with justice, sustainability, environmental awareness, independence, and maintaining balance and unity of the national economy.

Methods of Research

This article uses normative juridical research. Studies related to the implementation of Preemptive Rights are reviewed using a statutory and conceptual approach. The primary material used in this article is POJK No. 4/POJK.04/2019 Concerning Pre-emptive Rights and other regulations that intersect with Pre-emptive Rights. Secondary material is obtained from previous studies, articles, and other sources related to Preemptive Rights. This article attempts to review laws and regulations, government policies, court decisions, and others related to Preemptive Rights. This article supports collaborative governance related to Preemptive Rights.

Results and Discussion

The existence of Preemptive Rights must still be guarded so that its implementation runs well. According to Vladimir, the exercise of Preemptive Rights can also lead to irregularities. This is conveyed in his writings as follows (Atanasov, 2007):

> "simple preemptive rights provide strong protections for small investors when financing costs are low, but almost no protection when financing costs are high".

Vladimir's explanation stated that HMETD can provide very strong protection for small investors but can also apply vice versa, depending on the sustainability of the activity. The activity Vladimir meant would provide strong protection if the costs incurred were very small, on the other hand, if the activity required large funding it could also be detrimental. This is also inseparable from the existence of

asymmetric information. One of the roles of asymmetric information is to determine high or low costs during the exercise of Preemptive Rights. Myers in Steven said that asymmetric information can cause conflicts of interest during activities in the capital market. This can be seen in the following statement (Fazzari et al, 2015):

> "Myers and Majluf (1984) provide another reason for a link between internal finance and investment. They show that asymmetric information about real investment projects causes conflicts of interest between existing security holders and providers of new investment finance".

Indonesia regulates Preemptive Rights in POJK no. 4/POJK.04/2019 Concerning Pre-emptive Rights (POJK HMETD). This POJK was prepared based on the mandate of article 82 of Law No. 8 of 1995 concerning Capital Markets (UU Pasmod). Pre-emptive rights are given to pre-existing shareholders to buy shares that have just been issued by the issuer before being offered to standby buyers so that the percentage of ownership does not decrease. These rights are given proportionally according to the shareholding of the existing holders. Proportionate distribution of this can be exempted for issuers to improve their financial position. The process of increasing the issuer's capital to improve its financial position is not limited by the percentage limit on the maximum number of shares that may be issued. This is different from the requirement for additional capital for issuers in the context of improving financial position, which is a maximum of 10% of paid-up capital. Both of these conditions indicate that the position of existing shareholders, especially the minority, has weak position. The formation of Preemptive Rights POJK was made based on the following considerations: (1) Fulfilling the needs of Public Companies in increasing capital and (2) Improving protection for minority shareholders, especially those related to increasing capital. The basis for consideration of the HMETD is not achieved if the restrictions related to the addition of capital for the issuer to improve the financial position are not limited because it can cause very high dilution for shareholders who do not participate in purchasing these rights. The next regulation which states that the addition of capital must also pay attention to the smallest dilution has not been able to answer the problem considering that the articles have different interpretations interpreting the smallest dilution.

The process of exercising Preemptive Rights can also result in high implementation costs due to asymmetric information. Disclosure of information related to company profiles is needed in the capital market to achieve efficiency. Efficiency according to Beaver is the relationship between security prices and information. According to Jogiyanto, an efficient market is a market that describes the following: (1) The definition of a market is based on the intrinsic value of securities; (2) The definition of the market is based on the accuracy of security prices; (3) The definition of market efficiency is based on the distribution of information; and (4) The market definition is based on a dynamic process. Every investor wants conditions that provide convenience both in terms of accurate available information and fast service. This is needed so that investment decisions made by investors can be made more quickly and can be accounted for properly.

Disclosure of Regulatory Information in Indonesia Related to Transactions in the Capital Market

Legal arrangements related to information disclosure in Indonesia can be seen in POJK Preemptive Rights, POJK No. 42/POJK.04/2020 Concerning Affiliated Transactions and Conflicts of Interest Transactions (POJK Affiliated Transactions), POJK No. 17/POJK.04/2020 Concerning Material Transactions and Changes in Activities (POJK Material Transactions), as well as POJK No. 31/POJK.04/2015 Concerning Material Facts (POJK Material Facts).

POJK disclosure of Preemptive Rights can be seen from Article 15 which requires issuers to comply with the following principles of transparency.

The plan to increase capital by giving Preemptive Rights to shareholders at the latest at the same time as the GMS shall contain at least; (a) The maximum number of plans to issue shares by giving Preemptive Rights including the accompanying securities; (b) Estimated period for implementation of additional capital when it can be determined; (c) Analysis regarding the effect of additional capital on financial condition; (d) An outline estimate of the use of funds; (e) Information regarding the payment of shares in a form other than money, including information regarding the results of the assessment if there is a payment of shares in a form other than money. In addition, in paragraph (1a) it is stated that the capital increase must be announced to shareholders together with the announcement of the GMS which contains: (a) Reasons and objectives for the capital increase, (b) Estimated implementation period, if the implementation period has been planned, (c) Plan the use of funds resulting from the capital increase, if it can be determined, (d) Analysis and discussion of management regarding the company's financial condition before and after the capital increase, (e) Risks or impacts of the increase in capital to shareholders including dilution, (f) information in the tabular form regarding details of the structure of share capital before and after the increase in capital at least include information related to shares, details of share ownership by shareholders who have 5% or more, shares in savings, and pro forma share capital if securities are converted if there is pro forma shares and (g) information regarding potential investors.

Disclosure of information on increasing capital if the transaction is related to a conflict of interest refers to the POJK Affiliated Transactions. Disclosure of this information can be seen in article 10, among others:

1. A description of the affiliated transaction must be disclosed including (a) the Date, (b) the Object of the transaction, (c) the Names of the parties involved in the transaction, and (d) The nature of the relationship between the parties in the transaction;
2. Summary report from the appraiser which includes: (a) Identity, (b) Object of the appraisal, (c) Purpose of the appraisal, (d) Assumptions and limiting conditions, (e) Approaches and methods, and (f) Value conclusions;
3. There is a fair summary of the transaction which includes: (a) Identity, (b) Object of valuation, (c) Purpose, (d) Assumptions and limiting conditions, (e) Approach and method, and (f) Fairness opinion;
4. Proforma impact of transactions based on finance with limited review in the context of potential harm to PT's business continuity;
5. Reasons and considerations for affiliated transactions;
6. PT plans, data on companies taken over, and information related to acquisitions;
7. Summary report of an independent expert or consultant;
8. Affiliate transaction statement has complied with procedures;
9. Statement from the board of commissioners and directors that the affiliated transaction does not contain a conflict of interest and all material information has been disclosed and the information is not misleading.

This POJK provides information disclosure to each party when affiliated transactions occur. All transactions must be carried out under adequate procedures. Adequate procedures mean that share transactions involving affiliates and conflicts of interest must be on par with transactions conducted between parties that do not have an affiliation.

The principle of openness in affiliated transactions and conflicts of interest basically must comply with articles 3 and 4, namely (1) Public Companies that carry out affiliated transactions must fulfill adequate procedures to ensure that the transactions are carried out in accordance with applicable business practices and (2) Public Companies that conducting this transaction must: (a) Use an appraiser to determine the fair value of the object of the affiliated transaction; (b) Announce the disclosure of information on every affiliated transaction to the public; (c) Delivering information disclosure and (d)

Obtaining approval from independent shareholders at the GMS in the event that the affiliated transaction value meets the material transaction value limit that must be approved through the GMS in advance, affiliated transactions that may disrupt the business continuity of public companies and affiliated transactions which based on OJK considerations require the approval of independent shareholders.

The obligation to fulfill procedures in the POJK Affiliated Transactions can be violated under certain conditions. These conditions are regulated in article 6, namely (1) Affiliated transactions are the implementation of laws or court decisions; (2) Affiliated transactions are controlled by companies with at least 99% ownership; (3) Transactions made no more than 0.5% of paid-up capital and less than Rp. 5 billion; (4) Affiliated transactions are loans received directly by banks, venture capital companies, or infrastructure financing companies, both domestic and foreign; (5) Guarantee transactions with banks; (6) Transactions of increasing or decreasing equity participation to maintain the percentage of ownership after the participation is made for at least 1 year; (7) Transactions carried out by Public Companies which are financial service institutions with controlled companies which are sharia financial service institutions in the context of developing the intended sharia financial services; and (8) Transactions in the context of restructuring carried out by Public Companies which are controlled either directly or indirectly by the government.

Disclosure of information in the POJK on material transactions can be seen in article 14 which must contain the following:

1. Description of the material transaction which includes: (1) Object of the transaction, (b) Transaction Value, (c) Party conducting the transaction;
2. Explanations, considerations, and reasons for carrying out material transactions and the effect of these transactions on the financial condition of a public company;
3. Limited Liability For Companies that use the services of an appraiser in conducting an appraisal of the object of a material transaction, the report summary contains at least: (a) the Identity of the party, (b) the Object of the appraisal, (c) Purpose of the appraisal, (d) Assumptions and limiting conditions, (e) Valuation approaches and methods, and (f) value conclusions;
4. Summary of the appraiser's report regarding the fairness of the transaction, at least containing: (a) Identity of the party, (b) Object of the appraisal, (c) Purpose of the appraisal, (d) Assumptions and limiting conditions, (e) Approach and method of valuation, (f) Fairness opinion on the transaction;
5. An explanation of the place or address, telephone number, and email address where shareholders can be contacted to obtain information regarding material transactions;
6. Statement of the board of directors that the material transaction is or is not an affiliated transaction as referred to in the POJK Affiliated Transactions and Conflicts of Interest;
7. Statement of the board of commissioners and directors that: (a) Material transactions do not contain conflicts of interest as referred to in the POJK Affiliated Transactions and Conflicts of Interest, and (b) All material information has been disclosed and the information is not misleading.

In addition to requiring the above procedures, POJK Material Transactions also regulates other provisions in article 29 of POJK Material Transactions as follows:

"Limited Liability Companies (PT) that experience dilution as a result of controlling actions and control reports are no longer consolidated by Limited Liability Companies, they are required to carry out the procedures stipulated by the POJK for material transactions if the total assets, net profit and operating income of the controller divided by the consolidation owned by the Limited Liability Company have a value equal to or more than 20%, it is obligatory to carry out audited financial reporting 12 months before the Limited Liability Company experiences dilution if it is

not more than 50% and holding a GMS if the calculation result is more than 50%". The function of financial reporting is to find out whether the transaction has gone through a process that does not harm shareholders (dilution of less than 50%) and whether transactions that cause dilution of more than 50% have been known and approved by shareholders through the GMS.

Disclosure of information in the POJK Material Facts can be seen in Article 2 paragraphs (2) and 6. Article 2 paragraph (2) states that at least material information or facts announced must contain at least the following.

a. Event Date;
b. Types of material information or facts;
c. Description of material information or facts and;
d. The impact of the incident on material information or facts.

Article 6 POJK Material Facts provides a more rigid regulation that information or material facts referred to in Article 2 paragraph (1) include:

a. Business merger, business separation, business consolidation, or joint venture formation.
b. Submission of bids to buy securities of other companies
c. Purchase or sale of company shares with material value
d. Split of shares or merger of shares
e. Distribution of interim dividends
f. Delisting and re-listing of shares on the Stock Exchange
g. Income in the form of extraordinary dividends
h. Gain or lose important contracts
i. New inventions or new products that add value to the company
j. Selling additional securities to the public or in a limited amount that is material
k. Changes in direct or indirect control over issuers or public companies
l. Changes in members of the board of directors and/or members of the board of commissioners
m. Repurchase or payment of debt securities and/or Sukuk
n. Purchase or sale of important assets
o. Labor disputes that can disrupt the company's operations
p. Legal cases against issuers or public companies and/or members of the board of directors and members of the board of commissioners of issuers or public companies that have a material impact
q. Replacement of accountants who are being assigned the task of auditing issuers or public companies
r. Replacement of Trustees
s. Replacement of securities administration bureau
t. Changes in the financial year of the issuer or public company
u. Changes in the use of reporting currency in the financial statements
v. Issuers or public companies are under special supervision from the relevant regulators which may affect the business continuity of the issuer or public company
w. Restrictions on the business activities of issuers or public companies by the relevant regulators
x. Changes or failure to achieve materially published financial projections
y. Some events will cause an increase in financial obligations or a material decrease in the income of the issuer or public company
z. Debt restructuring
aa. Termination or closure of part or all of the business segments
bb. Material impacts on issuers or public companies due to forced events and/or
cc. Other material information or facts.

These four POJKs provide information disclosure in such a way that it is limited to disclosure, not to externalities experienced by shareholders. Prospective shareholders are only given an overview of the company profile including the pro forma after the transaction. The risks of minority shareholders exercising HMETD have not been disclosed so the principle of disclosure has not been able to provide detailed information.

Preemptive Rights are always sold at a discounted price but other costs are not disclosed so that when a shareholder makes an investment decision it does not include other costs related to the exercise of the Preemptive Rights. This kind of case is also experienced by other countries as written by Michelle Meoli in her journal (Meoli, et al, 2007). Meoli presents a model based on a typical European corporate governance framework, which is characterized by conflicts of interest between controlling and minority shareholders. Meoli provides an interpretation of operations allegedly performed at negative NPV and investigates the role of rights issues in avoiding minorities causing operations to fail. The reason why these operating expectations are different is in the setting of private gains that can only be taken by the controlling shareholders from the value of the company. Rights issues, in this context, are detrimental to minority protection because the controlling shareholder can set a discount at a rate that forces the minority to exercise the issue or sell the rights at a discount in the market, without avoiding a loss in value. Meoli et al are not against positive use of the rights issue, but highlight the risk of minorities being forced to take part in equity issues also against their interests. This risk is especially high when the controlling shareholder needs to maintain or increase his profit stream, such as when a company is experiencing financial difficulties, or a major merger is being planned.

The findings of Jesse M. Fried et al (Fried & Spamann, 2020) regarding Preemptive Rights actions regarding pricing, when further explored, note that Preemptive Rights pricing can lead to asymmetric information even though the Preemptive Rights approval has already been approved for the price.

The information gap regarding Preemptive Rights between shareholders who are not part of the company's management and the company's management results in injustice because the shareholders only have the option to buy or not without knowing the other costs resulting from the corporate action.

Information Asymmetry Is Seen in the Making of Contracts in Capital Market Transactions (HMETD)

Preemptive Rights are an agreement between a public company that becomes an issuer and a shareholder. The rules in the contract must also be considered in a transaction in the capital market. According to Konrad Zweight and Hein Kotz in Agus Yudho Hernoko, true contractual freedom will exist if the parties to the contract have an economic and social balance (Hernoko, 2014). This understanding provides broad opportunities for strong economic groups to overcome weak economic groups, the domination of the strong over the weak, an "exploitation de l'homme par l'homme. A person's actions can be said to be fair if there is the ability to take other people's perspectives and adjust our behavior by considering the perspectives of others to achieve more or if according to Amartya Sen in his theory of justice, one's rational choice must be in favor of the weak (Sen, 2009). Rawls's version of justice says that it is unfair to sacrifice the rights of one or several people just for the sake of greater economic benefits for society as a whole.

The principle of making contracts that must be considered is the principle of balance. An understanding of the principle of balance can be traced from the opinions of several scholars, including Sutan Remy Sjahdeini, Mariam Badrulzaman, Sri Gambir Melati Hatta, and Ahmadi Miru (Sen, 2009). In general, experts give the meaning of the principle of balance as the balance of the positions of the contracting parties. An imbalance of position disrupts the contents of the contract so that the intervention

of certain authorities (government) is required. Peter Mahmud Marzuki mentions the principle of proportionality with the term "equitability contract" with elements of justice and fairness. The meaning of "equitability" indicates a relationship that is equal (equality), not one-sided and fair (fair), meaning that the contractual relationship takes place proportionally and fairly. The principle of *aequitas praestionis* is referred to, namely the principle that requires a guarantee of balance and the teaching of *justum pretium*, namely propriety according to law. It cannot be denied that the similarities of the parties never existed. On the other hand, when the parties enter into the contract, they are in unequal circumstances, but this inequality should not be used by the dominant party to impose their will inadequately on other parties. This kind of situation is called the principle of proportionality which means equity (Sen, 2009). Asymmetric information that causes an imbalance in the preparation of contracts affects the substance of the contract and harms one of the parties for conditions unknown to one of the parties. An agreement is formed if the parties know their respective rights and obligations including the risks that arise after the existence of the agreement.

Information Asymmetry in Law Enforcement

Law enforcement in the capital market sector is found in article 111 of the Capital Market Law. This article stipulates that any party who suffers losses as a result of a violation of the Capital Markets Law and or its implementing regulations can claim compensation individually or jointly with other parties who have similar claims, against the party or parties responsible. for the violation. Lawsuits that have been filed related to dilution and other cases related to the capital market through litigation are minimal. This is reinforced by court decisions that are very few in deciding legal cases, especially those related to the capital market. legally enforceable decisions are found in the following cases.

1. Supreme Court Decision No. 3261 K/PDT/2018

This decision is regarding the lawsuit between Mrs. Wiwiek Tjokrosaputro vs. PT Idola Tunggal. The Defendant (in this case PT. Idola Tunggal) has made a change in the capital at the GMS, causing the shareholders (in this case Mrs. Wiwik, et al) to experience share dilution of 50% of share ownership. Mrs. Wiwik herself lost a portion of the company's assets of 31.25 % This case was won by PT Idola Tunggal in court because the cassation plaintiffs did not have the capacity (legal standing) to conduct a GMS because the plaintiffs were not yet Persero.

2. Supreme Court Decision No. 2677 K/PDT/2014

The parties to this decision are Mrs. Wiwiek Tjokrosaputro vs. Hunawan Widjajanto. The lawsuit was filed against the EGMS on 16 July 2007 without the knowledge of the plaintiff who represented 65% of PT. Batu Mulia Manikam Nusa unilaterally diluted the shares.

3. Supreme Court Decision No. 334 K/PDT/2015

The parties to the dispute, in this case, are Abdul Haris vs. PT Kurnain Havizi. In 2008 there was approval to amend Persero's Articles of Association on March 14, 2008. During the GMS there was an unlawful act that caused the plaintiff's losses to be diluted to 20.989% from the original 35% and the loss of preemptive rights or right of first refusal.

4. Supreme Court Decision No. 1102/PDT/2015

This decision answers the lawsuit between Siti Hutami Endang Adiningsih vs. PT Indo Plantations et al & Notary Sutjipto. The issuance of the shares converted by the defendant caused a dilution of the plaintiff's shares from 10% to 5%. The plaintiff asked for compensation. The Court's decision decided that the amount of compensation from the corporate action was only decided at 5%, which was limited to the percentage of the dilution loss.

5. Supreme Court Decision No. 238 PK/PDT/2014

This decision is related to PT. Berkah Karya Bersama vs. Siti Hardiyati Rukmana. Based on the investment agreement, the defendant was granted the right to 75% of TPI's shares by issuing new/diluted shares for the settlement of the debt of the co-defendant.

6. Supreme Court Decision No. 97 B/Pdt.Sus-Arbt/2016

This decision was issued on April 18, 2011. This decision is related between PT.CTPI et al vs. Mrs. Hardiyati Rukmana. Niken Wijayanti, namely Respondent 5, in this lawsuit wishes to become a shareholder of the company with the share of each shareholder being divided proportionally without any dilution and at the same time determining the management. The company's debt to PT. BKB should be settled by the shareholders, in this case, Siti Hardiyanti Rukmana, which determines the price and terms agreed upon by both parties.

The lack of dispute resolution is also caused by asymmetric information in the burden of proof. Bebchuk (Bebchuk, 1984) in his research also revealed that the presence of asymmetry can affect litigation decisions and settlement of the parties and these conditions cause failure in the settlement. This was found both through litigation and alternative dispute resolution.

Attitude Toward The Existence of Asymmetric Information Regarding Activities in the Capital Market

Good governance must pay attention to the regulation of matters that intersect with asymmetric information as a manifestation of the principle of the disclosure. Bebchuk said that "…the asymmetric information approach takes firm quality as a given and depends on the law to allow firms to signal quality (Iacobucci, 2004). Corporate governance in Indonesia is adapted to the philosophy of Pancasila.

The Pancasila economic system (SEP) according to Emil Salim is explained in every precept (Ali, 2009). The first precept explains that SEP must recognize religious ethics and morals. The second precept says that SEP focuses on building economic relations in the development of society. The third precept of SEP opens up fair economic opportunities for all regardless of position, ethnicity, religion, race, or region. The fourth precept leads to the implementation of economic and political democracy. The fifth precept says that SEP must give an egalitarian color and social equity in the development process.

The characteristics of economic democracy contained in SEP include: (1) Every economy that is carried out is mutualism or togetherness. Every economic activity must involve other people and other people who are invited to carry out these activities feel benefited; (2) Economic activities carried out must be based on the nature of kinship. This nature applies that in carrying out economic activities every economic actor must position the other party as a family but not that which leads to nepotism but an attitude of mutual assistance, mutual help based on affection; (3) Economic activity must reflect corporatism, namely cooperation between economic actors in fulfilling needs; (4) Sovereignty of the people means that the interests of the people are primus, that the state government is run on the will and interests of the people, that "the Throne is for the People". This illustrates that the position of the people is "central-substantial". The central-substantial position of the people can be interpreted that in development the object is the people. Economic development is a derivative of people's development. Economic actors must also protect their interests. If these interests experience friction, the government intervenes to regulate the interests of the people so that they do not experience conflicts of interest; (5) *Homo humanus* has 3 parts, namely (a) Rational soul, (b) Emotional soul, (c) Appetitive soul (Giustiniani, 1985). Humans in economic democracy as economic actors are recognized as having the character of using ratios, emotions, and desires in meeting their needs. Utilization of these three characteristics brings benevolent and learned personality; (6) Homo social, humans are individuals who need other people to meet their needs, including in economic activities; (7) Homo ethic. According to Martin Prozesky (Prozesky, 2014),

homo ethicus has the view that being ethical means combining and balancing concern for one's interests with real concern for others. The selfishness that causes harm to others (especially in the context of carrying out economic activities) must be avoided; (8) *Homo religious* emphasizes the approach that religion can show cognitive value in explaining and understanding human behavior (Sztajer, 2013). The experience and appreciation of the Holy Spirit then determine the style and way of life, including in economic activities; (9) *Homo magnificus* which reduces human nature as *homo economicus*. The dominance of the economic mindset that justifies greedy, selfish, materialistic, and hedonistic attitudes and behavior must be reduced. The existence of *homo magnificus* does not only seek satisfaction with the economy but also other aspects, namely paying attention to factors in achieving economic efficiency that does not harm other people; (10) Development that prioritizes humans (people-centered or people-based) is prioritized. The progress of social culture can affect its economic development; (11) Social welfare is optimized. The explanation in the preamble of the 1945 Constitution stipulates the purpose of the formation of the Indonesian state is to protect the entire nation, one of which is indicated by indicators of being able to promote the general welfare. The primacy of promoting general welfare is then regulated in the body of the 1945 Constitution in Article 33. Social welfare must be pursued through a series of efforts that have been determined by the constitution. Fulfillment of personal needs that harm others is sought to be avoided; (12) There is participation, economic emancipation, and a grass-roots economy in implementing economic activities. The existence of participation illustrates that production is done by all for all in economic activities. Economic emancipation describes a person's freedom to determine his economic position and how it will be in the future. The grass-roots economy is an economic activity that is usually included in the informal sector group (Musifiky, 1994). Economic activities that arise from the lower classes must also be considered; (13) Public-based business ownership. The ownership structure in the business world is as much as possible not owned individually but there are other stakeholders so that other parties can also experience the same opportunity in doing business. Parties in economic activity must have a sense of shared ownership, joint determination in every action, and a sense of shared responsibility. Companies can be owned by other parties if the company first registers to become a public company.

The achievement of economic democracy is determined by the state. The state's ability to carry out the redistribution of the results of economic activity must be further strengthened. The market mechanism cannot guarantee fairness in the distribution of benefits or results from economic activities. The market mechanism accompanied by a climate of healthy competition means that there is fairness in opportunities. The openness of opportunity alone cannot guarantee the distribution of the "national cake" which is considered fair by society. The distribution of the "national cake" will be more equitable if the powers and opportunities of the various economic actors are more or less fairly balanced. Changes to economic actors whose abilities are weak must be made so that they can develop can compete. The policy and implementation of redistribution must at the same time strengthen the ability of the people's economic layer to compete and gain opportunities. This is very important in a world that is increasingly open and full of competition (Musifiky, 1994). Economic activity can be categorized as fair if, in the process of economic activity, there is a fair distribution of benefits (Kartasasmita, 1996).

Protection in the capital market must be ex-ante and ex-post. The exercise of Preemptive Rights must be based on these two matters. Ex-ante protection according to Lehmann (Lehmann & Vismara, 2020) should serve as a signal to potential investors that the agency costs are controlled and the risks associated with agency issues have been addressed to limit underpricing. Ex-post protection in corporate governance looks at whether all the required mechanisms and institutions can protect the interests of the parties. Barbara Fried (Fried, 2021) in her writing said that the ex-post approach is an effort to look back which can raise questions about who did good and who did not, and who was the party who violated it. This approach sees everything from the perspective of justice and rights. Asymmetric information that causes high costs can be reviewed through an ex-post approach by taking into account the economic democracy in Indonesia. La Porta in his writings said that dividends have an important role in minimizing

takeover by internal parties. La Porta then said the following "This view of dividends is taken by Rafael La Porta et al. (2000b), who report that higher dividends are paid by corporations in countries with strong legal protection of minority shareholders, such as those countries with codes based on Common Law rather than Civil Law" (Faccio, et al, 2001). The next alternative is the provision of very detailed information for public companies to be rewarded by the Financial Services Authority in the form of incentives related to disclosing costs in Preemptive Rights transactions. Arrangements regarding costs related to Preemptive Rights need to be disclosed and regulated in a regulation.

Conclusion

Asymmetric information related to the implementation of Preemptive Rights needs to be studied more deeply in Indonesian regulations. Disclosure of information regarding additional capital and regulations related to the implementation of corporate actions is still limited to providing information on company profiles and company proforma after implementation, not including costs arising from the exercise of Preemptive Rights. This requires ex-ante and ex-post protection by taking into account SEP in the exercise of HMETD.

References

Ali, A. (2009). Negara Pancasila Jalan Kemaslahatan Berbangsa. Jakarta: LP3ES.

Atanasov, V. (2007). Preemptive Rights and Anti-Dilution Protections Around The World. Williamsburg: William Davidson Institute.

Bebchuk, L. (1984). Litigation and Settlement under Imperfect Information. Rand Journal of Economics, 15 (13).

Chen, C. & Victor W. (2013). Corporate Governance under Asymmetric Information: Theory and Evidence. Economic Modelling, 33.

Du, P, et al. (2020). The Control Strategies for Information Asymmetry Problems Among Investing Institutions, Investors, and Entrepreneurs in Venture Capital. Frontiers in Psychology, 11.

Faccio, et al. (2001). Dividends and Expropriation. American Economic Review,91 (1).

Fazzari, et al. (2015). All Use Subject to JSTOR Terms and Conditions Asymmetric Information ,Financing Constraints, and Investment. Steven, 69 (3).

Fried, J. & Spamann, H. (2020). Cheap-Stock Tunneling around Preemptive Rights. Journal of Financial Economics, 137 (2).

Iacobucci, E. (2004). Toward a Signaling Explanation of the Private Choice of Corporate Law. American Law and Economics Association, 6 (2).

Lehmann, E. & Vismara, S. (2020). Corporate Governance in IPO Firms. Annals of Corporate Governance, 5 (1).

Macher, T., et al. (2011). Regulator Heterogeneity and Endogenous Efforts to Close the Information Asymmetry Gap. Journal of Law and Economics, 54 (1).

Meoli, M, et al. (2007). Do Rights Issues Really Protect Minorities? Empirical Evidence on the Italian Case. SSRN.

Susilawati, C. (2020). Asymmetric Information: Tinjauan Berdasarkan Rekomendasi Analis Sekuritas dan Revisi Earning Forecast. Ekonomis: Journal of Economics and Business, 4 (1).

Sztajer, S. (2013). The Concept of Homo Religiosus and Iits Philosophical Interpretations. Anglojęzyczny Suplement Przeglądu Religioznawczego, 1.

Yulianto, A., et al. (2021). Debt versus Equity Open Innovation to Reduce Asymmetric Information. Journal of Open Innovation: Technology, Market, and Complexity, 7 (3).