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UNFAIR DILUTION IN THE LEGAL PERSPECTIVE OF CAPITAL MARKET IN INDONESIA

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ABSTRACT
Dilution is a natural thing in running a company. The presence of dilution can cause losses. Anticipation of losses to dilution in Indonesia has been regulated in several regulations but has not fully addressed the issues related to dilution. Therefore, the concept of legal comparison is needed in further regulation. The writing method in this article is normative research using legal and conceptual comparative approaches. The results written in this article are (1) The existence of the concept of claims diluted explicitly with the determination of indicators as adverse dilution, (2) The existence of the concept of continuous supervision both before, at the time, and after capital addition activities that cause dilution to create legal protection for minority shareholders.

KEY WORDS
Dilution, legal comparison, legal protection, minority shareholders.

The corporate action of increasing capital is used by Public Companies in the capital market to obtain several funds outside the financing scheme in the form of debt. The impact of this corporate action is a change in ownership of the percentage of shares. A decrease in the change in ownership of the percentage of shares can cause losses to previous shareholders, especially minority shareholders. This decrease in the percentage of ownership is called dilution. Some countries, including Indonesia, consider that dilution is not a violation, but if it is examined further it can also cause losses. Prevention of dilution in Indonesia is regulated by the Pre-Emptive Rights or rights issue mechanism. The arrangement is still general so it is difficult to file a dilution claim created by the corporate action of increasing capital.

Weak legal arrangements lead to abuse by issuers. This was stated by Dinh Tran Ngoo Huy et. al……weakness in the legal and regulatory framework may lead to the abuse of other shareholders in the company. The potential for abuse is marked where the legal system allows, and the market accepts, controlling shareholders to exercise a level of control which level of risk that they assume as owners through exploiting legal devices to separate ownership from control, such as pyramid structures or multiple voting rights. Such abuse may be carried out in various ways, including the extraction of direct private benefits via high pay and bonuses for employed family members and associates, inappropriate related party transactions, systemic bias in business decisions, and changes in capital structure through special issuance of shares favoring the controlling shareholder (Huy, et.al, 2019).

The statement above explains that regulation can be exploited by exploiting weaknesses in regulation. This weakness can be misused by the issuer (in this case the owner), one of which is to change share ownership, especially so that the corporate action benefits the controlling share. This can also apply to the exercise of the Preemptive Rights when the Rights are not used, the change in the percentage of ownership will change and be controlled by another party.

Good legal arrangements and good law enforcement have an impact on the economy of a country. This is similar to that described by Bogdan Dima et.al as follows (Dima et.al, 2018) A country with sound political institutions, a sound, and strong judicial system, clear rules, and citizens willing to accept the established institutions and laws is considered to have a strong rule of law (Oxley & Yeung, 2001). The rule of law contributes to the creation

of a stable financial environment (Hausmann, Pritchett, & Rodrik, 2005) where property rights are protected (Haggard & Tiede, 2011) and investors feel trust in the transactional environment (Fogel et al., 2006).

From the statement, it can be described that if a country has a strong law enforcement system by formulating various regulations clearly and citizens are willing to accept these rules, the law creates a stable economy. This stability is created because investors have confidence in conducting transactions in the capital market. The interests of every citizen are always competing as the proverbs homo homini lupus and bellum omnium contra omnes which means that in achieving individual needs one will eat other individuals. Every human against all. The existence of the government regulates that the interests of one another do not harm each other. An increase in the economy can be done if it does not make other individuals lose as a result of one's actions in fulfilling their needs.

Dilution prevention arrangements in Indonesia can be found in POJK No. 14/POJK.04/2019 Regarding Pre-emptive Rights (POJK on Pre-Emptive Rights) and POJK No. 17/POJK.04/2020 Regarding Material Transactions (POJK on Material Transactions). This rule provides a soft setting and even repressive law enforcement can only be found in Article 111 of Law no. 8 of 1995 concerning the Capital Market.

The regulation of Rights that is still soft in preventing dilution requires legal comparisons with other countries. The formulation of the problem raised in this article is how to formulate law enforcement regarding adverse dilution.

The purpose of writing this article is to find the formulation of dilution claims in the Pre-emptive Rights by referring to the concept of other countries and providing recommendations to the government regarding dilution arrangements.

METHODS OF RESEARCH

This writing method uses a comparative legal and conceptual approach to normative juridical research. The comparative law approach is carried out by comparing the laws of one country with the laws of other countries related to dilution arrangements (in this case, Indonesia and Delaware, and Hong Kong). The conceptual approach is carried out by referring to legal principles and opinions of scholars related to dilution regulation. The legal materials used in this paper consist of two, namely primary and secondary legal materials. The primary legal materials are obtained from the POJK on Pre-Emptive Rights regulations and the POJK on Material Transactions. Secondary legal materials are obtained from journals, books, and similar literacy related to dilution. The material processing technique is carried out by presenting the philosophical background of dilution protection and then comparing the dilution regulations in the three countries. The comparison results can be used as an alternative to creating a new legal method that is not only appropriate for Indonesia today, but also for Indonesia in the future.

RESULTS AND DISCUSSION

The dilutive equity problem is an efficient method of applying suppression. Stock dilution in the economic sector is a natural thing, but its existence also needs to be monitored, considering that this condition can also harm the parties involved. This is also reinforced by La Porta as follows (La Porta, et.al, 2000): expropriation can take a variety of forms. In some instances, the insiders simply steal the profits. In other instances, the insiders sell the output, the assets, or the additional securities in the firm they control to another firm they own at below-market prices. Though often legal, such transfer pricing, asset stripping, and investor dilution have largely the same effect as theft. In still other instances, expropriation takes the form of diversion of corporate opportunities from the firm, installing possibly unqualified family members in managerial positions, or overpaying executives. La Porta explained that the dilution of shares is indeed permitted in the regulations but in practice, the impact of the dilution is almost the same as theft.

Cases that relate to the practice of dilution in the world and are detrimental are described by Atanasov in his research as follows (Atanasov, 2007):

- Markets in developing countries often carry out shareholder takeovers in the form of tunneling;
- In the former Soviet bloc countries before 2002, it was stated that the role of minority shareholders did not exist, resulting in very large share control on the Bulgarian stock exchange;
- In the case of Bulgaria in 1998, there was a controlling share that placed 196,300 shares into the hands of 4 parties at a price 50% more below the market price;
- The Chaebol (Telecom) case in Korea found evidence of dilution of other shareholders;
- The case of Dolls vs. James Martin Associates in the US shows that the majority shareholder proposes to increase the capital of half a million shares which results in dilution of the minority shareholders;
- The Alantec case shows that a venture capitalist attempted to erase the shareholdings of 2 founders;
- There are cases of dilution in US mutual funds, debt-equity-swaps, and the case of Greenmail about majority shareholders selling back their shares to companies at increased prices. This impact affects minority shareholders.

According to Chiu (Barker & Chiu, 2015), corporate law enforcement in the form of derivative actions and unfair prejudice petitions is framed in such a way that it is rarely used by shareholders. The rules in securities also only inform transparency, but these regulations only support information on stock trading and exit strategies. The regulations have not yet provided significant opportunities for investors to be implemented through litigation primarily related to dilution.

Protection of shareholder property rights in the world can be seen in the International Customary Law (ICL) which has the principle of "Minimum Standard of Treatment" and compensation requirements from takeovers (Aaken, 2009). According to Van Aaken Ann, the existence of these two principles is still not optimal given. The following statement (Aaken, 2009):…..But this protection is— nomen est omen—minimal and does not live up to the modern-day requirements of protection because interference with property rights is much more refined nowadays; most contentious issues are not those connected with outright expropriation but rather with regulatory expropriation or unfair treatment and disputes over contractual rights elevated to international law claims.

Atanasov's dilution prevention arrangement is mapped into three groups of protection, namely (1) Pre-emptive Rights, (2) Minimum price provisions, and (3) Approval rights (Atanasov, 2007). Indonesia adheres to the first grouping, namely Pre-emptive Rights. Preemptive Rights are a mandate from Article 82 of the Capital Market Law which is further regulated in the POJK on Preemptive Rights. Rights activities also intersect with the POJK on Material Transactions.

The objectives of the Preemptive Rights when referred to based on consideration for the establishment of the POJK on Preemptive Rights are (1) Meeting the needs of Public Companies in increasing capital and (2) Increasing protection for minority shareholders, especially those related to additional capital. The purpose of establishing Preemptive Rights in corporate relations (shares in the company) is stated in the provision of protection from risks that can be associated with the emergence of new members. Rights that are not taken away give rise to new parties that can harm corporate affairs, due to their lack of competence and ability to do business properly. In addition, this method makes it possible to provide another protection objective, namely to protect participants from the risk of possible dilution of shares in the authorized company capital owned by each of them (Andrey, 2014).

One of the Pre-emptive Rights arrangements refers to the Organization for Economic Co-operation and Development (OECD). This principle is the main instrument of policymaking in the field of corporate governance (OECD, 2015). OECD principles pay attention to the rights and fair treatment of shareholders and the main ownership function

(OECD, 2015). The forms of protection include: (1) All shareholders must have the opportunity to obtain effective compensation for violations of their rights, (2) Equity investors have certain rights such as equity shares in public companies that can be bought, sold, or transferred, (3) Investors have the right to participate in corporate profits to the extent of their invested capital, (4) Investors have the right to corporate information and the right to influence the corporation, especially at the General Meeting of Shareholders (GMS) and voting. The Pre-Emptive Rights arrangement also seeks to comply with the principles of the Ease of Doing Business (EODB). EODB is an attempt to capture several important dimensions that affect domestic companies (World Bank Group, 2020). One of the indicators of EODB is protecting minority shareholders (World Bank Group, 2020). This means that in building a company at the outset, there must also be prerequisites for paying attention to minority shareholders. Investment protection that is in contact with outside parties from the Indonesian state also refers to the Human Rights Council of the United Nations, namely A/HRC/8/5. John Ruggie (United Nations, 2008) in a study related to A/HCR/8/5 point 9 states that there are three principles of state obligations related to business and human rights, namely (1) The state's obligation to protect against human rights violations by third parties. third, including business; (2) Corporate responsibility to respect human rights; and (3) The need for more effective access to recovery.

Other principles also refer to the philosophy of the Indonesian state. Based on the philosophy of the Indonesian state, the state aspired to by the Indonesian people is a legal state based on populist principles aimed at realizing just welfare (social justice) for all Indonesian people and world peace. The welfare state is an ideal development model that focuses on increasing welfare through a more important role for the state in providing universal and comprehensive social services to its citizens. Good legal protection applies the rule of law and avoids violations of human rights. Protection of investors is not only through regulation but also in law enforcement. The more investors are protected from theft, the more investors trust to invest in the capital market.

When viewed from the above principles, it can be said that protection against dilution is carried out to protect the weak as a manifestation of equal rights in carrying out economic activities.

Examining The Enhanced Listing Regime Within The Indonesia Minority Shareholder Protection Framework. Legal protection is a universal concept that is owned by the rule of law. Legal protection for the weak party in terms of economic power was then emphasized by Salim HS and Erlies that the position of the weak party was not only at an economically weak point but also from a juridical aspect (Salim & Nurbani, 2013). This means that the regulations governing the economically weak parties also need to be considered in terms of whether the protection that originally protected the weak parties was able to protect the existence of those practice parties.

Legal protection against dilution in Indonesia can be seen from (1) the Limited Liability Company Law, (2) the Capital Market Law, (3) the POJK on Pre-emptive Rights, and (4) the POJK on Material Transactions. Article 43 paragraph 1 of the Company Law explains that all shares issued for additional capital must first be offered to every shareholder with share ownership for the same share classification. Article 82 of the Capital Market Law states that Pre-emptive Rights are given to existing shareholders to purchase shares newly issued by the issuer before being offered to standby buyers so that the percentage of ownership does not decrease. POJK on Pre-Emptive Rights stipulates that these rights are granted under a certain ratio to the percentage of ownership of existing shareholders. The distribution is excluded for issuers in the context of improving their financial position. This means that the Pre-emptive Rights can be enforced and not offered to the previous shareholders by taking into account the existing ownership ratio. The process of increasing the issuer's capital to improve its financial position is not limited to 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 the paid-up capital. Article 29 of the POJK on Material Transactions stipulates that a PT that is diluted as a result of the controlling action is required to carry out the procedures stipulated by the material

transaction if the controlling report is no longer consolidated by the PT. The requirement for financial reporting obligations is that in the condition that the total assets, net income, and operating income of the controlling entity divided by the consolidated company-owned have a value equal to or more than 20%. Amounts that meet the requirements are required to submit audited financial reports 12 months before the PT is diluted if it is not more than 50% and the GMS is held 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 the shareholders (dilution of less than 50%) and the transaction that results in a dilution of more than 50% is known and in ACC by the shareholders through the GMS.

Article 82 of the Capital Market Law is a lex specialis regulation because the provision of Preemptive Rights is carried out in the capital market, while the Rights in the Company Law can be applied when conducting a private placement corporate action where the privilege is reserved for the previous shareholder (with limited scope), while in The Capital Market Law Preemptive Rights can be used by shareholders owned by the general public as long as they have purchased several shares in the capital market. Initially, the determination of the Preemptive Rights was given to the same classification of shares and proportionate to the previous ownership. The regulation underwent a shift when reading the POJK on Pre-Emptive Rights that there were exceptions that did not have to be given proportionally. The exception is applied at the time of capital increase in the context of (1) improving financial position, (2) in addition to improving financial position and (3) awarding bonus shares. The limitation on additional capital by the issuer is only given in the context of other than improving the financial position, which is a maximum of 10% of the paid-up capital. This indicates that issuers in the context of improving their financial position are allowed to increase their capital to provide a very large dilution if the Preemptive Rights are not purchased by the previous shareholders, although in the next article 8C it is stated that the additional capital must be based on calculations that result in smaller dilution for shareholders. shares, especially minority shareholders.

Exceptions from the implementation of public offerings under regulations in the capital market apply to issuers that make additional capital to improve their financial position (article 44 A paragraph 1 POJK on Pre-Emptive Rights). In addition, it also applies to issuers that make additional capital to improve their financial position and in addition to improving their financial position which contains affiliated transactions (Article 44 B POJK on Pre-Emptive Rights). Finally, it applies to issuers that increase their capital to improve their financial position, and in addition to improving their financial position, there are conflicts of interest (Article 44 C POJK on Pre-Emptive Rights). Further, the exception can be seen in POJK No. 42/POJK.04/2020 concerning Affiliated Transactions and Conflicts of Interest. The definition of a conflict of interest transaction is a transaction carried out by the PT or the controlling company with each party, both with affiliates and parties other than affiliates that contain a conflict of interest. Conflicts of interest that do not harm the company can be carried out under certain conditions. These specific conditions include:

- Conflict of interest transactions must have been approved by the GMS and attended by independent shareholders (article 5);
- Transactions for addition or equity participation to maintain the percentage of ownership after the said statement has been made for a minimum of 1 year (article 6 point f);
- Transactions in the context of restructuring are carried out by PT that is controlled either directly or indirectly by the government (article 6 point h).

Transactions in the capital market conflict of interest are prohibited, but there are special conditions that allow it with the notes above.

Arrangements for material transactions that relate to dilution are also required to report their audited finances 1 year earlier if the dilution is less than 50% and to find out if there is a dilution of less than 50% and the statement of the GMS if it is more than 50%.

The weakness of the Pre-Emptive Rights arrangement can be seen from each arrangement. First, article 8C of the POJK on Pre-Emptive Rights stipulates that additional capital must pay attention to the smallest dilution. The smallest dilution indicator is still

abstract, giving rise to different interpretations from one another. Inclusion needs to be defined more specifically. Second, the rules in the POJK for affiliated transactions and conflicts of interest are explained that if the transaction (including the corporate action to increase capital) contains an affiliated transaction and a conflict of interest, it can be carried out under certain conditions. The first certain conditions are the approval of the GMS which is attended by independent shareholders. This still raises the question of what if there is an independent party who is not present and does not agree with the results of the GMS, if so, it will create a lawsuit in court. The condition is that the two issuers may have a conflict of interest as long as it is used for additional capital which is to maintain the ownership position for a minimum of 1 year since the conflict of interest transaction exists. This indicates that the conflict of interest may be carried out in a longer period because it is said to be at least 1 year, there is no limit on how long it can be done. The third condition is that there may be a conflict of interest in the context of restructuring. The disadvantage is that transactions in additional capital can also be carried out in a conflict of interest position. Whatever the activity, it must be in contact with other shareholders so that protection against externalities from these activities needs to be considered.

According to Atanasov, protection against dilution consists of several steps, namely (1) ex-ante protection; (2) During the exercise of Rights, and (3) Ex-post protection (Atanasov, 2007). These three steps are indicators that need to be considered in corporate actions to increase the capital that intersect with dilution. Ex-ante protection consists of (a) Requirements for amendments to the Articles of Association for the issuance of new shares, (b) There is a vote from the shareholders regarding the issuance of new shares, (c) There is a sound of the board of directors being heard for the issuance of new shares, (4) Pricing provisions minimum. There are two indicators of protection during the implementation of Preemptive Rights, namely (a) Transfer or securitization of the latest Preemptive Rights, (b) Effectiveness of the implementation of Preemptive Rights. The effectiveness of the implementation of the Preemptive Rights is seen from the costs involved in its implementation. These costs include implementation costs, other costs borne by shareholders, sophisticated shareholder conditions, infrastructure in trading, responsible for company or shareholder costs when using brokerage services. Ex-post protection consists of (a) Participation rights, how much the shareholders use the Preemptive Rights, (b) The existence of valuation rights, (c) The difference between the assessments of participation, (d) The existence of litigation based on violations of fiduciary obligations. This indicator can be used as a reference for whether regulations in Indonesia are pursuing the three protection approaches.

Litigation efforts related to capital market violations in Indonesia can be seen in Article 111 of the Capital Market Law. The article stipulates that parties who are harmed in capital market activities can claim compensation either individually or jointly with other parties who have similar claims against the party responsible for the violation. The existence of this arrangement does not necessarily mean that aggrieved shareholders can file for litigation. This is evidenced by the fact that there are still few Supreme Court decisions related to law enforcement in the capital market, especially regarding dilution. These cases include the following:

- Supreme Court Decision No. 3261 K/PDT/2018. This decision regarding the lawsuit between Mrs. Wiwiek Tjokrosaputro vs. PT Idola Tunggal. Defendant (in this case PT. Idola Tunggal has made a capital change in the GMS, causing the shareholders (in this case Mrs. Wiwik, et al) to experience a share dilution of 50% of the share ownership so that the person concerned loses the share of the company's assets by 31.25%. In this case PT. Idola Tunggal was won in court. After all, the cassation plaintiffs did not have the legal standing to conduct the GMS because the plaintiffs were not yet a limited liability company;
- Supreme Court Decision No. 2677 K/PDT/2014. The parties to this decision are Mrs. Wiwiek Tjokrosaputro vs. Hunawan Widjajanto. There was a lawsuit against the EGMS on July 16, 2007, without the knowledge of the plaintiff who represented 65% shares of PT. Batu Mulia Manikam Nusa and unilaterally diluted shares;

- Supreme Court Decision No. 334 K/PDT/2015. The disputing parties in this matter are Abdul Haris vs. PT Kurnain Havizi. In 2008 there was an approval to amend the Articles of Association of the Company on March 14, 2008. In 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;
- 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 shares converted by the defendant caused the dilution of the plaintiff's shares from 10% to 5%. Plaintiffs seek compensation. The Court's decision decided that the amount of compensation from the corporate action was only decided at 5%, which is limited to the percentage of the diluted loss;
- Supreme Court Decision No. 238 PK/PDT/2014. This decision is related to PT. Blessings of Joint Work vs. Siti Hardiyati Rukmana. Based on the investment agreement, the defendant was granted rights to 75% of TPI's shares with the issuance of new/diluted shares for the settlement of the debts of the co-defendants;
- Supreme Court Decision No. 97 B/Pdt.Sus-Arbt/2016. This decision was published on April 18, 2011. This decision is related to PT. CTPI et al vs. Mrs. Hardiyati Rukmana. In this case, Niken Wijayanti, 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, Mrs. Siti Hardiyanti Rukmana, to determine the price and terms agreed upon by both parties.

The difficulty of resolving disputes regarding dilution indicates that regulations related to corporate governance in Indonesia need to be continuously improved to respond to the complexities of economic activity in the capital market.

Comparison of Dilution Regulation Laws with Other Countries. According to Sunaryati Hartono, comparative law has two functions, namely (1) as the development of legal knowledge, and (2) as a practice and legal development (Hartono, 1989). For the development of legal science, the comparative research method of law is very useful, because this method will show different legal principles, legal principles, and legal institutions, but often two legal systems that do not show a relationship or meeting. Historically, however, it can still show similarities in legal concepts or general principles. In addition, through a legal comparison, it will also be found that although the sources of law used by the two legal systems are the same, their application in the legal systems is different. The second benefit of comparative law is in the world of practice. Comparative law is very useful in applied research and the formation of new laws. Comparative law will show various alternatives that have been taken so that by reflecting on the experiences and thoughts of legal scholars from other countries, it will be easier for us to create a new legal system that is not only appropriate for Indonesia today, but also for Indonesia in the future. Comparative law functions to predict what will be the legal needs in the future under the development of the Indonesian state. The nature of the law which was originally followed can turn into leads so that it can precede social change. The movement that precedes it can be the embodiment of a set of legal rules that govern future relationships and needs. The preparation of legal rules is made not only to resolve social conflicts but also to be preventive.

The formulation of Preemptive Rights in Indonesia must also adopt a leading legal nature. Prevention of dilution is carried out not only alone but is arranged in such a way that there is a distinguishing element, what kind of dilution is not allowed considering that in practice there are still forms of expropriation.

The formation of laws and law drafters in a situation of planned development no longer only needs to improve the habits that form the law, but more than that, lawmakers and law drafters must be able to find legal rules for human relations from within a society that has not yet been formed. but that is the ideal of the nation (Hartono, 1989). In a society that does not

develop in a planned manner, habits that form law, on the other hand, in an Indonesian society that builds planning, now it is the law that must form habits.

The concept of shareholder protection against dilution is regulated in the state of Delaware. The country regulates direct equity dilution claims. Determination of how dilution can be prosecuted can be seen from the case of Gatz v. Ponsoldt, 925 A.2d 1265. The plaintiff, in this case, is the minority public shareholder of Regency Affiliates, Inc., while the defendant is William R. Ponsoldt.

To meaningfully describe the transactions that give rise to the problems presented, first, the background of the events leading up to the recapitalization is told. The result of that event was William R. Ponsoldt, Sr. ("Ponsoldt"), through entities owned or controlled by it, acquired a sizeable minority block of Regency's shares, giving it de facto control of the company.

The background of this case is the existence of a recapitalization arrangement that is packaged in a complicated transaction between Pondsolt and Lawrence Levy (“Levy”). This transaction was carried out without the consent of the Regency's public shareholders. This condition ultimately gave Pondsolt the freedom to disburse most of the equity to its interests through Regency. As a result, Pondsolt turned Regency's de facto shareholding into an absolute majority interest along with it being transferred to an entity owned by Levy. The result was that Regency's public shareholders - who previously held Regency's majority stake - became minority shareholders in the Levy-controlled company. These activities are identified into 2 transactions, namely (1) Transaction 1 is the expropriation of voting rights and economic value from public shareholders by and to the controlling shareholders, and (2) Transaction 2 is the transfer of the benefits of the takeover by the controlling shareholders to third parties.

The court's opinion previously gave an opinion based on the Tri-Star doctrine that a lawsuit for dual fiduciary obligations could arise in the following conditions (1) Shareholders who have majority or effective control cause the corporation to issue excessive shares to be exchanged for assets of the controlling shareholders who lower value, (2) Exchange causes an increase in the percentage of shares owned by minority shareholders.

Such corporate action uses a method to achieve this result by overpaying (or over-issuing) shares to the controlling shareholder so that the corporation is harmed and has a claim to force the recovery of the value of the overpayment. These claims are by definition included in the derivative category, but when viewed from the perspective of public shareholders, they also have separate direct claims arising from the same transaction. This matter was then submitted to another legal action at the Supreme Court level.

The Supreme Court's opinion on this case then reads as follows (Pillegi, 2011): minority shareholders may have a direct equity dilution claim when their holdings are diluted, and those of the corporation’s controller is not. In other words, as long as the controller’s holdings are not decreased, and the holdings of the minority shareholders are, the latter may have a direct equity dilution claim.

The quote above shows that the Supreme Court has provided clear boundaries or indicators of adverse dilution. The determining condition is that if the dilution of equity shows that the holding company under its control has decreased the percentage of ownership, while the controlling company does not, the minority shareholder can claim the dilution of equity directly. The purpose of this decision is to strengthen the position of the individual to file a lawsuit directly because in the company there are also known derivative lawsuits, the purpose of which is that the lawsuit is carried out by minority shareholders for the company's purposes. This can be adopted by Indonesia because the doctrine is also regulated in the Limited Liability Company Law which has been explained by Munir Fuady as follows (Fuady, 2014): Concerning proposals for a merger or other corporate restructuring actions aimed at causing dilution of votes from shareholders in voting, a direct lawsuit may be filed against such actions because the party that is harmed in this case is the shareholder, not the company.

The direct implementation of the lawsuit by the shareholders in the case of Gatz vs. Pondsolt has also been carried out by Indonesia in its regulation, however, there are no explicit rules that describe how the dilution conditions can be filed in the realm of lawsuits.

The second concept that can be used as a comparison regarding the implementation of Preemptive Rights in preventing dilution efforts is HKEX-LD-102-2016 and HKEX-LD-103-2016. HKEX-LD-102-2016 is a form of supervision related to the assessment of the implementation of the previous rights issue to the submission of proposals including how many parties participated in the Preemptive Rights and who rejected it as well as the significant effect. Supervision of HKEX-LD-102-2016 comes from submitting a proposal for a company that will submit a rights issue (Pre-Emptive Rights). In the previous year, the company had exercised Pre-emptive Rights but created a dilution of 80%, and the last rights issue was approved by most of the shareholders with voting rights, but the level of attendance of shareholders at the GMS was low (around 20%) and the last rights issue was canceled by 52% thus creating a large odds lot. The issuer in the following year then submitted his proposal to conduct another rights issue. Because last year's rights issue was considered for assessment, the stock exchange did not permit to conduct another rights issue. This indicates that the supervision by the SRO is carried out through an assessment of previous rights issues and future rights issues. HKEX-LD-103-2016 emerged as a result of a company that in its rights issue proposal created a transaction that resulted in a high odd-lot so that the exchange's decision did not approve the proposed share distribution and increased the board lot size to protect the interests of the affected shareholders on the corporate action. The concept that exists in several countries can be carried out in Indonesia.

CONCLUSION

The anti-dilution regulation in Indonesia still needs updating considering that law enforcement related to dilution is still general and is limited to providing information regarding the existence of dilution. Therefore, it is necessary to adopt from other countries related to dilution indicators that can be claimed by minority shareholders, namely the existence of equity dilution which shows the condition of the holding company that is shaded experiencing a decrease in the percentage of ownership, while the controlling company does not experience it. Supervision related to the implementation of the right issue must also pay attention to the previous right issue proposal to the submission of the next proposal including how many parties participate in the Preemptive Rights and who reject it as well as the effects that have a significant effect.

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