



Corporate Governance Regulation and Technology: Indonesia's Way to Move Forward

Ulya Yasmine Prisandani¹

¹*International Business Law Program, Universitas Prasetiya Mulya, Indonesia*

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Abstract

The study aims to analyze the regulation and implementation of corporate governance in Indonesia, and extend it to the beneficial utilization of technological advancements in the legal field that can be applied to developing Indonesian good corporate governance implementation. The analysis will be carried out through a normative-juridical method, utilizing the statute approach in which relevant laws and regulations are enquired into, supported by the existing literatures and academic papers. The paper looks into the weaknesses of the currently prevailing corporate governance regulatory regime, followed by the possible use of technology to develop Indonesia's corporate governance implementation. The study finds that the drawbacks of Indonesian corporate governance legal regime include the needs for stronger and stricter regulation such as in relation to the requirement for affiliation for Board of Directors and Board of Commissioners, as well as minority shareholders protection linked to an equitable decision making process in a General Meetings of Shareholders. Further, technological advancements can be used for the betterment of corporate governance implementation in Indonesia, such as in terms of automation of document filing, submission and reporting in addition to other practical online and digital means which include the eASY.KSEI system as the official online General Meetings of Shareholders platform for public companies that has been tested during the recent COVID-19 pandemic situation.

Keyword: corporate governance; electronic general meetings of shareholders; director duty; law and technology

INTRODUCTION

Corporate governance is defined by the Organization for Economic Cooperation and Development (hereinafter referred as the 'OECD') in its Principles of Corporate Governance of 2015 as "a set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined." In terms of corporate governance ranking in South East Asian Nations, Indonesia still needs to catch up to its neighbor namely Thailand, Singapore, and Malaysia after being ranked 4th place in the Asian Development Bank scorecard. The 2015 scorecard took into account four company elements, namely the rights of shareholders, equitable treatment of shareholders, role of stakeholders, disclosure and transparency as well as responsibilities of the Board of Directors and Commissioners when assessing upon the level of compliance and improvement in the field of corporate governance in each South East Asian countries¹.

¹ Asian Development Bank. (2017). *ASEAN Corporate Governance Scorecard Country Reports and Assessments 2015*.

Relatably, the issue of corporate governance has become the focus of public's attention when multiple occurrences of good corporate governance violation has been proven to be so severe and so shocking due to the nature of the offence, as well as the perpetrator and company that belongs to the state-owned company list. These mishaps include the smuggling of luxurious goods and manipulation of financial statements of PT. Garuda Indonesia (Persero) Tbk by its director, I Gusti Ngurah Askhara Danadiputra²³ as well as allegation of corruption and mismanagement of insurance premiums of PT. Asuransi Jiwasraya (Persero) that ended up in criminal proceedings against the ex financial director, Hary Prasetyo⁴⁵. Lippo group was also shamed for its poor corporate governance implementation due to the silent transfer of ownership of Meikarta back in 2018⁶.

Good corporate governance principles are considered to be the specific implementation of corporate law principles that are embodied in Law Number 40 of 2007 on Limited Liability Companies (hereinafter referred as the "Indonesian Company Law"). Corporate governance regulations are still scattered and irresolute, causing leniency in the enforcement procedure in the case of non-compliance and violation of rights. Indonesian corporate board and shareholder relationship is mainly regulated under the "Indonesian Company Law", and other corporate governance related regulations are non-binding soft laws that serve as guidance for Indonesian companies. In some sectors, Financial Services Authority also plays a role as the supervisor and regulator of corporate governance.

On the other hand, advancement of technology has been helping a lot in revolting and improving law and its implementation. Case laws and decisions can now be found online, lawyer and client communications are now carried out digitally, and in certain jurisdictions, eDiscovery systems to find relevant evidences are helping to lessen legal practitioners burden⁷.

Not only in the corporate governance realm, but digitalization and electronic methods in carrying out legal processes have been implemented in various areas in the public sector such as the e-Tendering method for public procurement mechanism⁸ as well as in multiple private transaction uses which include electronic credit agreement⁹ and online sale and purchase transactions¹⁰. In any case, utilizing to technological advancements to help with corporate governance implementation and supervision¹¹, in which this includes providing the regulatory framework as a basis, can be beneficial.

As a result of these conditions, corporate governance become one field that must be developed under thorough scrutiny in order to ensure its improvement and evolution in the right direction. In that regard, the paper aims to answer the following questions:

1. to what extent do drawbacks exist in the currently prevailing corporate governance regime of Indonesia?; and
2. to what extent can technology help in regulating and implementing better corporate governance

2 Mufti, R. R. (2019, 5 December). *Garuda Indonesia president director fired after smuggled bikes found on plane*. The Jakarta Post. Retrieved from <https://www.thejakartapost.com/news/2019/12/05/garuda-indonesia-president-director-fired-after-smuggled-bikes-found-on-plane.html>

3 Anwar, M. C. (2019, 1 July). *Setumpuk Sanksi, Ini Penjelasan Lengkap Garuda Indonesia!* CNBC Indonesia. Retrieved from <https://www.cnbcindonesia.com/market/20190701082643-17-81713/setumpuk-sanksi-ini-penjelasan-lengkap-garuda-indonesia>

4 Cahyani, D. R. (2019). *Dirut Jiwasraya Blak-blakan Ungkap Penyebab Gagal Bayar Polis*. Tempo.

5 Novelino, A. (2020, 14 January). *Eks Direktur dan Benny Tjokro Jadi Tersangka Kasus Jiwasraya*. CNN Indonesia. Retrieved from <https://www.cnnindonesia.com/nasional/20200114172704-12-465298/eks-direktur-dan-benny-tjokro-jadi-tersangka-kasus-jiwasraya>

6 Rahmawati, W. (2018, 25 November). *Tata kelola sejumlah emiten buruk, begini kata investor*. Kontan. Retrieved from <https://investasi.kontan.co.id/news/tata-kelola-sejumlah-emiten-buruk-begini-kata-investor>

7 Maura Grossman and Gordon Cormack, 'Technology-Assisted Review in E-Discovery Can Be More Effective and More Efficient Than Exhaustive Manual Review', *Richmond Journal of Law and Technology*, 17.3 (2011), 11.

8 Siti Dhurotun Muniroh and Ubaidillah Kamal, 'THE INDICATION OF UNFAIR BUSINESS COMPETITION PRACTICE IN THE IMPLEMENTATION OF PUBLIC PROCUREMENT AUCTION USING E-TENDERING', *Journal of Private and Commercial Law*, 2.2 (2018), 78–93 <<https://doi.org/10.15294/jpcl.v2i2.15700>>.

9 Dita Perwitasari, 'LEGAL CERTIFICATION IN ELECTRONIC CREDIT AGREEMENT', *Journal of Private and Commercial Law*, 2.2 (2018), 125–33 <<https://doi.org/10.15294/jpcl.v2i2.16834>>.

10 Muhammad Ikhsan Lubis, 'ONLINE BUYING AND SELLING TRANSACTIONS UNDER INTERNATIONAL PRIVATE LAW', *Journal of Private and Commercial Law*, 2.1 (2018), 17–32 <<https://doi.org/10.15294/jpcl.v2i1.14499>>.

11 Mark Fenwick and Erik P.M. Vermeulen, 'Technology and Corporate Governance: Blockchain, Crypto, and Artificial Intelligence', *SSRN Electronic Journal*, 48 (2018) <<https://doi.org/10.2139/ssrn.3263222>>; Fiammetta Piazza, 'Bitcoin and the Blockchain as Possible Corporate Governance Tools: Strengths and Weaknesses', *Penn State Journal of Law & International Affairs*, 5.2 (2017), 262.

in Indonesia?

RESEARCH METHODS

The analysis will be carried out through a normative-juridical method that employs the statute approach. A thorough analysis will be conducted to the relevant laws and regulations, which include the Indonesian Company Law, Financial Services Authority regulations as well as where applicable, publicly listed companies regulation, whereas implementing policies and statistics will be obtained from official institutions such as the Indonesian Stock Exchange and Indonesian Central Securities Depository (*Kustodian Sentral Efek Indonesia*). These regulations and numbers will be supported by existing literatures and academic papers for further elaboration and analysis. No first-hand data gathering activity is carried out for this paper.

RESULTS AND DISCUSSION

The Drawbacks of Current Indonesian Corporate Governance Regime

Corporate governance is one essential element of economy, since sound corporate governance promotes economic development through higher returns on equity, efficiency of investment allocation, firm performance and valuation, as well as lower cost of capital and easier access to external financing¹². Corporate governance is a complex issue that involve many different aspects including governmental policy and regulations as well as company's internal and external mechanisms that apply to multiple stakeholders. Nevertheless, a closer analysis towards the laws and regulations may be needed as regulatory changes can significantly disincentivize companies for non-compliance, and as a result, better corporate governance will be achieved. For that reason, several major drawbacks of the currently prevailing corporate governance regime in Indonesia fall under the following categories: absence of strict corporate governance regulations, loose regulatory requirement for Board of Directors and Board of Commissioners, and last but not least, lax regulation on inequitable decision making process.

a. Absence of strict corporate governance regulations

Indonesia up to now has yet to enact a strict law on good corporate governance, although the National Committee on Governance Policy (*Komite Nasional Kebijakan Governance*) had issued the Good Corporate Governance Code in 2016. However, this Good Corporate Governance code is not a legally binding document. As a result, companies tend to treat this as a recommendation, in which violations will not bring about any criminal or administrative sanctions. The National Committee on Governance Policy has also been idle, despite the mandate given through the Coordinating Ministry for Economic Affairs Decree No KEP-14/M.EKON/03/2008 of 2008 with regard to its responsibilities, which are as follows:

1. drafting and developing guidelines and rules of behavior regarding good governance policies in the corporate and public sectors;
2. submitting recommendations for the improvement of laws and regulations based on the principles of good governance;
3. monitoring and adjusting the application of good governance in the corporate and public sectors;
4. providing advice with regard to upholding the principles of good governance;
5. giving input in the implementation of skills and feasibility assessment of the management and supervisor of the company in relation to the implementation of corporate governance; and
6. performing other related tasks based on the direction of the Coordinating Minister for Economic Affairs

Financial Services Authority (*Otoritas Jasa Keuangan*) has recently become increasingly involved in supplying good corporate governance guidance for publicly listed companies and for specific

¹² World Bank. (2017). *Doing Business 2017: Equal Opportunity for All*. World Bank.

sectors that fall under its auspices. The duty assigned to the Financial Services Authority include regulating and supervising banking institution, capital market institution, and non-banking financial institution. Through Financial Services Authority Circular Letter Number 32/SEOJK.04/2015, companies are subjected to a comply or explain rule in five aspects of corporate governance namely shareholder engagements in guaranteeing the rights of shareholders, the functions and roles of the board of commissioners, the functions and roles of directors, stakeholder participation, and information disclosure. Furthermore, Financial Services Authority also issued Financial Services Authority Regulation Number 73/POJK.05/2016 on Good Corporate Governance for Insurance Companies. In the same year, 55/POJK.03/2016 on the Implementation of Corporate Governance for Public Banks was also circulated, followed its corresponding circular letter Number 13/SEOJK.03/2017 for public banks.

The Financial Services Authority had also issued Indonesian Corporate Governance Manuals in 2015 and 2018 respectively, but again this does not result in a legally binding instrument for limited liability companies in Indonesia. The Manuals attempt to summarize, and discuss key corporate governance regulations that are scattered in many different laws and regulations, in addition to international best practices. Consequently, corporate governance related provisions must be gathered carefully from the prevailing laws and regulations, such as the Indonesian Company Law.

Indonesian Company Law imposes certain rules for Board of Directors in managing the day-to-day operation of a company. The Law stipulates that management processes must be done by each member of the Board of Directors with good faith and full of responsibility (Indonesian Company Law: 97), but defining good faith and responsibility in this sense requires a deeper analysis. Elucidation of Article 97 Section (2) only gives elaboration on the term of “full responsibility”, which is defined as having concern for the Company in a scrupulous and determined manner. The element of good faith remains to be interpreted.

Yahya Harahap elaborates good faith in terms of five duties: fiduciary duty, statutory duty, loyalty duty, duty to act for a proper purpose, and duty to avoid conflict of interest. Fiduciary duty essentially means that each member of the Board of Directors must be trustable and honest. Statutory duty refers to compliance to the prevailing laws and regulations, as well as internal company policy, whereas loyalty duty can be understood as always acting on behalf of the company’s interest. Further, the responsibility element is also further elaborated into duty of due care as well as duty to be diligent and skillful¹³. In any case, liability of Board of Directors are limited, and Board of Directors will not be able to be held responsible for company’s loss if capable of proving the following:

- a. That the losses do not result from his/her fault or negligence;
- b. That the member of Board of Directors has conducted the management in good faith and with prudence in the interest of the Company and within the objectives and purposes of the Company;
- c. That the member of Board of Directors does not have any conflict of interest whether directly or indirectly in the acts of management that result in losses; and
- d. That the member of Board of Directors has taken preventive measures against the arising or continuation of the losses.

When these conditions are not fulfilled, Board of Directors can be held personally, or jointly and severally liable (Indonesian Company Law; 97), depending on the circumstances. For example, if an error, negligence or violation is committed by a member of the Board of Directors without the consent or knowledge of another member of the Board of Directors, or if the other member of the Board of Directors does not take part in the act, then the other member shall not be responsible for it. Regardless of how, it will ultimately be weighed down to evidence and testimony in the adjudication or dispute settlement process.

In addition to the national laws and regulations, limited liability companies in Indonesia also can refer to international standards of corporate governance, the most prominent one being the OECD Principles on Corporate Governance that discuss important issues such as shareholder rights, stakeholders, disclosure, as well as board practices. Nevertheless, these international standards, again, only serve as a soft, non-binding law that serve as a guidance for limited liability companies.

13 Harahap, M. Y. (2016). *Hukum Perseroan Terbatas* (1st ed.). Jakarta: Sinar Grafika.

b. Loose regulatory requirement for Board of Directors and Board of Commissioners

Indonesian Company Law provides a detailed and thorough set of provisions on the matter of company establishments, operations, mergers and acquisitions, and dissolution. First and foremost, it denotes that a limited liability company that is established under Indonesian law has three company organs, namely General Meetings of Shareholder, Board of Commissioners, as well as Board of Directors (Indonesian Company Law: 1 (2)). This is the legal basis that shows that Indonesian law adopts the two-tiered board system in contrast to the one-tiered board system in countries such as Korea, Ireland, Sweden, Switzerland, and Turkey.

The Board of Directors is defined as an Organ of the Company with the sole authority and responsibility for the management of the Company in the best interest of the Company within the objectives and purposes of the Company, and represents the Company both within and outside the court of law under the provisions of the articles of association. (Indonesian Company Law: 1(5)), whereas the Board of Commissioners is defined as the organ of the Company that has the responsibility to conduct a general and/or specific supervision, in accordance with the articles of association, as well as providing advice for Board of Directors (Indonesian Company Law: 1(6)). Under the Indonesian Company Law, the General Meetings of Shareholders is defined as an Organ of the Company with the authority not vested in the Board of Directors or Board of Commissioners within the limits as provided for in this Law and/or the articles of association (Indonesian Company Law: 1(4)).

From the definitions provided under the Indonesian Company Law, it can be subsequently inferred that the governance structure in an Indonesian limited liability company refers to the following common structure: General Meetings of Shareholders being the ultimate decision maker of the company, followed by the Board of Commissioners that oversees and advises the Board of Directors who run the day to day operations of the company.

Nevertheless, this control mechanism often does not work as well as intended, because many of the key personnels in the corporate boards are affiliated with the shareholders, or amongst themselves. As such, control comes from one clustered group and independent corporate actions for the interest of the company may not be achieved. Ownership structure has a great impact in the monitoring mechanism that a company may use, and that institutional investors will have a bigger room to monitor if the company's ownership structure is widely dispersed¹⁴. Widely dispersed ownership structure is not commonly found in Indonesia, and this goes back to the history of Indonesian company.

Indonesian company history mainly diverges from two types of company: family enterprises and State-Owned enterprises. The history of state control still remains intact, as these Indonesian state-owned enterprises have been recently converted into partly privatized companies through public offerings and/or strategic alliances over the last twenty years. However, the government remains as the controlling shareholders with more than 51 percent of shares, and as a consequence, state control is extended to the Board of Directors and Board of Commissioners through controlling the board members appointment in the General Meetings of Shareholders by way of majority votes (International Finance Corporation, 2018).

Additionally, the Indonesian Stock Exchange has also relaxed the requirement for having independent board members. The Decree of the Board of Directors of Indonesian Stock Exchange No. Kep-00183/BEI/12-2018 eliminated the requirement for a public company to have an independent director and independent commissioners by way of revoking Decree of the Board of Directors of Indonesian Stock Exchange No. Kep-00001/BEI/01-2014, the latter in which essentially referred to the requirement of having independent director and commissioner in order for public companies to stay listed in the stock exchange (Indonesian Stock Exchange Rule I-A on Listing of Shares (Stock) and Equity-Type Securities Other than Stock Issued by the Listed Company: V.3.2; V.4.2.). This further allows the possibility of higher control from the majority shareholder without any assurance in the balance of power by independent Board of Directors or Board of Commissioners members.

14 Siregar, V.S., & Utama, S. (2008). Type of earnings management and the effect of ownership structure, firm size, and corporate-governance practices: Evidence from Indonesia. *The International Journal of Accounting*, 43, 1-27. <https://doi.org/10.1016/j.intacc.2008.01.001>

c. Lax regulation on inequitable decision making process

Corporate governance framework should ensure equitable treatment of all shareholders, in which all shareholders should have the opportunity to obtain effective redress in the event of violation against their shareholding right, as provided in OECD Corporate Governance Principles 2015. In order to achieve that, different prerequisites must be achieved, such as equal opportunity for voting and participation for minority shareholders and protection from abusive actions in the interest of the controlling shareholders towards minority shareholders.

Shareholder voting and participation is regulated in the Indonesian Company Law, in which specific quorum requirements are set for certain General Meetings of Shareholders agenda. For example, the agenda for amending Articles of Association would require voting from shareholders that at least represent two-thirds of all shares with valid voting right present in the GMS (Indonesian Company Law: 88). Different requirement prevails for different agenda, and taking another example would be the specific requirement for approving a transaction with conflict of interest. Such agenda must be approved by independent shareholders which represent more than one-half of all shares with valid voting right owned by all independent shareholders present in GMS. This agenda forms as a protection towards minority shareholders, and can ensure equitable right for all shareholders in the decision making process. Protection for minority shareholders in form of other rights may include preemptive rights.

Nevertheless, when the controlling shareholder can extend their powers through affiliation and direct and/or indirect control towards other company organs, decision-making processes in the company become one-sided and imbalanced. In this instance, the interest of the minority shareholders may not be addressed aptly. Reflecting from a similar situation in Malaysia, concentrated shareholders structure and family business domination actually result in lesser minority shareholder protection with poorer corporate governance implementation¹⁵.

The Indonesian Company Law has only put explicit protection for minority shareholders with regard to the legal acts of merger, consolidation, acquisition, or division (Indonesian Company Law: 126) and has yet to regulate the balance between shareholders for General Meetings of Shareholders processes. The available remedy for violation of minority shareholders right would be a civil lawsuit to the District Court (Indonesian Company Law: 61) or shares buyback right in the case of disapproval of a Company's act that causes loss to the shareholders or the Company (Indonesian Company Law: 62). The Indonesian Company Law gives each shareholders legal standing (*legal persona standi in judicio*) to file a lawsuit to the culpable or negligent Board of Directors on behalf of the company without having to obtain a Power of Attorney from the company, General Meetings of Shareholders or other shareholders. All things considered, it would require the ultimate good faith and proper management from the company organs in order to ensure fulfillment of minority shareholder's rights to equitable participation in decision-making process.

Utilization of Technology for Indonesia's Corporate Governance Development

Development of technology and digital processes have become inevitable part of the current way of living. Technology simplifies processes, makes processes more transparent and less time consuming. Law practices in Indonesia, sooner or later, will have to keep up with the developments in order for it to comply with international standard, and this encompasses the corporate governance field as well. Proposals to use advanced technological systems such as blockchain, have been brought about and uttered in other jurisdictions, and henceforth, Indonesian corporate governance also will have to keep up with the evolving systems. In that sense, analysis is provided on the two examples of the use of technology to improve Indonesia's corporate governance regime, namely with regard to the automation of document archives, submission and reporting process, as well as practical use of digital and online means.

15 Rachagan, S., & Satkunasingam, E. (2009). Improving corporate governance of SMEs in emerging economies: A Malaysian experience. *Journal of Enterprise Information Management*, 22(4), 468–484. <https://doi.org/10.1108/17410390910975068>

a. Automation of document archives, submission and reporting process

Automation of different processes in the field of corporate commercial law has recently been introduced in many different parts of the world. For example, many common law jurisdictions in addition to Japan and Korea to a certain extent, has utilized the notice-filing system instead of the traditional document filing system in order to create a proprietary security right¹⁶. In the notice-filing system, any interested party can look up for an object online and check whether or not other parties have filed a proposal to create proprietary security right upon that certain object.

Another example on automation and electronization of commercial legal processes would be the recently tested ASEAN Single Window system¹⁷. The ASEAN Single Window connects and integrates National Single Windows of ASEAN Member States to exchange electronic trade documents which enable single submission of data, followed by a single synchronous processing of information, single decision-making for customs release and clearance amongst Member States and other participating countries.

In 2016, international law firms Linklaters and Pinsent Masons announced their investment in autonomous office automatons called Verifi, which is a computer program that can sift through fourteen United Kingdom and European regulatory registers to check thousands of bank client names overnight¹⁸.

In Indonesia, these types of online system may be very useful since companies need to submit numerous different reports and documents throughout the year. Document automation and assembly, that refers to the design of systems and workflows that assist in the creation of electronic documents, have been proposed and on the rise in the past years¹⁹. Legal services and processes are no longer exclusive from disruptive innovation, in which technologies actually help speeding up procedures and labor-intensive processes^{20,21}

Technology utilization for the improvement of corporate governance implementation in Indonesia is far-reaching. For example, publicly listed companies in Indonesia must submit annual reports to the Financial Services Authority that at least includes the various documents, such as summary of important financial data, information on shares, Board of Directors report, Board of Commissioners report, publicly listed company (issuer) profile, management analysis and discussion report, governance document of the publicly listed company, report on the issuer's social and environmental responsibility, audited annual financial statements, as well as statements of the members of Board of Directors and Board of Commissioners with regard to the responsibility for the submitted annual report. Simplifying and digitalizing these document submission, for example, may lead to a better and closer supervision system that ultimately will result in better corporate governance implementation.

b. Practical use of digital and online means

Digital and practical means of conducting businesses, including in the legal sector, have been made possible due to the COVID-19 outbreak that took emerged in the early 2020s. The central government imposes large-scale social restriction implementations in areas with high rate of COVID-19 infection as a mitigation measure, and such restriction includes closure of schools and workplace, restriction of religious activities, limitation of activities in public places or facilities, limitation of social-cultural activities, as well as limitation in people transport.

Areas such as DKI Jakarta, West Sumatra as well as Jakarta nearby cities including Bogor, Depok, Bekasi, and Tangerang have imposed the restriction on April 2020²² and this affected corporate processes including arranging annual General Meetings of Shareholders as mandated under the law. As stipulated in the Financial Services Authority Circular Letter Number S-92/D.04/2020 on the Relaxation

16 Jon, W. (2018). Cross-border Transfer and Collateralisation of Receivables: A Comparative Analysis of Multiple Legal Systems. In *Cross-border Transfer and Collateralisation of Receivables: A Comparative Analysis of Multiple Legal Systems*. Oxford: Hart Publishing.

17 ASEAN Secretariat, 'About ASEAN Single Window', *Association of South East Asian Nations*, 2018.

18 Kerikmäe, T., Hoffmann, T., & Chochia, A. (2018). Legal technology for law firms: Determining roadmaps for innovation. *Croatian International Relations Review*, 24(81), 91–112. <https://doi.org/10.2478/cirr-2018-0005>

19 Brooks, C., Gherhes, C., & Vorley, T. (2020). Artificial intelligence in the legal sector: pressures and challenges of transformation. *Cambridge Journal of Regions, Economy and Society*, 13 (1), 135-152. <https://doi.org/10.1093/cjres/rsz026>

20 Sheppard, B. (2015). Incomplete Innovation and the Premature Disruption of Legal Services. *Michigan State Law Review*, 2915(5), 1797-1910. <https://digitalcommons.law.msu.edu/lr/vol2015/iss5/3>

21 Alarie, B., Niblett, A., & Yoon, A. H. (2018). How artificial intelligence will affect the practice of law. *University of Toronto Law Journal*, 68, 106–124. <https://dx.doi.org/10.2139/ssrn.3066816>

22 Ministry of Tourism Republic of Indonesia, 'Large Scale Social Restriction Implementation', *Press Release*, 2020.

of the Submission of Reports and the Implementation of Mandatory General Meetings of Shareholders, publicly listed companies are given a two months extension for holding their General Meetings of Shareholders from 30 June 2020 to 31 August 2020. This is due to adherence of physical distancing policy as well as other COVID-19 mitigation measures that will be violated if a General Meetings of Shareholders is carried out with multiple shareholders being in the same venue at once.

Another most important aspect that was regulated in the Circular Letter was online General Meetings of Shareholders mechanism for publicly listed companies. The Circular Letter stipulated that “The holding of a General Meetings of Shareholders by a Public Company can be done by an electronic power of attorney mechanism using the e-GMS system provided by the Depository and Settlement Institution and the GMS is conducted as efficiently as possible without reducing the validity of the GMS in accordance with Financial Services Regulation Number 32 of 2014 and Law Number 40 of 2007 concerning Limited Liability Companies”. Through this Circular Letter, the Financial Services Authority finally made official the alternative for publicly listed companies to organize General Meetings of Shareholders through online means.

Online General Meetings of Shareholders have actually been allowed even since the enactment of the Indonesian Company Law was enacted back in 2007. Under the law, a General Meetings of Shareholders may also be conducted through teleconference, video conference, or other electronic media facilities which enable all participants to see and hear each other directly and to participate in the meeting (Indonesian Company Law: 77). This non-physical method has never been materialized in any official rules or regulations, and practices of an online General Meetings of Shareholders are scarce. Practice even suggests that companies prefer to use to adopt a circular resolution outside of a General Meetings of Shareholders, that has the same binding power as a decision in a General Meetings of Shareholder however needing all shareholders with voting rights to approve in writing by signing the offered motion (Indonesian Company Law: 91). Additionally, studies have also noted a legal vacuum in the online General Meetings of Shareholders legal framework in regard to the event of a network problem²³ even though the deed of General Meetings of Shareholders minute that is carried out through video conference as a form of electronic media is considered as valid²⁴.

By virtue of this regulatory update, publicly listed companies are now allowed to resort to the online General Meetings of Shareholders system that has been prepared by the Indonesian Central Securities Depository. On 3 April 2020, Indonesian Central Securities Depository issued Letter Number KSEI-4164/DIR/0420 on the Implementation of the eASY.KSEI facility as a Mechanism to Electronically Authorize the Process of Organizing General Meetings of Shareholders for Public Company Share Issuers which Shares are Held in the Collective Custody of the Indonesian Central Securities Depository. This Letter, in essence, introduces the Electronic General Meeting System KSEI, shortened and often referred as the “eASY.KSEI” for publicly listed online General Meetings of Shareholders itself. The eASY.KSEI system itself consists of two systems, namely e-Proxy and e-Voting. This will simplify the voting mechanism since all of the General Meetings of Shareholders minute will be automatically transferred to the Indonesian Central Securities Depository whereas traditionally, it will be manually typed up during the meeting.

Van der Elst and Lafarre noted that the current trading processes and shareholder engagement systems are faced with large-scale classical inefficiencies despite being in the digital age with various state of the art technologies being available for use²⁵. Resorting to the use of blockchain technology, for example, for trading processes and exercising shareholder rights can store information in a verifiable and immutable manner that provides higher transparency and trust due to its tamper resistance manner^{26,27}.

23 Dharmawan, N. K. S., Landra, P. T. C., & Purwani, N. P. (2015). Keberadaan Pemegang Saham Dalam Rups Dengan Sistem Teleconference Terkait Jaringan Bermasalah Dalam Perspektif Cyber Law. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 4(1), 190–202. <https://doi.org/10.24843/jmhu.2015.v04.i01.p15>

24 Mira Nila Kusuma Dewi, 'Kedudukan Hukum Akta Risalah Rapat Umum Pemegang Saham (Rups) Melalui Media Elektronik', *Arena Hukum*, 9.1 (2016), 112–31 <<https://doi.org/10.21776/ub.arenahukum.2016.00901.7>>.

25 Van der Elst, C., & Lafarre, A. (2019). Blockchain and Smart Contracting for the Shareholder Community. *European Business Organization Law Review*, 20(1), 111–137. <https://doi.org/10.1007%2Fs40804-019-00136-0>

26 Garcia-Teruel, R. M. (2020). Legal challenges and opportunities of blockchain technology in the real estate sector. In *Journal of Property, Planning and Environmental Law: Vol. ahead-of-print* (Issue ahead-of-print). <https://doi.org/10.1108/JPEL-07-2019-0039>

27 Van der Elst, C., & Lafarre, A. (2019). Blockchain and Smart Contracting for the Shareholder Community. *European Business Organization Law Review*, 20(1), 111–137. <https://doi.org/10.1007%2Fs40804-019-00136-0>

If blockchain has now been proposed as a solution for more effective shareholder engagement and trading processes, it is indeed beneficial to review and put together technological possibilities in corporate governance through firstly preparing the regulatory framework. Blockchain in itself, despite the dubious nature of cryptocurrency use that lingers around it, serve as a possible corporate governance improvement tool due to its capacity to maintain confidential information and to record transactions with higher certainty than those of manually operated systems²⁸. This may serve as a useful function to record stock transactions, or voting ballots in an online General Meetings of Shareholders.

All in all, online General Meetings of Shareholders, or to a smaller extent internet voting, has a significant potential to supplement traditional meeting procedures mainly due to the lower cost and unlimited geographical reach elements that will allow a huge number of shareholders to participate in the meetings, in which at the same time participation of increasing number of cross-border shareholders would mean that internet voting mechanism would spread faster²⁹. This is inline with Indonesia's profile of shareholders, since the 51.46 percent of shares that are held in the Indonesian Central Securities Depository's custody are owned by foreign parties, where previously foreign ownership had reached more than 60 percent of shares ownership in Indonesia³⁰, and as such, may provide solution to a better, and more far-reaching, corporate governance implementation. As a side note, however, the trend of weaker corporate governance practices in emerging markets in comparison to developed capital markets have been observed, and other factors such as politics, local culture, and historical roots also play a significant role in the development of corporate governance in a country³¹

CONCLUSIONS

The current Indonesian corporate governance still needs stronger, stricter set of corporate governance regulations. Implementations, especially in relation to the power balance between majority shareholders with the Board of Directors and/or Board of Commissioners that are often added with a close degree of affiliation, still need to improve especially since this can cause detriments to minority shareholders. Still relating to the power balance, the regulations can also provide clearer and more stern protection towards minority shareholders in order to fulfill one of the most important element in good corporate governance which is equitable treatment between all shareholders. On top of that, corporate governance in Indonesia is only mainly regulated by soft laws and international codes that are not binding with the exception of certain fields that are regulated and supervised by the Financial Services Authority.

For that reason, multidisciplinary means should be employed in order to ensure improvement of corporate governance regulation and implementation in Indonesia. Regulatory framework should also prepare to embrace technological developments that can help the development of corporate governance implementation in Indonesia to be more transparent and trustable. For instance, corporate governance implementation may utilize automation of processes for document archiving, submission and reporting, in addition to other digital and online systems for other practical processes. Indonesia has started to use technology in implementing corporate governance for publicly listed companies, namely through the e-Proxy and e-Voting eASY.KSEI system developed to organize decision making through digital General Meetings of Shareholders amidst the large-scale social restriction and COVID-19 crisis, and this serves as a great start in the development of a corporate governance regime that incorporates technological advancements. Nevertheless, studies have been conducted abroad with regard to incorporating advanced technologies such as Blockchain to the implementation of corporate governance, and this is a possibility that should not be dismissed. Technology serves as a potential supporting element in bettering the corporate governance regime in Indonesia, and as such, should be studied and advanced further. In the end, Indonesia still has a long road ahead to integrate technology advancements, good corporate governance principles, as well as stronger regulatory framework.

²⁸ Piazza.

²⁹ Abdennadher, S., & Cheffi, W. (2020). The effectiveness of e-corporate governance: an exploratory study of internet voting at shareholders' annual meetings in France. *Corporate Governance*, 20(4), 673-702. <https://doi.org/10.1108/CG-04-2019-0116>

³⁰ Wicaksono, A. (2019, 12 August). *Modal di bursa saham RI masih dikuasai asing*. CNN Indonesia. <https://www.cnnindonesia.com/ekonomi/20190812181845-92-420664/modal-di-bursa-saham-ri-masih-dikuasai-asing>

³¹ Cornelius, P. (2005). Good corporate practices in poor corporate governance systems: some evidence from the Global Competitiveness Report. *Corporate Governance*, 5(3), 12-23. <https://doi.org/10.1108/14720700510604661>

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