Stock Option Rights In Transportation Company Merger And Acquisition Transactions

Ahmad Sudiro

ahmadsudiro@untar.co.id

Faculty of Law, Tarumanagara University, Jakarta Indonesia

Article Info

Received:13-02-2021
Revised:10-04-2021
Accepted: 06-06-2021

Keywords:
Company, Option, Merger and Acquisiton

Abstract

Merger and acquisition transactions are corporate transactions that often occur. The seller asks for an option to be able to buy back the shares of the company that are sold. The buyer asks for an option to be able to buy the remaining shares to become the majority holder. The agreement on the option rights is separated from the master sale and purchase agreement for the company's shares. This study discusses the use of share sale options in corporate mergers and acquisitions transactions. This study uses a normative judicial method. This study concludes that option rights have implications for the company and other shareholders. So that the sale or purchase option rights must be submitted to the public since the option rights arise. The option to sell and the right to buy the shares are clearly defined including the validity period, number of shares, estimated price and share ownership portion. This right has an impact on the performance of the company and interested parties. Cancellation of rights must also be communicated openly to interested parties. The agreement regarding option rights is an integral part of the main agreement.

I. Introduction

Merger and acquisition transactions are corporate actions that often occur. The purpose of merger and acquisition transactions is to maximize the value of the company[1]. Increased firm value in relation to minority shareholders [2]. A company that wants to grow needs additional funds and new expertise. Additional funds

[1] Irina V Kozlenkova, Stephen A Samaha, and Robert W Palmatier, "Resource-Based Theory in Marketing," *Journal of the Academy of Marketing Science* 42 (2014): 1–21.
[2] I Kadek Sridana, I Nyoman Putu Budiartha, and I Putu Gede Seputra, "Perlindungan Hukum Terhadap Pemegang Saham Minoritas Pada Perseroan Terbatas Yang Melakukan Merger," *Jurnal Analogi Hukum* 2, no. 1 (2020): 59–62.

and new expertise can come from new shareholders. These new shareholders are called strategic shareholders or strategic investors. With shareholders who have the capability to support the company's growth, the company will have competitive value [3]. Companies involved in mergers and acquisitions will have advantages in efficiency, profitability, growth and firm size compared to companies that do not conduct mergers and acquisitions [4].

Company merger and acquisition transactions are regulated in Article 28 and Article 29 of Law Number 5 Year 1999 on Anti Monopoly and Unfair Business Competition. In the New Normal era due to the Covid-19 pandemic, many companies choose the alternative of mergers and consolidations to be able to survive [5].

Old shareholders will sell shares to new shareholders. The old shareholders want to retain the right or opportunity to own their shares again. This is referred to as the Buy Option Right. According to Riaman et al [6], stock option is a derivative product of the money market in the form of a right owned by the option holder to sell or buy shares at a certain agreed price within a certain range or period of time.

This research aims to discuss the option rights to sell and purchase shares in the company's merger and acquisition transactions from a juridical perspective. Research that discusses option rights is still rare. This research is unique and updated in the discussion of stock option rights from a juridical perspective.

To illustrate, an existing shareholder owns 75% of the shares and then sells 40% of the shares to a new shareholder, the existing shareholder still owns 35% of the shares. The old shareholder wants to have an option to become the majority shareholder, so the old shareholder has an option to buy back 16% of the shares after three years. Thus, if the option is exercised, the old shareholder will hold 51% of the shares and the new shareholder will retain 24% of the shares.

Another scenario that occurs is that the new shareholder wants to invest in two stages. The new shareholder wants to have a better knowledge of the company and the existing shareholders. The new shareholder purchases 25% of the shares first. The new shareholder requests an option to buy shares to become the majority shareholder within the next 3 years to become the majority or an additional 26% of shares. This transaction has a detrimental effect on minority

[3] Suwinto Johan, "Implementasi Strategi Bisnis Dan Korporasi Melalui Merger Dan Akuisisi," *Ultima Management: Jurnal Ilmu Manajemen* 3, no. 1 (2011): 68–81.

[4] Suwinto Johan et al., "Key Financials Performance Independent versus Integrated: Empirical Evidence from Indonesia Financial Service Industry (2001–2011)," *International Journal of Economics and Finance* 5, no. 1 (2012): 92–104.

[5] Ida Nadirah, "Perspektif Hukum Persaingan Usaha Terhadap Merger Dan Akuisisi Perusahaan Di Era New Normal," in *Seminar Nasional Teknologi Edukasi Sosial Dan Humaniora*, vol. 1, 2021, 968–73.

[6] Riaman Riaman et al., "Penentuan Harga Wajar Opsi Beli Tipe Eropa Dengan Pembagian Dividen Menggunakan Model Black-Scholes," in *Prosiding Seminar Nasional Matematika Dan Pendidikan Matematika (SNMPM)*, vol. 2, 2018, 1–11.

shareholders. The stock option may cause a decrease in the calculated stock price return [7]. Stock option prices are affected by strike price, option maturity time, volatility and risk-free interest rate [8].

Shareholders have the right to file a lawsuit against the Company to the court, if they are disadvantaged due to unfair and unreasonable corporate actions as a result of the decision of the general meeting of shareholders, directors and/or shareholders based on Article 61 (1) of Law No. 40 of 2007 concerning Limited Liability Companies (PT Law). In addition, shareholders have the right to ask the company to buy their shares at a fair price, if they do not approve of the company's actions that harm shareholders in the form of changes in shareholders, transfer or pledge of company assets with a value of more than 50% or mergers, consolidations, acquisitions and separations based on Article 62 of the PT Law [9].

Article 126 of UU PT stipulates that mergers, consolidations, acquisitions or separations must take into account the interests of minority shareholders. Shareholders who disagree with the GMS resolution regarding merger, consolidation, acquisition and separation may exercise their rights in accordance with Article 62 of UU PT.

Sari et al. concluded that the PT Law still does not fully protect the interests of minority shareholders [10]. Majority shareholders can still make decisions in the absence of minority shareholders. The voting rights of minority shareholders are often overlooked in Shareholders' Meeting (RPS) decision-making [11]. Majority shareholder treatment does not guarantee fairness to minority shareholders [12]. Regulators play an important role in merger and acquisition transactions [13].

[7] Annisa Fitri, "Penentuan Nilai Opsi Saham Karyawan (OSK) Dengan Menghitungkan Efek Dilusi Menggunakan Metode Black-Scholes" (Universitas Negeri Padang, 2020).
[8] Syanti Dewi and Ishak Ramli, "Opsi Saham Pada Pasar Modal Di Indonesia (Studi Pasar Opsi Saat Pasar Opsi Masih Berlangsung Di Bursa Efek Indonesia)," *Jurnal Muara Ilmu Ekonomi Dan Bisnis* 2, no. 2 (2018): 300–312.
[9] Prayoga Aditya and Muskibah Muskibah, "Perlindungan Hukum Terhadap Pemegang Saham Minoritas Atas Akuisisi Perseroan Terbatas," *Zaaken: Journal of Civil and Business Law* 1, no. 2 (2020): 254–70.
[10] Maya Sari, Abdul Rachmad Budiono, and Hanif Nur Widhiyanti, "Perlindungan Hukum Bagi Pemegang Saham Minoritas Yang Tidak Dilibatkan Dalam Proses Akuisisi," *Yuridika* 32, no. 3 (2017): 441–63.
[11] Lintang Agustina Roesadi, "Perlindungan Pemegang Saham Minoritas Dalam Terjadi Pengambilalihan Saham Pada Anak Perusahaan (Kasus Pt. Sumalindo Lestari Jaya, Tbk)," *Diponegoro Law Journal* 6, no. 2 (2017): 1–13.
[12] Mustaqim Mustaqim, "Perlindungan Hukum Bagi Pemegang Saham Minoritas Pada Perseroan Terbatas Tertutup Dalam Rangka Pengendalian Perusahaan Sebagai Upaya Untuk Mewujudkan Keadilan Berdasarkan Pancasila," *Jurnal Hukum STAATRECHTS* 1, no. 1 (2018).
[13] Suwinto Johan and Laura Herbani, "Metode Valuasi Manakah Yang Lebih Tepat Untuk Merger Dan Akuisisi?," *Jurnal Muara Ilmu Ekonomi Dan Bisnis* 2, no. 1 (2018): 64–71.

For publicly listed companies as stipulated in Law No. 8 of 1995 on Capital Market (Capital Market Law), companies are required to disclose material information to the public. Based on Article 7 of the Capital Market Law, material information or facts are, among others, information regarding business mergers, acquisitions, business consolidations or the establishment of joint ventures [14]. If a public company does not report material information to the public, it will be subject to sanctions [15].

Stock options can also have a favorable effect on company performance. Stock options to management can align risk with risk [16]. Management stock options aim to maintain company performance by involving management as part of the shareholders.

This study has research questions namely why is the sale and purchase of shares a legal issue? How does a majority shareholder option agreement disadvantage minority shareholder? What is the structure of share sale and purchase option agreements in merger and acquisition transactions? Why is the use of share sale and purchase options important for the public to know?

2. Research Method

Based on the formulation of the previous problem, the research method used is normative legal research method or library legal research. Normative legal research materials, namely primary legal materials, secondary legal materials and supporting legal materials [17]. This research utilizes a research method by examining library materials or secondary materials. Primary legal materials used in this research are the 1945 Constitution of the Republic of Indonesia and other relevant regulations. Secondary legal materials used include literature in the form of legal journals, legal theories, scientific books related to the research title, symposium/seminar results, and scientific articles. Other legal materials are materials that explain primary and secondary legal materials [18].

Legal research includes research on principles and related legal norms, research on legal systematics including horizontal and vertical synchronization between existing regulations. In normative law, this research uses a statute approach. This research examines all laws and regulations related to the research

[14] Suwinto Johan and Ariawan Ariawan, "Keterbukaan Informasi UU Pasar Modal Menciptakan Asymmetric Information Dan Semi Strong Form," *Masalah-Masalah Hukum* 50, no. 1 (2021): 106–18.

[15] Hendrawan Agusta, "Pertanggungjawaban KHPM Dalam Proses IPO Jika Terdapat Fakta Material Yang Tidak Diungkap," *Masalah-Masalah Hukum* 49, no. 1 (2020): 48–60.

[16] Etik Kresnawati, Anang Alwi Shihab, and Nurul Hidayati, "Program Opsi Saham Dan Perilaku Pengambilan Risiko Manajemen: Pengujian Mediasi Moderasian," *Jurnal Bisnis Dan Akuntansi* 21, no. 1 (2019): 1–16.

[17] Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi* (Prenada Media, 2017).

[18] Johan and Ariawan, "Keterbukaan Informasi UU Pasar Modal Menciptakan Asymmetric Information Dan Semi Strong Form."

topic. The statutory approach is an approach using regulations. With this method, the research analyzes the regulations, identifies and adjusts the relevant regulations.

3. Results and Discussion

Share Sale and Purchase Agreement

Share sale and purchase agreements have the same characteristics as sale and purchase transactions in general. This agreement must fulfill the four agreements based on Article 1320 of the Civil Code (KUH Perdata), namely the agreement of the parties, the competence of the parties, the object of the agreement and the halal cause [19].

The sale of company shares by the company must be able to fulfill the capabilities of the parties. The company is represented by the board of directors in the transaction. The board of directors must obtain approval from the shareholders to act or be specifically regulated by the company's articles of association.

Article 1338 of the Civil Code regulates the principles of an agreement. Article 1338 paragraph 1 of the Civil Code emphasizes that all agreements made in good faith shall apply as laws for those who make them. These principles also apply in share purchase and sale agreements.

Share Sale and Purchase Becomes a Legal Issue

The sale and purchase of shares is a sensitive issue between shareholders. The number of shares owned will be the basis for decision-making in the RPS. As an illustration, Company A is owned by Company B by 75% and another shareholder PQR by 25%. Company B is the majority shareholder of company A. Company B has the authority to make decisions in accordance with the company's articles of association with more than ½ to ¾ of the votes. Company B has sufficient voting rights to make decisions.

Company B is owned by shareholder X. One day X sells his shares to another party, Y for 55% of the shares of company B. Y becomes the majority shareholder of B. So that Y will have full authority in making decisions about company A.

PQR is a minority shareholder in company A. PQR knows that the shareholder of A is B. Changes in shareholders in B do not require the approval of PQR. However, changes in shareholders in B have an impact on PQR's rights in A which are still 25%.

The laws and regulations do not yet regulate changes in shareholders of a company that is owned by another company. Minority shareholders are affected by the change of shareholders in B. Shareholder X becomes a minority shareholder

[19] Suwinto Johan and Markoni Markoni, "Does Material Adverse Change (MAC) Fulfill the Principles of an Agreement?," *Jurnal IUS Kajian Hukum Dan Keadilan* 9, no. 1 (2021): 1–17.

in B. B's decision is determined by Y as the 55% shareholder. The explanation of this transaction is depicted in figure 1.

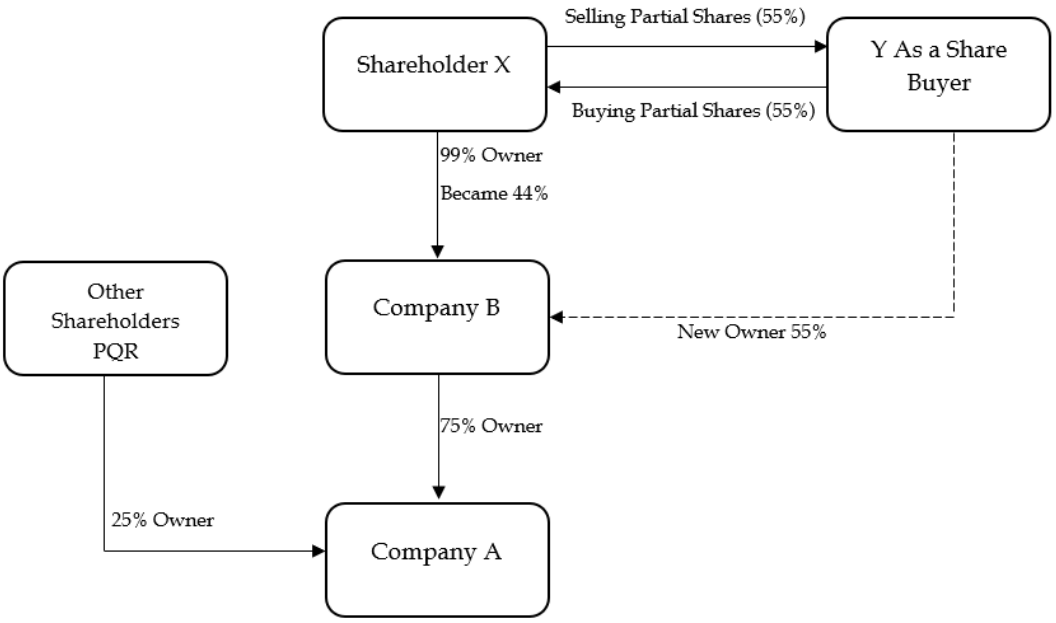


Figure 1 Explanation of Parent Company Mergers and Acquisitions

Source: Results of Research

Majority Shareholders Option Rights Agreement Harms Minority Shareholders

Share sales are often accompanied by options to buy back the shares sold by the buyer or to buy additional shares to become the majority shareholder by the buyer. This stock option right will be detrimental to minority shareholders, if minority shareholders are not included in the divestment process.

To illustrate, company A is 75% owned by B and 25% by PQR. One day, B sells 20% of his shares to X. The share sale agreement includes an option for B to buy back the shares from X after a period of three years at a certain agreed price. X also has the option to purchase up to 31% of B's shares or increase its ownership to 51% within three years of the acquisition.

If this option right is exercised at the end of the third year by X, X will own 51% of the shares and B will own 24% of the shares of company A. However, B can exercise the option right to buy back the shares also after three years. If B exercises it, the shares of B and X will change.

The transaction between B and X will have an impact on the performance of A. The impact of A's performance will affect the ownership portion of PQR. PQR as a minority shareholder has no authority over the sale of A shares by B, if it is regulated in the articles of association or the company establishment agreement between PQR and B.

Transactions between B and X affect PQR's assets. The transaction between B and X on A shares will affect PQR's share price on A. PQR shareholders do not have the option to carry on. Carry on is the minority shareholder's option to follow the majority shareholder's decision on divestment. This option includes the price and sale of shares proportionally. This is depicted in figure 2.

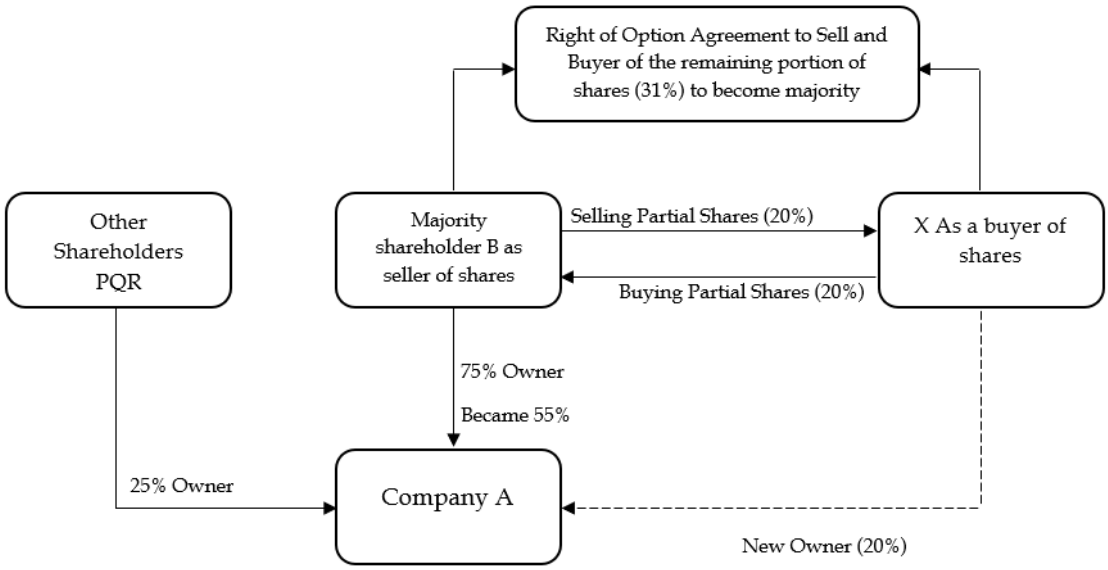


Figure 2 Sale of Shares with Option Rights
Source: Results of Research

Structure Of Share Sale And Purchase Option Agreements In Merger And Acquisition Transactions

The seller's and buyer's option rights have economic value. If the shareholder has a negative impact on the exercise of the option right, then the shareholder can offer to buy the option right. If the option right has been sold, the option right cannot be exercised. Therefore, the impact due to the exercise of the option right becomes invalid.

As an illustration, party B sells its 20% shareholding in A to party Y. The share purchase agreement stipulates that party B has the option right to buy back the shares sold to party Y at a certain price after a period of three years. Party Y does not want party B to exercise this option right. Party Y offers to party B to buy this buyback option. Party Y is willing to buy B's repurchase option at a certain price. Party B is willing to sell at a certain price. This is depicted in Figure 3.

The transaction between B and Y occurs with an additional agreement. Both parties did not inform PQR or other stakeholders. An option right sale agreement was entered into and the proceeds of the option right sale were made outside the knowledge of the regulator. This transaction was not reported. The

regulator and PQR were also unaware that the sale of option rights had taken place.

This transaction has harmed the stakeholders of company A. The option rights agreement is a separate agreement and not a merger and acquisition agreement. The laws and regulations still do not regulate this.

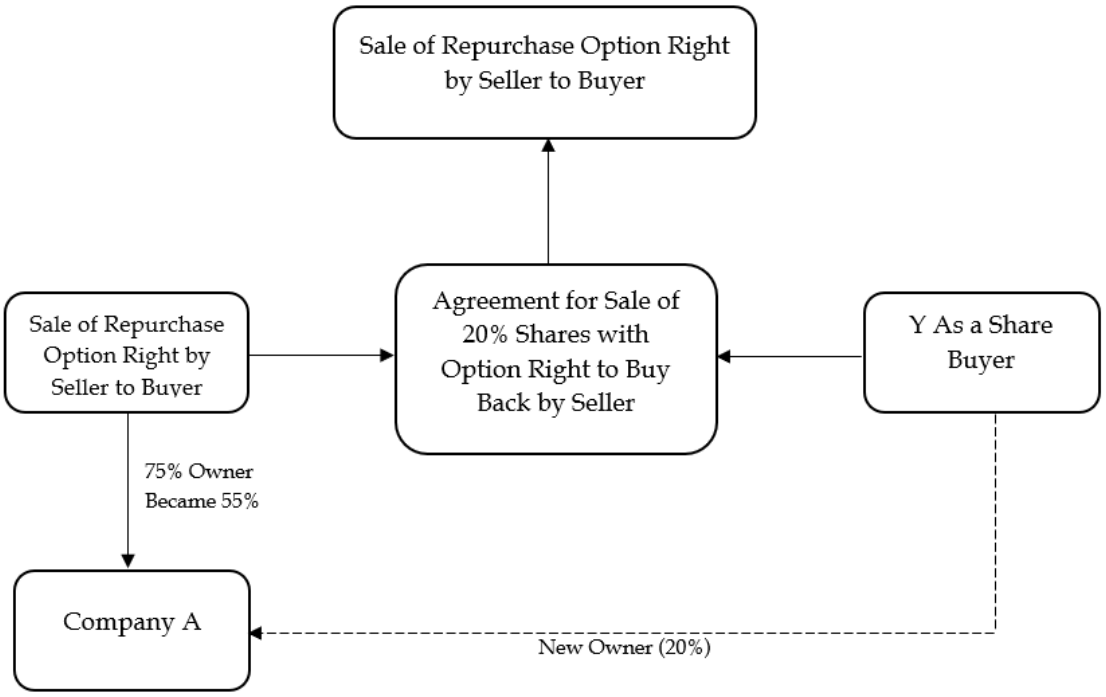


Figure 3 Option Right Sale
Source: Results of Research

The Use of Stock Sale and Purchase Option Rights is an Important Thing to Know by the Public or Minority Shareholders

Mergers and acquisitions with option rights to sell and repurchase shares should be information known to the public and majority shareholders. The transaction value of option rights is a transaction value that must be valued by an independent party. This is so that the sale or divestment of company shares does not become tax evasion. The sale value of shares is a smaller amount, but the sale value of option rights is given at a larger price. The value of the share sale is reported to the relevant authorities, but the value of the option rights sale is not reported. The transaction is conducted outside the country's territory.

Minority shareholders must be authorized to know about option rights transactions. Because option rights are an integral part of merger and acquisition transactions. Option rights are part of the company's share price. Therefore, minority shareholders have the right to know.

In addition, option rights can also change the composition of the majority shareholders. Therefore, minority shareholders have the right to know. Any

change in shareholders, minority shareholders must be aware and have the authority to object.

4. Conclusion

The sale and purchase of shares becomes a legal issue due to the sale or purchase of shares of a limited liability company in the form of a legal entity. Changes in shareholders will have an influence on the performance of the limited liability company. Sale and purchase of shares with option rights must be communicated to minority shareholders and stakeholders. Transactions with options will affect the wealth of minority shareholders and the rights of stakeholders such as the tax office. Therefore, the sale or purchase of shares with option rights must be disclosed to the public and relevant regulators. The agreement of selling option rights or buying option rights must be reported to the relevant regulators. Regulators need to issue stricter regulations in supervising merger and acquisition transactions. The research will provide knowledge about option rights to minority shareholders and regulators. This research has shortcomings in the discussion for companies in the form of public companies. Future research can be developed by discussing capital market regulations on the sale of shares by majority shareholders and the impact on minority shareholders.

Refrences

Aditya, Prayoga, and Muskibah Muskibah. "Perlindungan Hukum Terhadap Pemegang Saham Minoritas Atas Akuisisi Perseroan Terbatas." *Zaaken: Journal of Civil and Business Law* 1, no. 2 (2020): 254–70.

Agusta, Hendrawan. "Pertanggungjawaban KHPM Dalam Proses IPO Jika Terdapat Fakta Material Yang Tidak Diungkap." *Masalah-Masalah Hukum* 49, no. 1 (2020): 48–60.

Dewi, Syanti, and Ishak Ramli. "Opsi Saham Pada Pasar Modal Di Indonesia (Studi Pasar Opsi Saat Pasar Opsi Masih Berlangsung Di Bursa Efek Indonesia)." *Jurnal Muara Ilmu Ekonomi Dan Bisnis* 2, no. 2 (2018): 300–312.

Fitri, Annisa. "Penentuan Nilai Opsi Saham Karyawan (OSK) Dengan Menghitungkan Efek Dilusi Menggunakan Metode Black-Scholes." Universitas Negeri Padang, 2020.

Johan, Suwinto. "Implementasi Strategi Bisnis Dan Korporasi Melalui Merger Dan Akuisisi." *Ultima Management: Jurnal Ilmu Manajemen* 3, no. 1 (2011): 68–81.

Johan, Suwinto, and Ariawan Ariawan. "Keterbukaan Informasi UU Pasar Modal Menciptakan Asymmetric Information Dan Semi Strong Form." *Masalah-Masalah Hukum* 50, no. 1 (2021): 106–18.

Johan, Suwinto, and Laura Herbani. "Metode Valuasi Manakah Yang Lebih Tepat Untuk Merger Dan Akuisisi?" *Jurnal Muara Ilmu Ekonomi Dan Bisnis* 2,

no. 1 (2018): 64–71.

Johan, Suwinto, and Markoni Markoni. "Does Material Adverse Change (MAC) Fulfill the Principles of an Agreement?" *Jurnal IUS Kajian Hukum Dan Keadilan* 9, no. 1 (2021): 1–17.

Johan, Suwinto, Hermanto Siregar, Tubagus Nur Ahmad Maulana, and Perdana Wahyu Santosa. "Key Financials Performance Independent versus Integrated: Empirical Evidence from Indonesia Financial Service Industry (2001–2011)." *International Journal of Economics and Finance* 5, no. 1 (2012): 92–104.

Kozlenkova, Irina V, Stephen A Samaha, and Robert W Palmatier. "Resource-Based Theory in Marketing." *Journal of the Academy of Marketing Science* 42 (2014): 1–21.

Kresnawati, Etik, Anang Alwi Shihab, and Nurul Hidayati. "Program Opsi Saham Dan Perilaku Pengambilan Risiko Manajemen: Pengujian Mediasi Moderasian." *Jurnal Bisnis Dan Akuntansi* 21, no. 1 (2019): 1–16.

Marzuki, Mahmud. *Penelitian Hukum: Edisi Revisi*. Prenada Media, 2017.

Mustaqim, Mustaqim. "Perlindungan Hukum Bagi Pemegang Saham Minoritas Pada Perseroan Terbatas Tertutup Dalam Rangka Pengendalian Perusahaan Sebagai Upaya Untuk Mewujudkan Keadilan Berdasarkan Pancasila." *Jurnal Hukum STAATRECHTS* 1, no. 1 (2018).

Pemerintah Republik Indonesia, Undang-Undang Nomor 40 Perseroan Terbatas (2007).

Pemerintah Republik Indonesia, Undang-Undang Nomor 5 Anti Monopoli dan Persaingan Usaha tidak Sehat (1999)

Pemerintah Republik Indonesia. Undang Undang Nomor 8 Pasar Modal (1995).

Nadirah, Ida. "Perspektif Hukum Persaingan Usaha Terhadap Merger Dan Akuisisi Perusahaan Di Era New Normal." In *Seminar Nasional Teknologi Edukasi Sosial Dan Humaniora*, 1:968–73, 2021.

Riaman, Riaman, Agus Supriatna, Eman Lesmana, and Betty Subartini. "Penentuan Harga Wajar Opsi Beli Tipe Eropa Dengan Pembagian Dividen Menggunakan Model Black-Scholes." In *Prosiding Seminar Nasional Matematika Dan Pendidikan Matematika (SNMPM)*, 2:1–11, 2018.

Roesadi, Lintang Agustina. "Perlindungan Pemegang Saham Minoritas Dalam Terjadi Pengambilalihan Saham Pada Anak Perusahaan (Kasus Pt. Sumalindo Lestari Jaya, Tbk)." *Diponegoro Law Journal* 6, no. 2 (2017): 1–13.

Sari, Maya, Abdul Rachmad Budiono, and Hanif Nur Widhiyanti. "Perlindungan Hukum Bagi Pemegang Saham Minoritas Yang Tidak Dilibatkan Dalam Proses Akuisisi." *Yuridika* 32, no. 3 (2017): 441–63.

Sridana, I Kadek, I Nyoman Putu Budiartha, and I Putu Gede Seputra. "Perlindungan Hukum Terhadap Pemegang Saham Minoritas Pada Perseroan Terbatas Yang Melakukan Merger." *Jurnal Analogi Hukum* 2, no. 1 (2020): 59–62.