

**REVIEW OF THE EVENT OF DEFAULT IN REPURCHASE AGREEMENT  
TRANSACTIONS IN INDONESIA (CASE STUDY OF CENTRAL JAKARTA PN  
DECISION NUMBER 61/Pid.Sus-TPK/2020/PN Jkt.Pst AND SUPREME COURT RULING  
NUMBER 328 K/Pid.Sus/2022)**

**TINJAUAN TERHADAP *EVENT OF DEFAULT* PADA TRANSAKSI *REPURCHASE  
AGREEMENT* DI INDONESIA (STUDI KASUS PUTUSAN PN JAKARTA PUSAT NOMOR  
61/Pid.Sus-TPK/2020/PN Jkt.Pst DAN PUTUSAN MAHKAMAH AGUNG NOMOR 328  
K/Pid.Sus/2022)**

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***ABSTRACT***

*Referring to the Financial Services Authority Regulation Number 9/POJK.04/2015 concerning Guidelines for Repurchase Agreement Transactions for Financial Services Institutions, Repurchase Agreement contracts to sell or buy securities with promises to buy or resell at a predetermined time and price. In its implementation, the Global Master Repurchase Agreement becomes a standard that must be followed by the parties in making a Repo agreement. This journal uses a normative juridical method with descriptive writing specifications. The discussion in this journal is about Repo regulation in Indonesia in accordance with Financial Services Authority Regulation Number 9/POJK.04/2015 concerning Guidelines for Repurchase Agreement Transactions for Financial Services Institutions, particularly in terms of setting the event of default Repo.*

**Keywords:** *Event of default, Repurchase Agreement, Repo, and Global Master Repurchase Agreement*

**ABSTRAK**

Merujuk pada Peraturan Otoritas Jasa Keuangan Nomor 9/POJK.04/2015 tentang Pedoman Transaksi Repurchase Agreement Bagi Lembaga Jasa Keuangan, Repurchase Agreement merupakan kontrak menjual atau membeli surat berharga dengan janji membeli atau menjual kembali pada waktu dan harga yang telah ditentukan. Dalam implementasinya, Global Master Repurchase Agreement menjadi standar yang harus diikuti oleh para pihak dalam membuat perjanjian Repo. Jurnal ini menggunakan metode yuridis normatif dengan spesifikasi penulisan deskriptif. Pembahasan dalam jurnal ini mengenai regulasi Repo di Indonesia sesuai dengan Peraturan Otoritas Jasa Keuangan Nomor 9/POJK.04/2015 tentang Pedoman Transaksi Repurchase Agreement Bagi Lembaga Jasa Keuangan, khususnya dalam hal pengaturan peristiwa gagal bayar Repo.

**Kata Kunci:** wanprestasi, Repurchase Agreement, Repo, dan Global Master Repurchase Agreement

**I. INTRODUCTION**

One of the investment products transacted on the Indonesian Capital Market is

Repo. Repo is an agreement regarding buying and selling. According to R Subekti, sale, and purchase is a reciprocal agreement in which

one party (the seller) binds himself to another party (the buyer) to hand over the ownership rights of an object, while the other party (the buyer) promises to pay a price consisting of a certain amount of money as compensation and acquisition of property rights.

Repo practice has become commonplace in capital market transactions. Repurchase Agreement transactions (hereinafter referred to as "Repo") in Indonesia were initially introduced in the form of Government Debt Securities, which p. This is supported by the role of the National Debt Securities Dealers Association (HIMDASUN).<sup>1</sup>

Before the enactment of OJK Regulation Number 9/POJK.04/2015 concerning Repurchase Agreement Transaction Guidelines for Financial Services Institutions ("POJK Repo"), there were various efforts towards standardizing Repo transactions, including the implementation of the Master Repurchase Agreement ("MRA") by the Traders Association. Government Debt Instruments (HIMDASUN) and Mini Master Repurchase Agreement by industry players in the banking sector. However, there are no comprehensive, standardized, and specific regulations regarding Repo transactions in the Indonesian Capital Market.<sup>2</sup>

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<sup>1</sup>Fahmy, "Perlindungan Investor dalam Transaksi Repurchase Agreement di Pasar Modal Indonesia", (Jakarta: Disertasi Doktor Universitas Indonesia, 2017), p. 53.

<sup>2</sup>Indonesia, Financial Services Authority Regulation concerning Repurchase Agreement Transaction Guidelines, POJK Number 9/POJK.04/2015, LN 2015/No. 51, TLN 5711, General Provisions

Along with the increase in Repo transactions in Indonesia, legal certainty is needed which can protect parties carrying out Repo transactions. Thus, regulation is needed from the capital market authority that guarantees legal certainty in Repo transactions and therefore OJK (OJK) as the authority that carries out the system of regulation and supervision of the capital market sector, issues POJK Repo and issues OJK Circular Letter Number 33/SEOJK.04 /2015 concerning the Indonesian Global Master Repurchase Agreement ("SEOJK GMRA") wherein the guidelines for a written Repo Transaction agreement, namely the Indonesian Global Master Repurchase Agreement ("GMRA") have been attached.

Referring to POJK Repo, it also regulates events of failure or what we know as default (event of default). In its development, there has been legal confusion regarding the arrangements if a failure or event of default occurs in the Repo transaction agreement. This can be seen from the Repo case in Indonesia.

For example in the case of Mr. Marciano Hersondrie Herman, SE, and Sujadi through PT. Evio Securities provides Repo financing facilities or share pawning to Ir. Rennie Abdul Rahman Latief and Teguh Ramadhani amounting to IDR 20,000,000,000.00 (twenty billion Rupiah). Even though it has exceeded the transaction limit, PT. Evio Securities still wants to trade at PT. Danareksa Sekuritas with SIAP shares as collateral. Whereas. PT financing application letter. Evio Securities to

PT. Danareksa Sekuritas was created after the financing was approved (back date) using collateral in the form of SIAP shares which were not included in the Marginable Shares List published by the Risk Management Committee (KPR) of PT Danareksa Sekuritas.

Even though the Risk Management Committee had approved financing for PT Evio Securities, on October 2, 2014, Satrio Hadi Waskito as Head of the PCD Division submitted memo Number M-38/584/RCM to KPR so that the approved facility could be converted into a financing facility with a mechanism Repo used for settlement of principal obligations on behalf of customers. Rennie AR Latief and share transactions by PT. Evio Securities through Danareksa Sekuritas with consideration of PT. Evio Securities has no real activities, Ir. Rennie Abdul Rahman Latief is the Owner of PT. Evio Securities has old debts (2004-2007 debts) at PT. Danareksa Sekuritas in its Share Account amounted to IDR 8,615,781,320.00 (eight billion six hundred fifteen million seven hundred eighty-one thousand three hundred and twenty Rupiah) of which until the time the MER was submitted there had been no final payment/repayment by the Risk Management Committee PT. Danareksa Sekuritas decided to approve changes in the form of facilities to PT. Evio Securities from a credit limit facility to a financing facility with share collateral (Repo).

## II. RESEARCH METHODS

The research method used in writing this journal uses normative juridical research methods, namely research that focuses on examining the rules or norms in applicable positive law. The definition of the type of normative juridical research is research that aims to provide a systematic exposition of the legal rules that regulate certain areas of law, analyzing the relationship between one legal rule and another.

The approach used in this research is a statutory approach and a conceptual approach. The legislative approach is an approach taken by examining all laws and regulations related to legal issues. As well as studying whether there is consistency and conformity between laws and other laws or between regulations and laws.

## III. DISCUSSION

### 3.1 Repo Transactions in Indonesia

One of the investment products transacted on the Indonesian Capital Market is Repo. Repo is an agreement regarding buying and selling. According to R Subekti, sale, and purchase is a reciprocal agreement in which one party (the seller) binds himself to another party (the buyer) to hand over the ownership rights of an object, while the other party (the buyer) promises to pay a price consisting of a certain amount. money as compensation and

acquisition of property rights.<sup>3</sup>In civil regulations, regarding buying and selling in general, the Civil Code ("Civil Code") regulates it starting from Article 1457 to Article 1546. The definition of buying and selling can be found in Article 1457 of the Civil Code which states that buying and selling is an agreement. or an agreement where one party binds himself to deliver something or goods, and the other party to pay the promised price.<sup>4</sup>

In practice, because buying and selling is an agreement, apart from being based on the provisions contained in the Civil Code, the principles of the agreement that apply are known. In general, there are four principles of agreement, including:<sup>5</sup>

- a. Principle of freedom of contract;
- b. Principle of consensual;
- c. Principle of legal certainty;
- d. The principle of good faith.

These four principles must be fulfilled in an agreement and what is more important is fulfilling the conditions for the validity of the agreement.<sup>6</sup>With the existence of a sale and purchase agreement, rights and obligations arise for the parties, namely the seller and the

buyer. The seller must hand over his ownership rights to the goods he is buying and selling, as well as bear the enjoyment of the goods and also to bear any hidden defects, while the main obligation of the buyer is to pay the purchase price at the time and place as determined according to the agreement.<sup>7</sup>In this regard, it can be understood that in entering into a Repo agreement, basic civil principles and basic buying and selling regulations as applied in the Civil Code apply.

Repo transactions in Indonesia can be understood as an agreement between two parties, namely the first party or seller who sells securities to the second party or buyer with a promise to buy back the securities at the agreed time. A Repo transaction is a loan of funds using a certain agreed number of securities as collateral. The securities in question can be shares or bonds, both corporate bonds and government debt securities listed on the Indonesian Stock Exchange ("BEI"). This Repo is also usually called a share pledge where the share owner pawns his shares at a certain price with redemption to be determined together, but there is a slight difference between a share pledge and a Repo, namely that in a pledge the object cannot be transferred or traded, whereas in a Repo the shares are the object. can be traded and the Repo is the object that remains actively transacted.<sup>8</sup>

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<sup>3</sup>R. Subekti, *Aneka Perjanjian*, (Bandung: Citra Aditya Bakti, Cet. 11, 2014), p. 1.

<sup>4</sup>R. Subekti and R. Tirtosudibio, *Civil Code*, (Jakarta: Pradnya Paramita, Cet. 34, 2004) p. 1

<sup>5</sup>Ratna Artha Windari, *Hukum Perjanjian*, (Yogyakarta: Graha Ilmu, Cet 1, 2014), p. 8.

<sup>6</sup>Article 1320 of the Civil Code requires four conditions for the validity of an agreement, namely mutual agreement, the skills of the parties, the existence of p. particular thing that is the object of the agreement, and the agreement is based on a cause which p.al. The four conditions for the validity of the agreement must be fulfilled in an agreement.

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<sup>7</sup>R. Subekti, Op. Cit.

<sup>8</sup>Trinanda Kristo Marthinus, (et.al), "*Tanggung Jawab Penerima Saham Repurchase Agreement (Repo)*" *Jurnal Ilmiah "Advokasi"* Vol 12 No. 01, March 2024

Quoted from Fleming and Garbade, the repurchase agreement or Repo is expected to be issued at a higher price at a later date. A repo is thus broadly similar to a collateralized loan. Repo transactions are generally similar to collateral. In Indonesia, Repo can be interpreted as a debt transaction with securities or commonly understood as a lending and borrowing transaction and a collateral transaction.<sup>9</sup>

Previously, Repo transactions in the Indonesian Capital Market were not highly regulated. Contracts made between buyers and sellers, which are generally facilitated by securities companies, are not standardized. As a result, contract defaults or events of default often occur. Regarding default in Anglo-Saxon countries, it is referred to as an event of default or breach of contract where p. This is understood as a failure to comply with a term of an agreement (failure to fulfill the conditions in the agreement).

The provisions of these regulations apply to Issuers and/or Securities Companies that are members of Government Debt Securities trading organizers outside the Stock Exchange that have obtained a business license from the Capital Market and Financial Institution Supervisory Agency, which carry out Repo

and Reverse Repo transactions using MRA.<sup>10</sup>In Bapepam-LK Regulation Number VIII.G.13, Issuers and/or Securities Companies that carry out a Repo on Securities that are their portfolio are given the obligation to reclassify the Securities account to the Securities account that was Repo'd and then mark the Securities to market. which are Repo, record Repo Debt at the repurchase price, record the difference between the selling price and the repurchase price as Repo interest expense, disclose in the Notes to the Financial Statements the type, amount, value of securities, and the value of Repo Debt which are classified based on maturity Repo tempo.

As time went by, it was felt that Repo transactions in Indonesia still lacked legal certainty, so in 2015 the Indonesian OJK issued POJK number 9/POJK.04/2015 concerning Repos. In the POJK Repo, Repo transactions in Indonesia are regulated more comprehensively, including aspects of the agreement, obligations of service institutions that will carry out Repo transactions, sanctions for violations, and others.<sup>11</sup>If you look at Bapepam-LK regulation Number VIII.G.13, this is not regulated in more detail, therefore

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*Dalam Pengembalian Saham Pada Transaksi Repo Saham Dengan Metode Sell/Buy Back Repo*", (Semarang: Diponegoro Law Review, Volume 5, Number 2, 2016), p. 3.

<sup>9</sup>Michael J. Fleming and Kenneth D. Garbade, "Current Issues in Economics and Finance: The Repurchase Agreement Refined GCF Repo," (New York: Federal Reserve Bank of New York, Vol. 9, No. 6, 2003), p. 1.

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<sup>10</sup>In Bapepam-LK Regulation Number VIII.G.13 concerning the Accounting Treatment of Repurchase Agreements using a Master Repurchase Agreement, a Repurchase Agreement or Repo is defined as a securities sale transaction with a promise to buy it back at a predetermined time and price.

<sup>11</sup>When compared with Bapepam-LK Regulation Number VIII.G.13, Financial Services Authority Regulation Number 9/POJK.04/2015 is considered to have more comprehensive regulations, p. This can be assessed from the body of the regulation so that it is considered to be able to create more legal certainty for REPO transactions in Indonesia.

with the issuance of POJK Repo, it is hoped that there will be a guarantee of legal certainty for Repo transactions in Indonesia, especially regarding the implementation of GMRA as contained in the provisions of Article 5 paragraph (5) POJK Repo.<sup>12</sup>

In the same year, namely 2015, the Financial Services Authority (“OJK”) also issued the SEOJK GMRA. GMRA Indonesia is a standard written agreement for Repo Transactions prepared based on the 2000 version of GMRA and its attachments published by the International Capital Market Association (“ICMA”) and has been adapted to conditions in Indonesia which include the special characteristics of the Repo market, applicable laws, and market needs.<sup>13</sup>

In POJK Repo Article 3 paragraph (3) it is regulated that if an event of default occurs in a Repo transaction, the parties are obliged to complete their obligations by the procedures for resolving the event of failure as well as the rights and obligations that follow as contained in the Repo transaction agreement. According to the explanation of Article 3 paragraph (3) POJK Repo, what is meant by “failure event” includes but is not limited to:<sup>14</sup>

- a. failure to fulfill its obligations related to Repo transactions;
- b. Financial Services Institutions whose business activities are temporarily frozen (suspension);
- c. The statement made by the seller or buyer is materially false or incorrect when given or reaffirmed, and the party who is not in default (non-defaulting party) sends a notification of the event of failure to the party who is in default (defaulting party); And
- d. the parties to the Repo transaction are in bankruptcy.

In general, an event of default is an event that makes the party experiencing it no longer able to carry out the transactions in the contract. In the event of default, the parties to a business contract can include events other than default, such as going bankrupt, being acquired by another company, etc. In principle, an event can be categorized as an event of default if the parties to the contract agree that the event is an event of default.<sup>15</sup>

Then, referring to Article 4 paragraph (1) POJK Repo, it is determined that every Repo transaction must be based on a written agreement. Repo transactions in Indonesia refer to the Global Master Repurchase Agreement, which is a standard Repo Transaction agreement issued by the International Capital Market Association

<sup>12</sup>Financial Services Authority Regulation Number 9/POJK.04/2015 Article 5 paragraph (5): “Further provisions regarding GMRA Indonesia as referred to in paragraph (2) are regulated by a Financial Services Authority Circular Letter”, the existence of these provisions then became the basis for making the Letter Circular Number 33/SEOJK.04/2015

<sup>13</sup>Financial Services Authority Circular Number 33/SEOJK.04/2015

<sup>14</sup>Article 3 paragraph (3) POJK Repo

<sup>15</sup>Kusumadara Afifah, *Kontrak Bisnis Internasional: Elemen-Elemen Penting Dalam Penyusunannya*, (Jakarta: Sinar Graphics, First Printing, 2013), p. 63.

("ICMA").<sup>16</sup>This agreement contains at least the following:<sup>17</sup>

- a. transfer of Securities ownership rights;
- b. obligation to adjust the value of Securities to fair market value (mark-to-market);
- c. initial margin and/or Securities haircut in Repo transactions;
- d. margin maintenance including margin Securities substitution, rights and obligations of the parties regarding Securities ownership in Repo transactions including implementation time and tax obligations;
- e. failure events, procedures for resolving failure events, and the rights and obligations that follow;
- f. the agreement is subject to Indonesian law; And
- g. the position of the Financial Services Institution in Repo transactions as an agent or acting for itself; and (iii) procedures for confirming Repo Transactions and/or material changes related to such Repo transactions.

Examining the POJK Repo, it turns out that the GMRA document can be changed as long as it does not conflict with the provisions

in the POJK, which are the minimum clause provisions that must be included in the agreement by Article 4 stated previously.

Then, if a Financial Services institution already has a Repo agreement before the enactment of this POJK, the Financial Services institution is obliged to use GMRA Indonesia and can make adjustments or changes to the provisions as long as it does not conflict with POJK Repo.

In this POJK there is an action, namely a change in ownership. What is meant by a change in ownership is a legal transfer of title through entry into central custody or in the relevant custodian. The change in ownership from seller to buyer is also accompanied by inherent rights over securities such as voting coupon dividends, voting rights, and preemptive rights. Meanwhile, the use of the rights attached to the fixed rate follows the agreement between the parties as agreed in the Repo transaction agreement in p. What is meant by the agreement between the parties is that it is possible for the use of inherent rights to be returned to the seller. This must be included in the Repo transaction agreement.

With the transfer of ownership in Repo, by Article 6 paragraph (2) letter b POJK Repo Financial Services Institutions that carry out Repo Transactions are required to apply accounting treatment to the financial reports of Financial Services Institutions by applicable Accounting Standards. In Indonesia, the accounting treatment for asset recognition refers to Statement of Financial Accounting

<sup>16</sup>Financial Services Authority, "Questions and Answers on Financial Services Authority Regulation Number 09/POJK.04/2015 concerning Guidelines for Repurchase Agreement Transactions for Financial Services Institutions," p. 1

<sup>17</sup>Indonesia, Financial Services Authority Regulation concerning Repurchase Agreement Transaction Guidelines for Financial Services Institutions, POJK Number 9/POJK.04/2015, LN 2015/No. 51, TLN 5711, Ps. 4 paragraph (2).

Standards 55 concerning Financial Instruments: Recognition and Measurement which was approved by the Financial Accounting Standards Board on April 29, 2014 ("PSAK 55") which also refers to International Financial Reporting Standards ("IFRS"), namely the criteria for recognizing the asset in question.

In implementing Repo, Financial Services Institutions are required to report Repo transactions by the Securities being transacted as follows:

- a. Repo transactions on debt securities must be reported to the Recipient of the Securities Transaction Report by XM3 regulations
- b. Repo transactions on equity securities must be reported to the Depository and Settlement Institution in p. This is KSEI.

### **3.2 *Event of Default Repo Transactions in Central Jakarta District Court Decision Number 61/Pid.Sus-TPK/2020/PN Jkt.Pst and Supreme Court Decision Number 328 K/Pid.Sus/2022***<sup>18</sup>

In the case of Mr. Marciano Hersondrie Herman, SE, and Sujadi through PT. Evio Securities provides Repo financing facilities or share pawning to Ir. Rennier Abdul Rahman Latief and Teguh Ramadhani amounting to IDR 20,000,000,000.00 (twenty billion Rupiah). Even though it has exceeded the

transaction limit, PT. Evio Securities still wants to trade at PT. Danareksa Sekuritas with SIAP shares as collateral. Whereas. PT Evio Securities financing application letter to PT. Danareksa Sekuritas was created after the financing was approved (back date) using collateral in the form of SIAP shares which were not included in the Marginable Shares List published by the Risk Management Committee (KPR) of PT Danareksa Sekuritas.

Even though the Risk Management Committee had approved financing for PT Evio Securities, on October 2, 2014, Satrio Hadi Waskito as Head of the PCD Division submitted memo Number M-38/584/RCM to KPR so that the approved facility could be converted into a financing facility with a mechanism Repo used for settlement of principal obligations on behalf of customers. Rennier AR Latief and share transactions by PT. Evio Securities through Danareksa Sekuritas with consideration of PT. Evio Securities has no real activities, Ir. Rennier Abdul Rahman Latief is the Owner of PT. Evio Securities has old debts (2004-2007 debts) at PT. Danareksa Sekuritas in its Share Account amounted to IDR 8,615,781,320.00 (eight billion six hundred fifteen million seven hundred eighty-one thousand three hundred and twenty Rupiah) of which until the time the MER was submitted there had been no final payment/repayment by the Risk Management Committee PT. Danareksa Sekuritas decided to approve changes in the form of facilities to PT.

<sup>18</sup>Corruption Crime Court Decision at the Central Jakarta District Court Number 61/Pid.Sus-TPK/2020/PN Jkt.Pst dated May 7 2021 and Supreme Court Decision Number 328 K/Pid.Sus/2022 March 7, 2022



Evio Securities from a credit limit facility to a financing facility with share collateral (Repo).

Follow-up to the approval of the Repo financing facility to PT. Evio Securities then opened a Repo account in the name of PT. Evio Securities (RQ5952) with a limit of IDR 20 billion. Furthermore, on October 15, 2014, a Financing Agreement with Share Guarantee Number PJ-38/217/LG-DS was signed between PT. Evio Securities with PT Danareksa Sekuritas amounting to IDR 20,000,000,000.00 (twenty billion Rupiah) to increase customer securities transaction investment funds with a maximum financing period of 180 (one hundred and eighty) days (from 15 October 2014 to 13 April 2015), collateral in the form of SIAP shares. Regarding Repo financing facilities to PT. Evio Securities amounting to IDR 20,000,000,000.00 (twenty billion Rupiah) by the Financing Agreement with Stock Collateral Number PJ-38/217/LG-DS dated 15 October 2014, the financing facility was extended on 14 April 2015 by the Financing Agreement with Share Guarantee Number PJ-39/80/LG-DS where the agreement period ends on October 12 2015. Until the Repo financing facility matures on October 12, 2015, PT. Evio Securities does not make payments to PT. Danareksa Securities. The panel of judges at the first instance decided, in one of its decisions, as follows:

*"3. Stated that the Defendant Ir. Rennier Abdul Rahman Latief was legally and convincingly proven guilty of committing the crime of "PARTING IN THE*

*COMMISSION OF SEVERAL CRIMINAL ACTS OF CORRUPTION" as charged in the first subsidiary indictment and "MONEY LAUNDERING" as charged in the first-second alternative indictment"*

In the consideration section, the first level panel of judges did not include the event of default payment or event of default as regulated in POJK Repo Article 3 paragraph (3). In its development, there is a decision at the Cassation level, namely the Supreme Court Decision Number 328 K/Pid.Sus/2022 dated March 7 2022 stipulates the following:

*"JUDGE*

- *Reject the cassation petition from the Cassation Petitioner II/PUBLIC PROSECUTOR AT THE CENTRAL JAKARTA STATE ATTORNEY;*
- *Granting the cassation petition from Cassation Petitioner I/Defendant RENNIER ABDUL RAHMAN LATIEF;*
- *Cancel the Corruption Crime Court Decision at the DKI High Court Number 26/PID.SUS-TPK/2021/PT.DKI Jakarta dated September 15 2021 upholds the Corruption Crime Court Decision at the Central Jakarta District Court Number 60/Pid.Sus-TPK/ 2020/PN Jkt.Pst dated 7 May 2021;*

*JUDGE YOURSELF*

- 1. Declare that the Defendant RENNIER ABDUL RAHMAN LATIEF is proven to have committed the criminal act charged but is not a criminal act;*
- 2. Release the Defendant therefore from all legal demands;"*

Based on the cassation decision, the Supreme Court judge canceled the first instance decision and the second instance decision which upheld the decision of the Central Jakarta State Court. The Supreme Court judge also released the defendant (Ir.

Rennier Abdul Rahman Latief) from all legal charges. In his considerations, the Supreme Court judge thought that:

*"That based on juridically relevant legal facts revealed in court, the quo case is therefore not included in the realm of criminal law but is a legal event that must be tried by a civil court to determine the portion of responsibility of each party, including the Defendant as owner of PT. Aditya Tirta Renata and PT. Evia Securities and PT. Danareksa Sekuritas is the party that has provided financing facilities with shares and fixed assets as collateral to PT. Aditya Tirta Renata and PT. Evia Securities"*

In this case, the Supreme Court judge said that the a quo case does not fall within the realm of criminal law, but is civil which in the author's opinion must be resolved with provisions in the event of failure to pay a default or event of default as regulated in POJK Repo Article 3 paragraph (3). However, a further question arises as to whether the debtor can finally "escape" from his responsibilities if a case like the example above occurs. According to research carried out by the author, POJK Repo has not specifically regulated how to regulate it if securities suddenly fall due to something unnatural, such as the case example above which occurred internally at the company. Mimin's responsibility for the Repo seller is of course for the creditor, which in the example above is PT. Danareksa Sekuritas suffered losses.

The settings regarding the event of default itself in Repo transactions are different

when compared to the settings regarding the event of default in other business transactions. When viewed from a general perspective, a person is said to be in default if he does not perform at all, his achievements are not perfect, he performs his achievements but not on time and he does something that is prohibited in the agreement. However, the debtor cannot immediately be said to be in default because there must be proof first by the parties. In Repo transactions, the OJK regulates what events are included in an event of default, but in this case, it is different from the circumstances of an event of default which are usually regulated in business agreements in general. The existence of special regulations regarding the category of the event of default can confuse the parties because the party in the agreement can be said to be in a state of the event of default not only because they do not carry out their obligations but also if the Financial Services Institution is temporarily frozen in its business activities (suspension), Statement made by the seller or buyer is materially false or incorrect when given or reaffirmed, and the party who is not in default (non-defaulting party) sends notification of the event of failure to the party who is in default (defaulting party), the parties in the Repo transaction are in bankruptcy. Because OJK regulates in detail regarding p. Indirectly, this rule can be said to override the principle of freedom of contract, namely in particular the principle of freedom for the parties to

determine what circumstances constitute an event of default in their agreement.

Repo is a securities sale transaction with a promise to buy it back at a predetermined time and price between the seller and the buyer of the shares. The share sale agreement with provisions for repurchase or Repo by the seller to the buyer is carried out based on an agreement. The definition of agreement in Article 1313 of the Civil Code is:

*"An agreement is an act by which one or more people bind themselves to one or more people"<sup>19</sup>*

According to Subekti, an agreement is an event where someone makes a promise to another person, or where two people promise each other to carry out something.<sup>20</sup>R. Setiawan stated that an agreement is a legal act in which one or more people bind themselves or mutually bind themselves to one or more people.<sup>21</sup>In R. Subekti's opinion, a Repo agreement is a contract that arises from a bond or promise in which the seller is given the right to take back the goods that have been sold, by returning the purchase price that he has received along with all the costs that have been incurred by the buyer to carry out the purchase and delivery, as well as costs

necessary for repairs and expenses that cause the price of the goods sold to increase.<sup>22</sup>

Referring to Article 1320 of the Civil Code, the conditions for the validity of an agreement are that 4 (four) conditions must be met, namely:

- a) There is an agreement;
- b) Ability to make agreements;
- c) The existence of a certain thing;
- d) The existence of a lawful cause;

In an agreement, must be implemented. Fulfillment, called achievement, is the essence of an engagement. The obligation to fulfill the debtor's achievements is always accompanied by responsibility, meaning that the debtor risks his assets as collateral to fulfill his debt to the creditor.<sup>23</sup>The Repo transaction itself is based on an agreement, of course, requiring the parties to carry out the achievements or obligations of each party by what was agreed upon properly. The compliance of the executing parties to the agreement in the Repo itself is based on the principle of Pacta Sunt Servanda as intended in Article 1338 of the Civil Code which states:

*"All agreements made legally apply as law to those who make them"*

Furthermore, Repo transactions themselves are regulated in Articles 1519 – 1532 of the Civil Code which regulate buying and selling with the right to repurchase. As reflected in Article 1519 of the Civil Code which states:

<sup>22</sup>Subekti, Op.Cit., p. 28.

<sup>23</sup>Abdulkadir Muhammad, *Hukum Perjanjian*, (Bandung: Alumni, 1986), p. 17.

<sup>19</sup>Civil Code (Burgerlijk Wetboek), translated by R. Soebekti and R. Tjitrosuidio, (Jakarta, Pradyna Paramita, cet. 39, 2008), ps. 1313.

<sup>20</sup>Subekti, *Pokok-Pokok Hukum Perdata*, (Jakarta: PT Intermasa, 2001), p. 36.

<sup>21</sup>R. Setiawan, *Hukum Perikatan-Perikatan Pada Umumnya*, (Bandung: Bina Cipta, 1987), p. 49.

*"The power to buy back goods that have been sold is issued from a promise, where the seller is given the right to take back the goods he sold, by returning the original purchase price, accompanied by the compensation mentioned in article 1532."*

In implementing the agreement, situations often occur where one of the parties cannot carry out the agreement properly or by the agreement of the parties based on the agreement. Pg. Thus, in Repo transactions, what we know as an event of default often occurs. REPO transactions, especially stock REPOs, are an alternative investment for investors, apart from having advantages, of course, they also have risks. The most common risk that occurs and is faced by investors in stock REPO transactions is failure to pay, or a situation where the REPO seller cannot return the investor's or Repo holder's money when it is due. In a situation like this, it can be said that the seller is in default. Default is the non-fulfillment of achievements or obligations that have been determined towards certain parties in an engagement, whether an engagement that arises from an agreement or an engagement that arises due to law.<sup>24</sup>

In a Repo transaction that fails to pay, the seller cannot fulfill its obligations by the agreement, namely, the promise to buy back the securities in the form of shares that are the object of the Repo at maturity, so it can be said that the seller is in default. Thus, this situation gives rise to the Repo buyer as the injured party can file legal action to sue the Repo

seller for the losses they experienced as a result of failure by the Repo seller. In a situation like this according to Article 3 Paragraph 3 POJK Repo, in p. If an event of default occurs in a Repo transaction, the parties are obliged to settle their obligations by the procedure for resolving the event of failure as well as the rights and obligations that follow as contained in the agreement.

In the Indonesian GMRA Repo agreement standard, it is clearly stated, in the event of failure sub-chapter, that if the seller fails to pay the repurchase price on the applicable repurchase date, then the repurchase date for each transaction in this agreement is deemed to occur immediately, and all margin cash (money which is the value of the Repo transaction), must be paid back immediately, and equivalent margin securities (shares which are the object of the Repo) must be handed over immediately. After the Repo transaction has been agreed between the seller and the buyer, based on the provisions of Article 3 paragraph 1 POJK Repo, "every Repo transaction must result in a change in securities ownership." Based on the provisions of this article, after a share Repo transaction agreement has been agreed upon, ownership of the object of the Repo transaction in the form of shares has been transferred from the seller to the Repo buyer. In p. the selling party fails to pay, and cannot fulfill its obligation to buy back the securities in the form of shares, then the buyer as the party who has legitimate ownership of the shares, can sell or transfer the

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<sup>24</sup>*Ibid.*, p. 20.

securities in the form of shares to another party to fulfill their rights, which cannot be fulfilled by the Repo seller.

Even though the buyer has the authority to transfer or sell securities that are the object of a Repo to another party to fulfill their rights which cannot be fulfilled by the Repo seller, GMRA Indonesia has not regulated the responsibilities of the Repo seller in p. When it matures, the value of the securities held by the Repo buyer cannot meet the value that should be paid by the Repo seller on the repurchase date. GMRA Indonesia only regulates the obligations of securities companies, as arrangers or parties intended to carry out Repo transactions, to maintain the value of securities held by the Repo buyer above the repurchase value by the Repo seller. However, it is not stated how to arrange it, when approaching maturity, the value of the securities suddenly falls due to something unnatural, such as internal company issues or problems, which causes the value of the securities to decrease drastically. The responsibilities of Repo sellers are still not regulated in the standard GMRA Indonesia agreement. In the future, it is hoped that the OJK, as a regulator and supervisor in the capital market, can regulate more clearly regarding p. This is in a regulation so that no party is harmed in this Repo transaction.

#### IV. CLOSING

Based on the results of the research and discussions that have been carried out, the following conclusions can be drawn:

1) REPO is a sale and purchase agreement. According to R Subekti, sale, and purchase is a reciprocal agreement in which one party (the seller) binds himself to another party (the buyer) to hand over the ownership rights of an object, while the other party (the buyer) promises to pay a price consisting of a certain amount. money as compensation and acquisition of property rights. Before the enactment of OJK Regulation Number 9/POJK.04/2015 concerning Guidelines for Repurchase Agreement Transactions for Financial Services Institutions POJK 9/POJK.04/2015 concerning Guidelines for Repurchase Agreement Transactions for Financial Services Institutions ("POJK Repo"), there have been various efforts towards standardization RepoRepo transactions, including the implementation of the Master Repurchase Agreement ("MRA") by the Association of Government Securities Traders (HIMDASUN) and the Mini Master Repurchase Agreement by industry players in the banking sector. However, there are no comprehensive, standardized, and specific regulations regarding Repo transactions in the Indonesian Capital Market. Along with the increase in Repo transactions in Indonesia, legal certainty is needed which can protect parties carrying out Repo transactions. Thus, regulation is needed from the capital market authority that guarantees legal certainty in Repo

transactions and therefore OJK (OJK) as the authority that carries out the system of regulation and supervision of the capital market sector, issues OJK Regulation Number 9/POJK.04/2015 concerning Transaction Guidelines Repurchase Agreement for Financial Services Institutions, hereinafter referred to as POJK Repo and issued SEOJK GMRA Indonesia, which includes written guidelines for Repo transaction agreements, namely GMRA Indonesia.

- 2) Share REPO transactions are based on a written agreement made by the parties in the REPO transaction, and based on Article 1338 of the Criminal Code, the agreement made is binding on the parties. In p. If there is a default, where the seller cannot fulfill his obligation to buy back his shares at the maturity date as agreed, then the seller has defaulted, and based on Articles 1236 and 1246 of the Criminal Code, the seller as the defaulting party is obliged to compensate for the losses suffered by the buyer. due to negligence on the part of the seller. Apart from that, the obligation for REPO sellers to be accountable for and complete their obligations is also regulated in Article 3 Paragraph 3 POJK Repo, it is stated that in p. if a failure occurs (event of default) in a Repo transaction, the parties are obliged to settle their obligations by the procedure for resolving the event of failure as well as the rights and obligations that follow as contained in the Repo transaction

agreement. In GMRA Indonesia it has been stated that in p. If the seller fails to pay the repurchase price on the applicable repurchase date, the failing party is obliged to immediately complete its obligation to pay all cash margin and the buyer to hand over all equivalent securities. Even though the buyer has the authority to transfer or sell securities that are the object of a Repo to another party to fulfill their rights which cannot be fulfilled by the Repo seller, GMRA Indonesia has not regulated the responsibilities of the Repo seller in p. When it matures, the value of the securities held by the Repo buyer cannot meet the value that should be paid by the Repo seller on the repurchase date. GMRA Indonesia only regulates the obligations of securities companies, as arrangers or parties intended to carry out Repo transactions, to maintain the value of securities held by the Repo buyer above the repurchase value by the Repo seller.

## V. SUGGESTION

Referring to the regulation of event of default in POJK Repo, in Decision Number 61/Pid.Sus-TPK/2020/PN Jkt.Pst it can be analyzed that the event of default occurs when the Repo financing facility matures, PT. Evio Securities does not make payments to PT. Danareksa Securities. However, in general, a person is said to be in default if he does not perform at all, his performance is not perfect, he performs his achievements but not on time

and he does something that is prohibited in the agreement. Thus, according to this general regulation, the debtor cannot immediately be said to be in default because there must be proof first by the parties. It is best to provide evidence by the parties as per p. This is PT. Evio Securities and PT. Danareksa Sekuritas so as not to cause ambiguity in the interpretation of the event of default itself.

The responsibilities of Repo sellers are still not regulated in the standard GMRA Indonesia agreement. This is reflected in the lack of mention of how the arrangements are, when approaching maturity, the value of the securities suddenly falls due to something unnatural, such as internal company issues or problems, which causes the value of the securities to decrease drastically. The hope is that OJK, as a regulator and supervisor in the capital market, can regulate things more clearly regarding p. This is in regulation so that no party is harmed in this Repo transaction.

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