

## KONSTRUKSI HUKUM (KONSEPSI) TRANSAKSI REPO SAHAM (*REPURCHASE TRANSACTION*) DAN PELAKSANAANNYA DI PASAR MODAL INDONESIA

### INTISARI

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Transaksi Repo Saham merupakan produk pasar modal yang berkembang dan diminati para pelaku pasar. Transaksi Repo berangkat dari perjanjian antara pihak pembeli dan penjual Repo. Selama ini transaksi Repo berjalan hanya berdasarkan kebiasaan, belum memiliki pemahaman yang sama.

Penelitian ini bertujuan untuk mengetahui konstruksi hukum (konsepsi) transaksi Repo Saham dan melihat proses pelaksanaannya di pasar modal Indonesia. Penelitian hukum normatif bersifat kualitatif ini, menitikberatkan pada studi kepustakaan dan menganalisis secara mendalam atas konsepsi hukum perjanjian, fakta-fakta di lapangan berupa peraturan hukum bidang pasar modal, khususnya terkait pelaksanaan transaksi repo saham di pasar modal Indonesia.

Transaksi Repo Saham merupakan kontrak jual atau beli saham dengan janji beli atau jual kembali pada waktu dan harga yang telah ditetapkan, dituangkan dalam perjanjian. Unsur pokok (esensialia) dalam Transaksi Repo Saham adalah harga saham dan saham obyek Repo. Repo termasuk jenis perjanjian konsensual obligatoir, timbal balik, atas beban, komutatif dan formal. Kontrak Repo termasuk kontrak dengan penetapan waktu bukan kontrak bersyarat.

Perjanjian Repo tergolong baru di Indonesia (perjanjian *innominaat*), dan berkarakter *hybrid*, bisa dilihat dari perspektif pinjaman berjaminan (*secured loans*) namun bisa juga dilihat sebagai perjanjian jual beli. Oleh karenanya, Repo Saham sering dikaitkan dengan transaksi gadai saham atau dikaitkan dengan transaksi jual beli dengan hak membeli kembali (pasal 1519 KUH Perdata). Meskipun memiliki karakter *forward purchase*, Repo tidak bisa dikategorikan sebagai Transaksi Derivatif. Selama ini dalam praktik, terkait dengan peralihan hak kebendaan saham obyek Repo, terjadi dualisme kepemilikan atas saham tersebut selama jangka waktu kontrak. Pembeli mendapat kepemilikan secara yuridis (*legal ownership*) namun kepemilikan secara ekonomis (*beneficial ownership*) tetap ada pada Penjual. Model Transaksi Repo Saham yang dilakukan di pasar modal Indonesia adalah *Collateralized Borrowing Repo* yang lebih mendekati transaksi Gadai Saham dan *Sell/Buyback Repo* yang lebih mendekati transaksi Jual Beli dengan Hak Membeli Kembali.

Otoritas Jasa Keuangan telah mengeluarkan Pedoman Repo bagi Lembaga Jasa Keuangan, mengadopsi standar perjanjian *Global Market Repurchase Agreement* (GMRA) disesuaikan dengan kondisi Indonesia. Hal-hal yang selama ini belum teratur dengan Pedoman Repo ini menjadi lebih jelas, termasuk persoalan peralihan kepemilikan.

**Kata Kunci:** Saham, Transaksi Repo, Pasar Modal

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**LEGAL CONSTRUCTION (CONCEPT)  
OF STOCK REPURCHASE TRANSACTION (REPO)  
AND IT'S IMPLEMENTATION IN INDONESIAN CAPITAL MARKET**

**ABSTRACT**

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Stock Repurchase Transaction (Repo) is an evolving capital market product and many transacted by market participants. A Repo transaction is conducted based on an agreement between the Repo buyer and the Repo seller. Although many transacted, Repo transaction is still carrying out just by customs, yet have the same understanding.

This study aims to determine the legal construction (concept) of Stock Repo transaction and see how its implementation in the Indonesian capital market. This qualitative and normative legal research is focusing on literature study and analyze in depth on the conception of the law of treaties, facts on the market in the form of legal regulation of capital market sector, particularly related to the implementation of the stock repurchase transaction in Indonesian capital market.

Repo transaction is a contract of sale or purchase of securities with a promise to repurchase or sell at a specified future time and a specified price, set forth in an agreement. The main elements (*essentialia*) in a Repo Transaction are the stock as the object of the Repo and the stock price. Based on the type of agreements, Repo is a consensual *obligatoir*, reciprocal, commutative and formal agreement. Repo is a timing contract, cannot be categorized as a conditional contract.

Repo is relatively new in Indonesia (*innominaat*), with a hybrid character, could be seen from the perspective of secured loans but also can be seen as a sale and purchase agreement. On that basis, Stock Repo often associated with the transaction or pledge of shares and can be associated with the sale with the right to repurchase transaction (Article 1519 KUH Perdata). Despite having the character of a forward purchase transaction, Repo cannot be categorized as derivative transaction. So far in practice, related to the transfer of shares ownership in Repo, occurs dualism of ownership of these shares during the term of the contract. The buyer gets legal ownership but beneficial ownership remains on the Seller. Repo Transactions common model transacted in the Indonesian capital market are Collateralized Borrowing Repo with similarity to Shares Pledge and Sell/Buyback Repo that has similarity to Sale Purchase transaction with the Right to Buy Back.

Indonesia Financial Services Authority on June 25, 2015 issued a Repo Guidelines for the financial services institutions in Indonesia, adopting the standard Global Market Repurchase Agreement (GMRA) with adjustments to the conditions in Indonesia. The things that had not been organized by the Repo practices are becoming more evident, including the issue of transfer of ownership.

**Keywords:** Stocks, Repo, Capital Market

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