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HARMONIZING FULL, FAIR, AND ADEQUATE DISCLOSURE PRINCIPLES IN THE DEVELOPMENT AND STRENGTHENING OF THE FINANCIAL SECTOR.

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Abstract

The principle of full disclosure, as enshrined in Article 1 point 24 of Law No. 8 of 1995 on the Capital Market as amended by Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector ("**P2SK Law**"), constitutes the normative cornerstone of investor protection in Indonesia's capital market. However, the absolute application of this principle faces complex legal and operational challenges that necessitate its harmonization with the principles of fair disclosure and adequate disclosure. This study uses a normative juridical method to examine limitations on full disclosure under the P2SK Law and their implications for fairness, transparency, and investor protection. It identifies three main restrictions: protection of corporate goodwill and operational stability, preservation of trade secrets as intellectual property, and protection of privacy in sensitive personal matters. The study finds that fair disclosure remains operationally constrained by the absence of technically precise and consistent regulatory parameters, thereby creating loopholes for selective disclosure practices. Meanwhile, adequate disclosure is frequently reduced to mere administrative formality under Article 86 paragraph (1) of the Capital Market Law, neglecting the substantive depth required for rational investment decision-making. Such restrictions, when improperly managed, contribute to widening information asymmetry, erosion of investor confidence, and systemic threats to financial market stability. This study concludes that the Financial Services Authority (*Otoritas Jasa Keuangan* or "**OJK**") must issue precise implementing regulations to demarcate protected corporate information from mandatorily disclosed material facts, ensuring that the harmonization of disclosure principles does not undermine capital market integrity.

Keywords: Full Disclosure, Fair Disclosure, Adequate Disclosure

Abstrak

*Prinsip keterbukaan penuh (full disclosure) sebagaimana tercantum dalam Pasal 1 angka 24 Undang-Undang Nomor 8 Tahun 1995 tentang Pasar Modal sebagaimana diubah dengan Undang-Undang Nomor 4 Tahun 2023 tentang Pengembangan dan Penguatan Sektor Keuangan ("**UU P2SK**"), merupakan landasan normatif perlindungan investor di pasar modal Indonesia. Namun, penerapan prinsip ini secara absolut menghadapi kompleksitas tantangan hukum dan operasional yang menuntut harmonisasi dengan prinsip keterbukaan (fair disclosure) dan prinsip pengungkapan yang memadai (adequate disclosure). Penelitian ini menggunakan metode yuridis normatif untuk mengkaji pembatasan terhadap keterbukaan penuh berdasarkan UU P2SK serta implikasinya terhadap keadilan, transparansi, dan perlindungan investor. Penelitian ini mengidentifikasi tiga pembatasan utama: perlindungan goodwill (reputasi) dan stabilitas operasional perusahaan, pelestarian rahasia dagang sebagai kekayaan intelektual, serta perlindungan privasi dalam hal-hal pribadi yang sensitif. Hasil penelitian menunjukkan bahwa fair disclosure masih terkendala secara operasional akibat ketiadaan parameter regulasi yang teknis, presisi, dan konsisten, sehingga menciptakan celah bagi praktik keterbukaan selektif. Sementara itu, adequate disclosure kerap direduksi menjadi sekadar formalitas administratif berdasarkan Pasal 86 ayat (1) UU Pasar Modal, sehingga mengabaikan kedalaman substantif yang diperlukan untuk pengambilan keputusan investasi yang rasional. Pembatasan-pembatasan tersebut, apabila tidak dikelola secara tepat, berkontribusi pada meningkatnya asimetri informasi, menurunnya kepercayaan investor, dan munculnya ancaman sistemik terhadap stabilitas pasar keuangan. Penelitian ini menyimpulkan bahwa*

*Otoritas Jasa Keuangan ("**OJK**") perlu menerbitkan peraturan pelaksana yang presisi untuk membedakan informasi korporasi yang dilindungi dari fakta material yang wajib diungkapkan, sehingga harmonisasi prinsip-prinsip keterbukaan tidak menggerus integritas pasar modal.*

***Kata kunci**: Keterbukaan Penuh, Keterbukaan Wajar, Keterbukaan Cukup*

I. BACKGROUND

A. Background of the Capital Market in Indonesia

The capital market in Indonesia plays a strategic role in supporting the national economy. This is because the capital market serves as a long-term funding instrument for corporate financing. Since the enactment of Law No. 8 of 1995 on the Capital Market as amended from time to time ("**Capital Market Law**"), the development of the capital market in Indonesia has become an efficient investment facility for the general public in the business world.[1] This regulation ensures legal certainty for issuers, investors, and supporting institutions in the capital market through transparent and efficient securities transaction mechanisms. The scope of the capital market is not merely a venue where supply and demand for securities meet, but also a means to expand corporate financing, enhance corporate value, and strengthen capital structures.

The interconnection of these economic functions requires a framework of normative and operational rules to maintain market integrity.[2] The objective is to prevent potential issues or to safeguard the market should such issues arise. One of the primary potential issues is information asymmetry, where issuers or insiders possess information that could influence investor decisions, thereby triggering insider trading, price manipulation, and a decline in public trust. Therefore, the legal and supervisory framework governing capital market activities is a key requirement for a conducive business climate, in line with the maxim that every business step must be a lawful one.[3]

Regulation and supervision of the capital market fall under the authority of the Financial Services Authority (*Otoritas Jasa Keuangan* or "**OJK**") through the establishment of disclosure standards in OJK Regulations (*Peraturan OJK* or "**POJK**"). The OJK's role is not merely administrative but has evolved into that of a guardian of market integrity amid the increasing complexity of financial instruments and the adoption of technology. This function

[1] Gelbert et al., "PERKEMBANGAN HUKUM PASAR MODAL DI INDONESIA," *Causa: Jurnal Hukum Dan Kewarganegaraan* 3, no. 2 (2024): 21–30, https://doi.org/10.3783/causa.v3i2.2854.
[2] Fitri Rorizki et al., "Perkembangan dan Tantangan Pasar Modal Indonesia," *Economic Reviews Journal* 1, no. 2 (2022), 150.
[3] Agus Yudha Hernoko, *Hukum Perjanjian Asas Proporsionalitas Dalam Kontrak Komersial* (Kencana, 2010), 89; Mochammad Isnaeni, *Mutu Manikam Asas Hukum Kontrak* (Revka Prima Media, 2020), 4.

demonstrates that investor confidence and market efficiency can only be maintained if the quality of information disclosure and legal certainty remain consistent.

Given that the capital market performs an intermediary or connecting function between investors and issuers, the quality of the market depends on the information disseminated and accessed by all market participants. Investor protection and the operation of a market that is orderly, fair, and efficient can only be realized if the flow of information is equitable. This serves as the fundamental rationale for the need for complete, accurate, and timely information disclosure to prevent market mechanisms from becoming skewed, mitigate the risks of information asymmetry, and uphold the principle of fairness. Law No. 4 of 2023 on the Strengthening and Development of the Financial Sector ("**P2SK Law**") reaffirms that information disclosure serves as the foundation for rational investment decision-making, aimed at maintaining fairness and transparency in the capital market.

B. The Role of Information Disclosure in Maintaining Fairness and Transparency

Information disclosure plays a central role in maintaining fairness and transparency in the capital market. Provisions in the P2SK Law state that a modern capital market must be based on the principle of full disclosure, where investor protection is not achieved through product restrictions, but through the availability of complete, accurate, and timely material information. This principle aligns with Gustav Radbruch's three fundamental values: justice, legal certainty, and utility.[4] Justice is realized through equal access to information (fair disclosure), legal certainty is ensured through clear disclosure standards (adequate disclosure), and utility is achieved when the market becomes efficient and capable of reflecting a company's fundamental values.

In practice, disclosure requirements are implemented through POJK No. 31/POJK.04/2015 on Disclosure of Material Information or Facts by Issuers or Public Companies as amended by POJK 45/2024 on The Development and Strengthening of Issuers and Public Companies ("**POJK 31/2015**"). Those regulations define material information or facts as important and relevant information regarding an event, occurrence, or fact that may affect:

a. the assessment of the price of Securities by market operators in the Capital Market;
b. the assessment of the price of Securities by investors, prospective investors, or

[4] Gress Gustia Adrian Pah et al., *PRINSIP KETERBUKAAN Dalam PASAR MODAL Sebagai Bentuk Perlindungan Hukum Bagi Investor* (Deepublish, 2024), 5; Robert Alexy, "Legal Certainty and Correctness," *Wiley Online Library Ratio Juris* 28, no. 4 (2015).

other interested parties in relation to such event, occurrence, or fact; and/or

c. the decision of investors, prospective investors, or other interested parties in relation to such event, occurrence, or fact.

Issuers are required to report and announce material facts:

a. as soon as possible when Issuers or Public Companies know or should know Material Information or Facts; and
b. no later than the commencement of trading time session I at the Stock Exchange on the following business day.

Article 6 of POJK 31/2015 also specifies a list of events that must be disclosed, such as mergers and acquisitions, interim dividend distributions, significant legal proceedings, changes in control or the board of directors, as well as debt restructuring or indications of default.

Clarity regarding the types of information and reporting deadlines reduces the risk of information asymmetry in the capital market. These regulations place disclosure obligations within a measurable and monitorable framework, thereby promoting compliance discipline among issuers and more effective protection for investors. Thus, the harmonization of the principles of full disclosure, fair disclosure, and adequate disclosure serves to ensure that the capital market remains fair, transparent, and integrity driven.

II. OBJECTIVES

This study falls within the scope of capital market law, focusing on how the P2SK Law limits the principle of full disclosure through the application of the concepts of fair disclosure and adequate disclosure. The P2SK Law affirms that information disclosure remains the foundation for rational investment decision-making yet simultaneously provides room for restrictions on certain information that need not be fully disclosed, provided that the disclosure provided remains sufficient, relevant, and fair to market participants. These limitations raise questions regarding the consistency of this policy with the principles of transparency and fairness upheld within the capital market regime.

Based on this scope, this study will analyze the limitations on the principle of full disclosure through the application of the concepts of fair and adequate disclosure as regulated and implemented in the Capital Market Law within the capital market sector. Furthermore, the study will analyze the impact of these limitations on fairness, transparency, and investor protection within the Indonesian capital market mechanism.

The objective of this study is to conduct a comprehensive analysis of the permissible limitations on disclosure under the P2SK Law. This study also aims to assess whether this disclosure model, which is considered adequate and fair, remains capable of maintaining the integrity of the capital market and providing sufficient information to investors. This study is expected to provide a comprehensive understanding of the effectiveness of the restricted information disclosure regime and its implications for transparency and fairness in the Indonesian capital market.

III. METHODS

This study employs a normative legal research method using statutory, conceptual, and comparative approaches. The statutory approach examines the legal framework governing disclosure principles under P2SK Law, Capital Market Law, and relevant implementing regulations issued by OJK. The conceptual approach analyzes the legal doctrines underlying the principles of full disclosure, fair disclosure, and adequate disclosure, while the comparative approach reviews relevant legal concepts and disclosure practices from selected foreign jurisdictions and previous studies. Legal materials consist of primary legal sources, including legislation and regulations, as well as secondary legal sources such as legal literature, journal articles, and scholarly opinions. These materials are analyzed qualitatively through descriptive-analytical and prescriptive legal analysis to formulate recommendations for harmonizing disclosure principles within Indonesia's capital market regime.

IV. DISCUSSION AND ANALYSIS

A. Definition of Disclosure Principles

The general concept of information disclosure is not understood as a single, absolute concept but consists of three interrelated general concepts: full disclosure, fairness disclosure, and adequate disclosure.[5] These three concepts reflect the openness of information used to balance the interests of investor protection, market efficiency, and corporate interests in safeguarding strategic information. The differences among them lie in the scope, purpose, and normative limits of the disclosure carried out as follows:

[5] Zhihong Chen et al., "Regulation Fair Disclosure and the Cost of Equity Capital," *Review of Accounting Studies* 15, no. 1 (2010): 106–44, https://doi.org/10.1007/s11142-009-9115-6.

1. Full Disclosure

The principle of full disclosure in capital market law is a fundamental principle that requires issuers to disclose all material information to the public that may influence investors' decisions and security prices in a timely manner. Issuers are not permitted to withhold specific portions of material information or present information partially, which could create a misleading impression through omission.[66] The primary objective of full disclosure is to reduce information asymmetry between company insiders and investors, ensuring that price formation mechanisms fairly reflect the company's fundamental value.

The principle of full disclosure functions as an investor protection mechanism by providing an adequate information basis for rational investment decision-making. The absence of adequate transparency risks increasing the likelihood of market manipulation, fraud, and the concealment of material information, which ultimately erodes public trust. However, absolute disclosure without normative limits risks causing information overload, thereby reducing the effectiveness of the information itself. Therefore, full disclosure in practice requires restrictions to remain relevant, proportional, and focused on information that is truly material.[7]

2. Fairness Disclosure

Fairness disclosure emphasizes the dimension of fairness in information disclosure, both in terms of substance and distribution. This principle requires that the information disclosed consider the benefits and impacts of such disclosure, with the primary objective of presenting financial statements that are fair and not misleading.[8] Additionally, fairness disclosure aims to satisfy users of financial statements and enhance public trust in the company. In the context of capital markets, this principle also serves as a safeguard to prevent disclosure from creating information access disparities or unfair advantages for certain parties.

3. Adequate Disclosure

Adequate disclosure refers to the presentation of information in accordance with the minimum standards established by laws and regulations as a form of fulfilling legal obligations. Under this concept, issuers are required to disclose information regarding the company or related entities provided it meets the minimum materiality thresholds set by

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[6] Mas Rahmah, *Hukum Pasar Modal* (Kencana, 2019), 22.
[7] Richard H Rowe, "The Emerging Search for Economic Reality—A New Focus on the Concept of Full and Fair Disclosure," *Oklahoma Law Review* 26 (1973): 465.
[8] *Ibid.*

regulators. This approach is widely adopted in business practice as it provides legal certainty while ensuring efficiency for companies in fulfilling their disclosure obligations.[9] Adequate disclosure serves as the minimum threshold of transparency that every issuer must meet.

B. Legal Basis regarding Disclosure in the Capital Market

Disclosure in the capital market is explicitly stipulated in Article 1, point 24 of the Capital Market Law, as amended by the P2SK Law, which states that *"The Principle of Disclosure is a general guideline requiring Issuers, Public Companies, and other parties subject to this Law to inform the public in a timely manner of all Material Information regarding their business or securities that may influence the decisions of capital providers or investors and/or the price of Securities."* This provision establishes transparency as the foundation of capital market governance by adopting a full disclosure paradigm to protect investors and realize a market that is orderly, fair, and efficient. The application of disclosure is limited proportionally through the principles of fair and adequate disclosure to ensure that transparency is not misleading, remains timely, and is aligned with legitimate business interests and stability.

As an implementation of UUPPSK, some provision in the POJK 31/2015 have been amended. After amended, Material Facts defines as "*important and relevant information regarding an event, occurrence, or fact that may affect: a. the assessment of the price of Securities by market operators in the Capital Market; b. the assessment of the price of Securities by investors, prospective investors, or other interested parties in relation to such event, occurrence, or fact; and/or c. the decision of investors, prospective investors, or other interested parties in relation to such event, occurrence, or fact.*"

The disclosure mechanism is carried out in accordance with Article 2 in conjunction with Article 6 of POJK 31/2015 by establishing a minimum threshold for material information that must be disclosed, thereby reflecting the principle of adequate disclosure. Beyond material information, the disclosure regime also covers certain non-material aspects, such as sustainable finance and the environment, as stipulated in Article 1(8) in conjunction with Article 1(9) of POJK No. 51/POJK.03/2017 (POJK 51/2017).

C. Previous studies on disclosure in the context of capital markets

In contrast to this study, several prior studies have situated the principle of information

[9] Scott Russell, "Regulation Fair Disclosure: The Death of the Efficient Capital Market Hypothesis and the Birth of Herd Behavior," *Boston University Law Review* 82 (2002): 527.

transparency within different contexts. The article *"Insider Trading Practices as a Form of Violation of the Principle of Information Transparency in the Indonesian Capital Market*" positions the principle of transparency as a norm violated in securities transactions by insiders.[10] The focus of the study is directed at the weaknesses in the regulation and enforcement of insider trading laws under Capital Market Law, particularly due to the use of the fiduciary duty theory approach, which limits the scope of perpetrators to parties having a direct fiduciary relationship with the issuer. The principle of disclosure is understood functionally as a legal obligation that is violated when material information not yet available to the public is exploited for personal gain; thus, the analysis emphasizes investor protection and the effectiveness of sanctions.[11]

Another study examines the principle of information disclosure through a comparative approach to issuer compliance in preventing insider trading practices in Indonesia, Singapore, and the United States.[12] The analysis focuses on the timeliness of information disclosure, the breadth of the insider definition, and the strength of enforcement mechanisms as key indicators of the effectiveness of the disclosure principle. The principle of transparency is positioned as a technical-regulatory instrument to maintain market integrity and reduce information asymmetry, with an emphasis on the urgency of accelerating disclosure and strengthening market oversight to enhance investor protection.

This study takes a different approach by not centering the analysis on violations of the principle of transparency or issuer compliance in the context of insider trading, but rather by positioning the principle of transparency as a normative construct that should involve an interplay between the principles of full disclosure, fair disclosure, and adequate disclosure. The study's focus is directed toward efforts to harmonize transparency principles within the framework of developing and strengthening the financial sector, particularly within Indonesia's capital market regime following regulatory enhancements through the P2SK Law. This approach fills a gap in the literature regarding the formulation of proportional and fair information disclosure, ensuring that the principle of transparency is not understood as an absolute obligation but remains aligned with the objectives of market transparency and

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[10] Fisuda Alifa Mimiamanda Radinda et al., "Praktik insider trading sebagai bentuk pelanggaran prinsip keterbukaan informasi dalam pasar modal di Indonesia," *Jurnal Cakrawala Hukum* 11, no. 1 (2020): 41–49, https://doi.org/10.26905/idjch.v11i1.3528.
[11] D. G. Cracknell, *Obligations: Contract Law* (Old Bailey Press, 2003).
[12] Hanz Bryan Joeliant and Ariawan Gunadi, "Kepatuhan Emiten Terhadap Prinsip Disclosure Dalam Insider Trading Di Pasar Modal Indonesia Perbandingan Dengan Singapura Dan Amerika Serikat: Perspektif Perlindungan Investor," *Rechtsidee* 13, no. 2 (2025), https://doi.org/10.21070/jihr.v13i2.1095.

investor protection.

D. Limitations on the Principle of Full Disclosure in P2SK Law

Modern capital market law following the enactment of P2SK Law has undergone a fundamental shift. The old paradigm, which treated disclosure as a mere administrative obligation, has now transformed into a strategic instrument for investor protection. The P2SK Law does indeed explicitly reinforce the doctrine that the capital market system must be based on full disclosure. Investors are protected through the availability of complete material information so they can make rational and measured investment decisions; however, the application of this principle is not absolute and without limits. The principle of full disclosure, rigidly regulated in Article 1, point 24 of the Capital Market Law, requires issuers to disclose all material information regarding their business or securities in a timely manner. This obligation embodies the *caveat venditor* principle, which places the burden of information on the seller or issuer.

Practical and normative realities on the ground indicate that the absolute application of this principle faces complex challenges that can be counterproductive to market efficiency itself. The capital market does not operate in a vacuum but within a dynamic business ecosystem where information is a valuable commodity. Modern capital market legal theory acknowledges that unlimited transparency can backfire on both issuers and investors.

Theoretically, full disclosure aims to reduce information asymmetry and prevent manipulative practices that harm minority investors. Information asymmetry is a condition of market imbalance where one party holds an informational advantage over another, often leading to systemic losses. The latest legal regime under the P2SK Law acknowledges that excessive forced disclosure (over-disclosure) has the potential to create a phenomenon of information overload. Investors receive too much information, information that is overly technical or speculative, thereby losing the cognitive ability to sift through relevant material facts. This condition causes investors to drown in a sea of non-essential data, which ultimately obscures the true nature of the risks. The principle of full disclosure in the P2SK Law does not stand alone as a singular concept but is limited and harmonized through the application of the principles of fairness disclosure and adequate disclosure.

These normative boundaries are necessary because modern interpretations of transparency no longer simply mean disclosing everything broadly. Transparency must be understood as an effort to disclose information that is relevant, material, and useful for decision-making. The P2SK Law grants discretion and authority to the Financial Services

Authority (OJK) to assess the materiality of information. Gray areas persist where issuers must balance strict regulatory compliance with the principle of prudence in managing corporate information. Restrictions on full disclosure do not negate or undermine transparency; rather, they serve as a filtering mechanism to ensure that the information presented remains high-quality, proportionate, and does not mislead the public.

E. Legal obstacles to full disclosure

The application of the full disclosure principle often clashes head-on with other legitimate legal interests of the corporation and the individuals involved in it.[13] This legal antinomy requires in-depth analysis to determine clear demarcation lines between publication obligations and legally protected rights to confidentiality.

1. Corporate goodwill and stability

The obligation of full disclosure often directly conflicts with a company's need to maintain its goodwill or reputation, as well as its operational stability. Goodwill is an intangible asset with high economic value and is protected by law.[14] The disclosure of strategic yet speculative information, unverified preliminary estimates, or internal analyses that are not yet final, if forced to be made public, can be misleading and damage the company's image without a strong fundamental basis. Corporate plans such as a Backdoor Listing or debt restructuring that are still in the initial negotiation phase, for example constitute highly sensitive information. Prematurely disclosing such information in full risks weakening the company's bargaining position against competitors or triggering uncontrolled market speculation that ultimately harms shareholders.

Excessive transparency without filtering can pose potential risks to the company. Issuers required to disclose all sensitive operational details in the name of full disclosure may face serious stability disruptions. Capital market investors, who tend to be reactive, may respond negatively to information that is a normal business risk but is misinterpreted as a sign of managerial weakness or governance failure. The law grants management discretion, based on the Business Judgment Rule, to withhold certain information that, if disclosed, would harm the overall interests of shareholders, provided that such information has not yet become a final and binding material fact.[15] This balance is crucial to ensure issuers do not become

[13] Chiraphol N Chiyachantana et al., "The Impact of Regulation Fair Disclosure on Information Asymmetry and Trading: An Intraday Analysis," *Wiley Online Library Financial Review* 39 (2004): 549.
[14] M. Yahya Harahap, *Hukum Perseroan Terbatas* (Sinar Grafika, 2009).
[15] Nindyo Pramono, *Hukum Perseroan Terbatas Mengacu Kepada Undang-Undang Cipta Kerja UU No. 6*

victims of disproportionate transparency.

2. Protection of trade secrets (intellectual property)

The sharpest conflict within the transparency regime is the friction between capital market transparency and the protection of Intellectual Property Rights ("**IPR**"), particularly Trade Secrets. The principle of transparency requires issuers to disclose new discoveries, technological innovations, or new products that add value to the company as material facts. Law No. 30 of 2000 on Trade Secrets grants exclusive rights to their owners to withhold information that holds economic value due to its confidentiality. The vulgar disclosure of technical details, formulas, expansion strategies, or pricing structures to the public can eliminate an issuer's competitive advantage because such information can be accessed, analyzed, and imitated by competitors without research costs.

The capital market legal framework must acknowledge these limitations on intellectual property protection to maintain an innovative environment. Information containing trade secrets and sensitive business strategies is exempt from full disclosure obligations if its disclosure, in a manner, could genuinely harm the issuer's business continuity. A legal trade-off arises when regulators must ensure investors understand the economic prospects of these new products without forcing issuers to disclose internal secrets that form the core of the company's economic value.[16] The implementation of full disclosure without restrictions on trade secret protection would make the capital market a disincentive for technology or innovation-based companies to list their shares (IPO). Companies would be reluctant to go public if the price they had to pay was the loss of their trade secrets.

3. Sensitive issues (private matters)

Legal challenges become increasingly complex and multidimensional when disclosure obligations intersect with highly personal areas of private law, such as Family Law or contract law in the form of confidentiality agreements. Family law issues are often simplistically categorized as a private sphere with no public relevance. Indonesia's equity ownership structure, which remains dominated by family-owned businesses, means that the marital status of the Beneficial Owner or the company's controller has systemic implications.[17] Referring to the legal framework in Decision No. 259 Pdt.G/2017 of the South

Tahun 2023 (Sinar Grafika, 2024).

[16] Donald E Kieso et al., *Intermediate Accounting* (John Wiley & Sons, 2019).

[17] Gress Gustia Adrian Pah et al., *PRINSIP KETERBUKAAN Dalam PASAR MODAL Sebagai Bentuk Perlindungan Hukum Bagi Investor*.

Jakarta District Court, a divorce dispute involving the division of marital property (joint property) in the form of a majority stake can trigger acute uncertainty regarding corporate control. This case demonstrates how a dispute over the transfer of shares between a husband and wife who also serve as directors and commissioners can paralyze the company's governing bodies.

Legal provisions in the Capital Market Law and Law No. 40 of 2007 on Limited Liability Companies as amended from time to time ("**Companies Law**") require transparency regarding changes in control. Privacy limitations are a crucial issue here. It is important to interpret which material facts fall within the scope of a divorce lawsuit and are therefore subject to disclosure. Based on the principle of full disclosure as stipulated in the OJK Regulation regarding financial statement transparency and the Presidential Regulation on Beneficial Owners, the disclosure of material information related to changes in share ownership is legally mandatory to protect investors from the risk of uncertainty. The legal limitation lies in the relevance of the disclosure itself. The company must strictly filter the information. The material facts that must be disclosed are the legal implications of the divorce on the shareholding structure, for example, the potential for a deadlock in the General Meeting of Shareholders ("**GMS**"), the transfer of shares, or a change in control, not personal details or sensational narratives regarding the domestic conflict itself.

In the case of Judgment No. 259 Pdt.G/2017, the company was deemed to have fulfilled its duty of adequate disclosure by merely informing of the share transfer through a Preliminary Sales and Purchase Agreement (*Perjanjian Pengikatan Jual Beli* or "**PPJB**") without fully publishing the narrative of the divorce. This reinforces the legal assumption that individual privacy remains protected proportionally as long as it does not conceal material impacts on the company. Excessive disclosure regarding the directors' family scandals could instead become negative rumors that unfairly harm the company without providing analytical value to investors.

Strategic business transactions, such as merger, acquisition, or divestiture negotiations, are typically governed by strict Non-Disclosure Agreements ("**NDAs**"). The existence of NDAs creates a real conflict of norms with the public reporting obligations stipulated in the P2SK Law.[18] Issuers forced to disclose information regarding ongoing negotiations in the name of full disclosure risk violating NDAs and triggering breach-of-contract claims that

[18] Evan Dori and Muthia Sakti, "Binding Force of Non-Disclosure Agreement as Means of Trade Secret Protection in Decision No. 832/Pdt.G/2023/PN.Jkt.Brt," *Jurnal Daulat Hukum* 8, no. 4 (2025): 602.

could derail the transaction. The law permits delayed disclosure until the transaction reaches a final stage or a binding agreement, to prevent premature disclosure that is speculative and destabilizing. The existence of an NDA should not nullify public disclosure obligations if the information has already leaked to the market and become a rumor that significantly affects stock price movements.

Given the conflict between the confidentiality clause in an NDA and the disclosure obligations of a public company, an issuer needs to devise a solution to avoid being subject to sanctions or a breach of contract lawsuit. An issuer may include clauses in its NDA with third parties that regulate the obligation to notify disclosure of information as well as its exceptions. Such clauses include, among others, a Required Disclosure Carve-Out Clause, a Notification Obligation, Scope Negotiation/Pre-Notification, and many others. These clauses enable the issuer to remain compliant with its disclosure obligations while also fulfilling its obligations under the NDA with the third party.

F. Impact on Investors and the Market

Restrictions on the principle of full disclosure have significant causal consequences and impacts on the capital market ecosystem.

1. Risk of limited information received by investors

The consequence of disclosure restrictions is the risk of an increasingly widening information asymmetry. Information filtered based on trade secrets, privacy, or confidentiality clauses causes investors, especially retail investors who lack privileged access to receive an incomplete picture of the issuer’s condition. This information limitation directly degrades the quality of investment decision-making. Retail investors are forced to make decisions under conditions of bounded rationality, where their rationality is constrained by the available information. Unreported legal disputes among beneficial owners, for example, prevent investors from recognizing the risk of a future corporate control struggle that could cause the stock price to plummet. This has the potential to harm minority investors, whose position is always more vulnerable than that of controlling investors.

2. The emergence of market distrust

The misuse of these restrictions by issuers as a shield to conceal poor performance, inefficiency, or fraud will trigger systemic market distrust. The dark history of global capital markets, such as the Great Depression of 1929, teaches us that information opacity is the primary trigger for crises of confidence and market collapse.[1919] Investors who feel that issuers are withholding strategic information to hide material facts will withdraw their funds, causing market liquidity to dry up. Excessive transparency without context can also breed distrust if the information presented is confusing or misleading due to information overload. Balance is key; restrictions must be grounded in strong, well-established legal principles to avoid eroding the market's integrity, which is built upon a foundation of trust.

G. Restrictions on the principle of fair disclosure and assessment challenges

The principle of Fairness Disclosure serves as a tool to ensure the equitable distribution of information; however, its implementation in Indonesia faces significant regulatory and operational challenges.

1. Regulatory Weaknesses: Inconsistent Fairness Assessment Criteria

The main challenge in Indonesia's capital market legal framework is the absence of technical rules that are as comprehensive and equivalent to the U.S. Fair Disclosure Regulation, which specifically prohibits selective disclosure. While this principle is implicitly recognized in the P2SK Law, the assessment criteria regarding what constitutes "fair" are often inconsistent and open to multiple interpretations in legal enforcement practice. Standard parameters regarding information dissemination methods have not been properly standardized; does an announcement via the company's website alone satisfy the fairness requirement, or must it be made simultaneously through national news channels and the stock exchange website. This regulatory inconsistency creates a wide loophole for selective disclosure practices, where material information is disseminated first to securities analysts or institutional investors in private briefings before reaching the public. This practice clearly violates the principle of equality, which is the lifeblood of the capital market.

2. The Challenge of Establishing Fair Standards

A distinct difficulty arises in the effort to create a fair standard that is universally acceptable to all stakeholders. Issuers have a legitimate interest in protecting corporate secrets and limiting the distribution of sensitive information to only those with a legitimate interest. Investors, on the other hand, demand total transparency and real-time access. Balancing information access for retail investors *vis-à-vis* institutional investors to ensure true fairness is a daunting task due to disparities in analytical capacity and resources.

[19] Francis M Wheat, "Truth in Securities Three Decades Later," *Howard Law* 13 (1967).

Providing the same information at the same time (procedural fairness) does not automatically guarantee the same level of understanding (substantive fairness).[20] Technical information disclosed to meet full disclosure requirements is often only usable by institutional investors with research teams, while retail investors are left confused. Assessments of fairness must consider not only physical accessibility but also the public's understanding of the information to prevent intellectual discrimination.

H. Limitations on the Adequate Disclosure Principle

The Adequate Disclosure principle serves as a minimum compliance standard, but its interpretation in the modern capital market following the P2SK Law has led to differing interpretations regarding the quality of information.

1. Interpretation of adequacy as a minimum standard

The concept of Adequate Disclosure in the P2SK Law and generally accepted accounting standards is interpreted as fulfilling disclosure obligations in accordance with the minimum standards set by regulations. This concept provides legal certainty for issuers because its compliance parameters are quantifiably measurable, for example, through the list of material facts in POJK 31/2015. This interpretation of "adequacy" often gets trapped in mere compliance with administrative formalities (checklist compliance), neglecting substance.[2121] The increasingly complex modern capital market, with derivative instruments and digital assets, makes the "adequacy" standard under old regulations potentially obsolete. The P2SK Law attempts to update this paradigm by emphasizing the quality of reporting and materiality, but it has not yet provided a clear definition of the qualitative materiality threshold. As a result, sufficiency is often subjective and highly dependent on management's interpretation.

2. The Impact of Investments on the Quality of Decision-Making

The definition of what constitutes "sufficient" directly and significantly impacts the quality of investors' investment decisions. If adequacy is interpreted merely as a minimum threshold, it encourages issuers to present safe, standard, and normative information without providing the in-depth context required for fundamental analysis (window dressing). Investors may feel they have received sufficient information because formal requirements

[20] Hernoko, *Hukum Perjanjian Asas Proporsionalitas Dalam Kontrak Komersial*.
[21] Street DL and Bryant SM, "Disclosure Level and Compliance with IASs: A Comparison of Companies with and without US Listings and Filings," *Elsevier The International Journal of Accounting* 35 (2000): 305.

are met, even though the true substance of the risks has not been fully disclosed. Conversely, drastically raising adequacy standards without clear guidelines will cause issuers to flood the market with irrelevant defensive data merely to avoid regulatory sanctions. This, in turn, triggers a vicious cycle of information overload. The principle of adequate disclosure in the P2SK Law must be reconstructed to mean more than just the quantity of information presented. It must also encompass the sufficiency of information that is relevant, accurate, and understandable to enable informed, rational, and responsible investment decisions.

Analysis of the Impact of Disclosure Restrictions

Harmonizing the principle of transparency in the P2SK Law requires a critical and comprehensive examination of the implications of information restrictions on the financial ecosystem. The application of the full disclosure principle, limited by the parameters of fairness and adequacy, is not merely an administrative adjustment but a strategic policy intervention that alters the fundamental structure of Indonesia's capital market. This section outlines the legal and economic consequences of such restrictions across three aspects: investor confidence, market fairness, and the stability of the national financial system.

I. Impact on Investor Confidence in the Capital Market

Investor trust is the foundational relationship underpinning the sustainability of the capital market industry. The level of this trust is closely tied to the transparency of information provided by issuers to the public. Global capital market history records that major financial crises, such as the 1929 Great Depression in the United States, originated from the loss of public trust due to a lack of transparency and manipulative practices that caused massive harm to investors. The Capital Market Law and the P2SK Law were fundamentally designed as a regulatory response to prevent the recurrence of such dark history by mandating information transparency as the basis for rational and measured investment decision-making.

The implementation of non-transparent disclosure restrictions or issuers' strategies that hide behind the pretext of harmonization has the potential to erode investor confidence, both domestic and foreign. Foreign investors, in particular, view disclosure standards as a signal of the credibility of corporate governance in a country.[22] Global investment decisions are often based on the domestic market's ability to provide comparable and reliable information.

[22] *Dinamika Perkembangan Hukum Bisnis, Hukum Perbankan, Hukum Perseroan, Dan Hukum Investasi Di Indonesia Persembahan Kepada Prof. Dr. Rudhi Prasetya, S. H.* (Setara Press, 2023).

Restrictions on disclosure under the guise of "adequate disclosure", which are interpreted as a reduction in the substance of material information, will be met with high skepticism by investors. This skepticism manifests as market distrust, which ultimately triggers capital flight because investors perceive investment risks as unmeasurable due to information opacity.

Market psychology plays a crucial role when dealing with issuers who choose to be secretive or defensive. Investor behavior is driven not only by fundamental data but also by subjective perceptions of management's honesty. Issuers who restrict information regarding internal conditions, such as debt restructuring or legal disputes, under the pretext of maintaining corporate stability often trigger wild speculation among market participants. The market will interpret such silence or information restrictions as a signal that serious problems are being concealed (bad news). This creates persistent negative sentiment that is difficult to reverse. Consequently, the issuer's stock price will suffer a steeper decline (market punishment) than if the issuer had disclosed such material facts honestly from the outset.

The harmonization of principles set forth in the P2SK Law should not serve as a legal shield for issuers to lower transparency standards. Empirical evidence shows that consistent transparency, including the disclosure of unfavorable facts, accelerates the restoration of market confidence compared to strategies of delay or information restriction. Investor confidence can only be maintained and preserved if restrictions on disclosure have a clear, measurable legal basis and do not diminish the materiality required for investment risk assessment.

J. The risk of information asymmetry and its contribution to market inequity

Information asymmetry risk is a latent and structural threat that arises when disclosure restrictions are applied disproportionately within the capital market structure. Efficient market mechanisms require symmetrical information distribution so that security prices accurately and fairly reflect a company's fundamental value. Market Microstructure Theory explains that information access disparities divide market participants into two distinct groups: Informed Traders (such as institutional investors, securities analysts, or insiders) and Uninformed Traders (many retail investors). Restrictions on the principle of full disclosure, interpreted rigidly and narrowly as "adequate disclosure", have the potential to significantly widen the knowledge gap between these two groups.

This information gap creates structural market unfairness that disadvantages small investors. Institutional investors have the financial resources and network access to uncover information beyond limited public documents, while retail investors rely entirely on official documents that may have been redacted.[23] The principle of Fairness Disclosure in the P2SK Law aims to prevent this selective disclosure; however, operational challenges arise when the boundaries of reasonableness are not defined technically and rigidly. The absence of clear parameters regarding what may be restricted grants issuers excessive discretion to withhold strategic information from the public yet still disclose it to specific parties during private briefings. This practice directly undermines the principle of equal access to information, which is mandated by law and the economic constitution.

Moral hazard is the most dangerous derivative risk of this information asymmetry. Company management or controlling parties (insiders) can exploit loopholes in disclosure restrictions for personal or group gain. Covert insider trading often occurs during periods when material information is withheld or its dissemination to the public is restricted on the grounds that it is not yet final or constitutes a corporate secret. Parties with exclusive access to such information (information advantage) can take market positions ahead of the public (front running), buying at low prices before good news is announced, or selling before bad news is revealed.

Regulations that permit restrictions without strict oversight seem to legitimize such opportunistic behavior. The P2SK Law and its implementing regulations must strictly ensure that the harmonization of disclosure principles does not weaken the detection of insider trading.[24] Any information whose disclosure to the public is restricted must be accompanied by strict confidentiality protocols and a trading ban (blackout period) for those who know it until the information is fully disclosed. Without this mechanism, disclosure restrictions will merely legalize the transfer of wealth from uninformed investors to informed investors, which is diametrically opposed to the principle of fairness in the Capital Market Law.

K. Impact on Financial Market Stability

Financial market stability is closely and inseparably linked to the quality and speed of information flow. Macroprudential analysis positions transparency as the foundation for preventing the accumulation of systemic risks that could collapse the economy. Market liquidity, which is an indicator of the capital market's health, is highly dependent on the

[23] Chiraphol N Chiyachantana et al., "The Impact of Regulation Fair Disclosure on Information Asymmetry and Trading: An Intraday Analysis."
[24] Anthony T. Horgan, "Regulation FD Provides Firm Footing on Selective Disclosure High Wire," *VILLANOVA LAW REVIEW* 46, no. 656 (2001).

availability of credible and timely information. A liquid market can absorb economic shocks because asset prices can adjust quickly and efficiently to new information. Conversely, widespread inconsistencies in disclosure resulting from subjective interpretations of disclosure restrictions can drain market liquidity and trigger a freeze in transactions.

Systemic risk arises when information opacity obscures the interconnected risks among financial institutions or large issuers deemed *"Too Big to Fail*." The global financial crisis demonstrated that complex financial products or opaque corporate debt conditions can trigger a destructive domino effect when such risks eventually materialize. The P2SK Law, which grants issuers excessive leeway to restrict the disclosure of certain risks in the name of short-term stability, stores up the potential for a future crisis explosion. The market's ignorance of actual risk exposures prevents price corrections from occurring gradually and in a controlled manner; instead, they occur suddenly and drastically (market crash) when the true facts are revealed.

Unusually high stock price volatility often serves as an indicator of the failure of disclosure mechanisms in the market. The absence of official facts due to disclosure restrictions creates an information vacuum that is quickly filled by rumors, gossip, and irresponsible market speculation. Market rumors possess significant destructive power because they lack a clear basis for verification yet can trigger mass panic (panic selling) or unfounded euphoria (bubbles). Corporate actions such as backdoor listings or mergers are often marked by information restrictions regarding price valuations or the identity of new controlling parties, which trigger extreme stock price volatility before official announcements are made.[25]

Monetary and financial stability reinforce one another, and both require market efficiency driven by accurate and transparent information. A market flooded with rumors due to restrictions on official information becomes inefficient and highly vulnerable to price manipulation. The macroeconomic impact of disclosure restrictions in the P2SK Law must be managed by ensuring that adequate information includes risk indicators relevant to the overall stability of the financial system. The Financial Services Authority plays a central and crucial role in ensuring that the harmonization of disclosure principles does not sacrifice systemic risk visibility for the sake of issuers' interests alone. True financial market stability

[25] Audi Naura Dhaneswara, "Urgensi Penerapan Sistem Pre-Merger Notification Sebagai Sistem Pengawasan Merger, Akuisisi, Dan Konsolidasi Di Indonesia," *Jurist-Diction* 4, no. 2 (2021): 540, https://doi.org/10.20473/jd.v4i2.25751.

can only be built on a solid foundation of transparency, not on ignorance conditioned by regulation.

V. CONCLUSION

The harmonization of disclosure principles in the legal framework of P2SK Law reflects a fundamental shift: full disclosure is not absolute but subject to restrictive limitations for the sake of issuers' operational efficiency. The substance of these limitations on the obligation of full disclosure, as mandated in Article 1, point 24 of Capital Market Law is concentrated in three crucial areas: protection of corporate goodwill and reputation, preservation of trade secrets as a competitive advantage, and protection of privacy in sensitive matters. The implementation of the principle of fairness in disclosure is still identified as facing obstacles due to inconsistencies in the parameters for assessing reasonableness, which creates loopholes for selective disclosure practices. In practice, the principle of adequate disclosure is often reduced to merely meeting the minimum administrative standards under Article 86 paragraph (1) of the Capital Market Law, thereby neglecting the substantive depth of information necessary for investment decision-making.

Impact analysis demonstrates that information restrictions not managed with the principle of prudence have the potential to create market distortions in the form of widening information asymmetry between informed traders and uninformed traders, which runs counter to the spirit of Articles 90 through 99 of the Capital Market Law regarding the prohibition of fraud, market manipulation, and insider trading. This imbalance causally contributes to the erosion of investor confidence and increased stock price volatility driven by wild speculation rather than corporate fundamentals, which ultimately threatens the stability of the national financial system. The legal and economic implications of this phenomenon necessitate firm policy intervention by the Financial Services Authority to formulate technical regulations capable of precisely demarcating between public information and corporate secrets to ensure legal certainty. Future legal development and research should focus on in-depth studies regarding the integration of digital surveillance technology and a reorientation of law enforcement toward a preventive approach to foster a transparent, fair, and accountable capital market environment in Indonesia.

Solutions and Recommendations

A. Strengthening regulations and law enforcement regarding disclosure

OJK must issue implementing regulations that strictly define the parameters of fair disclosure to eliminate selective disclosure practices. Regulations derived from P2SK Law must establish clear boundaries between protected trade secrets and material facts that must be disclosed, so that issuers do not have excessive discretion. Law enforcement must shift from formal administrative sanctions toward substantive action against material negligence by issuers who conceal strategic information without a valid legal justification.

B. The Role of Education and Training for Market Participants

Education and training programs for market participants must not only focus on technical aspects of the economy and capital markets but must also include in-depth legal aspects. A comprehensive understanding of information disclosure regulations is necessary so that issuers can comply with adequate disclosure standards without violating trade secret or privacy provisions. Investors require adequate legal literacy to understand their rights and legal protections when facing capital market disputes. Synergy between economic understanding and legal compliance will minimize the risk of violations and disputes in the future.

C. Use of technology to improve the accuracy and transparency of information

The use of an integrated electronic reporting system is necessary to ensure the immediate and simultaneous dissemination of information to all market participants to uphold the principle of fairness. The development of digital infrastructure may consider alternative technologies such as blockchain as a means of validating data that cannot be manipulated. The integration of digital surveillance technology serves to mitigate the risk of insider trading and ensure that all investors receive accurate information at the same time.

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