

# **SOUTH EAST ASIAN JOURNAL OF CONTEMPORARY BUSINESS, ECONOMICS AND LAW (SEAJBEL)**

**ISSN 2289-1560**

**(Impact Factor: 7.521 (SJIF Impact Factor Evaluation))**



South East Asian Journal of Contemporary Business, Economics and Law (SEAJBEL), an open-access journal, is peer-reviewed and published in April, August and December annually. The journal accepts contributions in English only. SEAJBEL is providing scholars the best in theory, research, and methodology as well as providing platform to professionals and academics to share their ideas, knowledge and findings particularly in the region of South East Asia. The main objective of this journal is to provide a channel for the publication of articles based on original research as well as commentaries on a range of areas including management, marketing, finance, accounting, taxation, economics, public policy, law and other related topics.

# EDITORIAL BOARD

---

## EDITORIAL BOARD

### *Editors*

Associate Professor Dr. Mohd Rizal Palil

Dr. Dina Imam Supaat

### *Managing Editor*

Mr. Zesdyzar Rokman

### *Board of Reviewers*

**Professor Dr. Haryadi**

***(Faculty of Economics, University of Jambi, Indonesia)***

**Associate Professor Dr. Mohammad Basir Saud**

***(School of International Studies, Universiti Utara Malaysia)***

**Associate Professor Dr. Jesus P. Briones**

***(College of Business and Accountancy, University of Batangas, Philippines)***

**Associate Professor Dr. Zhu Nanjun**

***(School of Economics, Peking University, China)***

**Associate Professor Dr. N Maruti Rao**

***(Rani Channamma University, India)***

**Dr. Angela R. Payne**

***(Argosy University, United States of America)***

**Dr. Muhammad Ahmad**

***(Universiti Utara Malaysia)***

**Dr. Anna Kiseleva**

***(Institute of Europe RAS, Moscow, Russia)***

**Dr. Mahmood Shah**  
*(Department of Economics, Gomal University, Pakistan)*

**Dr. Marlin Marissa Malek Abdul Malek**  
*(Universiti Utara Malaysia)*

**Dr. I Gusti Ayu Ketut Rachmi Handayani**  
*(Faculty of Law, Sebelas Maret University Surakarta, Indonesia)*

**Dr. Go Lisanawati**  
*(Faculty of Law, University of Surabaya, Indonesia)*

**Dr. Mohd Norfian Alifiah**  
*(Universiti Teknologi Malaysia)*

**Associate Professor Dr. Amanuddin Shamsuddin**  
*(Universiti Tenaga Nasional)*

**Dr. Elvira Fitriyani Pakpahan, SHL., MHum**  
*(Faculty of Law, Universitas Prima Indonesia)*

**Dr. Zulkefli Muhamad Hanapiyah**  
*(Faculty of Business and Management, University Teknologi MARA)*

Search here...



#### USEFUL LINKS

- EDITORIAL BOARD
- SUBMISSIONS AND AUTHOR GUIDELINES
- INDEX
- CONTACT US

**SEAJBEL**

Copyright 2023 , all rights reserved.

## Vol. 4 Issue 3 (June 2014) Law

- EDITORIAL BOARD
- SUBMISSIONS AND / GUIDELINES
- INDEX
- CONTACT US

TABLE OF CONTENT			
No.	Name	Title	Page
1.	Malik M. Hafeez	An Analysis Of Asian And Western Corporate Governance Systems: Theoretical And Operational Concerns	1-8
2.	Malik M. Hafeez	Domination Of Family Owned Corporations And Problems Of Corporate Governance In Emerging Markets	9-15
3.	Umi Rozah	Forgiveness And Penal Mediation In Trivial or Insignificance Criminal Cases Settlement Based on Indonesian Local Wisdom	16-22
4.	Nabitatus Sa'adah	The Existence Of Indonesian Tax Court Viewed by Indonesian Justice System	23-28
5.	Amalia Diamantina	Protection To Child Citizenship Right In Mixed Marriage In Indonesia	29-33
6.	Zuhairah Ariff Abd Ghadas & Sabah Karimsharif	Types And Features Of International Petroleum Contracts	34-41
7.	Dewa Gede Sudika Mangku & Erika	Legal Consequences Of The Ratification Of The International Treaty Law Made By Indonesia In The Of The World Tourism Organization Perspective (Un-Wto)	42-46
8.	Dr Achmad Busro.	Court Decision on the Change of Legal Status after Transsexual Surgery (An Analysis on	47-54

		Batang District Court No. 19/Pdt/P/2009/PN.BTG)	
9.	Yuli Prasetyo Adhi	Characteristics and Problems of Online Fiduciary in the Imposition of Fiduciary Guarantee in Indonesia	55-58
10.	Tossapon Tassanakunlapan	Google, The Best Ict Business Model Or The Worst Evil Law Ever Faced.	59-64
11.	Rodiyah	The Accelerated Model Of The Right To Work Through The Harmonization Of Manpower Policies (A Case Study of Outsourcing Manpower after the Constitutional Court Decision Number 27/PUU-IX/2011 about the Review of Law Number 13 of 2003 Concerning Substantive Justice Attainment)	65-71
12.	Tri Sulistiyono	Analysis For Overwhelming Issues In The Decision And Implementation Of Minimum Wage Standard In Indonesia	72-79
13.	Dr. Indien Winarwati	The Implementation Of Togetherness Principles In Global Environmental Protection Regulations For States	80-86
14.	Rasdi	Penal Mediation For Juvenile Delinquency	87-93
15.	Dian Latifiani	The Consequences Of An Unregistered Marriage For The Wife And Born Children According To The Legal System In Indonesia	94-98
16.	Eny Suastuti	Responsibility Of Directors State Of Enterprise / SOE ( PERSERO )	99-104
17.	Kriti Kumar & Juhi Paliwal	Overlap Of Competition Policy And High Tech Patents In India: A Consumer Welfare Perspective	

Search here...

#### USEFUL LINKS

- EDITORIAL BOARD
- SUBMISSIONS AND /  
GUIDELINES
- INDEX
- CONTACT US

## FORGIVENESS AND PENAL MEDIATION IN TRIVIAL OR INSIGNIFICANCE CRIMINAL CASES SETTLEMENT BASED ON INDONESIAN LOCAL WISDOM

Umi Rozah

Criminal Law Departement, Universitas Diponegoro Jl. Prof. Sudarto, SH. Tembalang Semarang – Indonesia

### ABSTRACT

*One of functions of law system is as a tool of social integration through settlement of dispute. The basic function of legal system is to offer machinery and a place where people can go to resolve their conflicts and settle their disputes. Existence of law as a social integration realized by the court which have tasks to solve social conflicts in social relationship in the society. Social conflict could be appearance such as crimes or offences that violate of the rights, or things or interests of victim or society. Here, the criminal law works to prevent and protect the rights or things, or interests of victim from violation. Through the criminal justice process all criminal matters be solved with the end of sentencing, for all cases that proofed all elements of punishment, also for the trivial or insignificance cases. Indonesia has any local wisdom to solve the trivial or insignificance cases without punishment. There are forgiveness and penal mediation which prevailed in Masyarakat Adat Lampung and Masyarakat Adat Bali as a communal society. This paper is based on research that done in Masyarakat Adat Lampung and Bali on how they solve some trivial or insignificance criminal cases by forgiveness and penal mediation as an alternative of settlement in criminal matters.*

*Keywords: forgiveness and penal mediation, trivial or insignificance criminal cases.*

### INTRODUCTION

Indonesian Constitution Undang-Undang Dasar Negara Republik Indonesia 1945 amandemen ke-4, formulated in an Article 1 paragraph (3) that Indonesia is the rule of law state. One of functions of law system is as a tool of social integration through settlement of dispute, as Friedman said that the basic legal function is to offer machinery and a place where people can go to resolve their conflicts and settle their disputes. Existence of law as a social integration realized by the court which have tasks to solve social conflicts in social relationship in the society. Social conflict could be appearance such as crimes or offences that violate of the rights, or things or interests of victim. Here, the criminal law works to prevent and protect the rights or things, or interests of victim from violation. Generally, through the criminal justice process, the offender who commits an offence get some examinations according to certain procedure of criminal justice process. Here, the offender have to face so long process from investigation stage until execution stage, and the victim have no place to express his/her interest related to his/her damage cause of offender's action.

Criminal justice process in Indonesia based on Indonesian Code of Procedure Criminal Justice (Kitab Undang-Undang Hukum Acara Pidana / KUHAP) Number 8/1981 that regulates on criminal justice process from investigation stage, prosecution stage, examination in the court and execution of sentencing stage. We need so long chain to solve one case from investigation until execution of offender. We have to waste many money, many time, and many energy just to solve one case, especially light/minor/trivial/insignificance cases.

Recently, in penal theories and criminal justice practices have undergone of significance development along with researches of social science, pathology, and other knowledge, which influenced to punishment, sentencing, and criminal justice concept. The concept of punishment and sentencing start to develop from the classic school which has center on the action that committed by the offender. So punishment is logical consequences of the action, and the aim of punishment is revenge (retributive purpose of punishment). On the other way, modern school give a meaning of punishment and sentencing not merely logical consequence that following the action like in a revenge theory, but punishment and sentencing have some aims to protect of society against crimes, to protect and rehabilitate of the offender, and also to protect of victim.

Recent, at International development on criminal justice concept and procedure to handle criminal cases in many countries introduced of penal mediation as a settlement dispute in criminal matters (penal mediation, mediation penal, mediation in criminal matters, victim - offender mediation), as a part in criminal justice system. Initially, mediation model just works to solve private matters, but now many countries use it to solve criminal matters. In the restorative justice context, aim of penal mediation is to restore of victim's rights. Through penal mediation we don't need to bring any cases to the traditional criminal justice process, but everything related to criminal matters was solved inside.

Indonesia as a country which has many cultures and ethnic groups that known as a plural nation. Each ethnic group in Indonesia has a customs as way of live and way to solve any conflict in their community included in criminal matters, especially on the

## DOMINATION OF FAMILY OWNED CORPORATIONS AND PROBLEMS OF CORPORATE GOVERNANCE IN EMERGING MARKETS

Malik M. Hafeez

The Islamia University of Bahawalpur, Pakistan

### ABSTRACT

*Good corporate governance contributes to sustainable economic development by enhancing the performance of the companies and increasing their access to outside capital. The experiences of the developed countries reveal that good corporate governance can reduce risk, stimulate performance, improve access to capital markets, enhance the marketability of goods and services, improve leadership, increase the value of the corporations, enable the corporations to acquire external finances easily at a lower cost. The dispersed ownership and separation between ownership and control resulted corporate governance problems including agency cost in developed and emerging economies. The good corporate governance practices and concentration of share ownership in the baskets of a group of institutions gave them monitoring responsibility to the corporate issues in the western financial markets. However, the corporate governance problems including managerial opportunism still exist in developing economies, where family owned enterprises control their stock markets. The developing and emerging economies are constantly confronted with issues such as the lack of property rights, the abuse of minority shareholders and contract violations. For a strong impact of corporate governance measures on the economy, a set of democratic norms, market institutions and effective legal system should be set up. Over the past decade reforms in corporate governance driven by events such as the 1997 Asian financial crisis, major corporate scandals (such as Enron and WorldCom) and the globalization of capital markets have become an important global policy agenda. Economic development requires a modern, transparent corporate governance infrastructure based on efficient capital markets. This paper evaluates the possible monitoring role of company's creditors and auditors, arguing that a well-developed corporate governance structure, including accounting infrastructure and creditors vigilance, would promote long-term corporate stability and economic prosperity.*

*Key words: Corporate governance, family-owned firms, corporate monitoring, creditors, auditors, long-term corporate stability, agency theory.*

### 1. Introduction

The experiences of the developed economies reveals that a good corporate governance can reduce risk, stimulate performance, improve access to capital markets, enhance the marketability of goods and services, improve leadership, increase the value of the corporations, enable the corporation to acquire external finances more easily at a lower cost. However, in case of developing and emerging economies, the need for corporate governance extends beyond resolving problems resulting from the separation of ownership and control. The developing and emerging capital markets are continuously dealing with the issues such as the lack of property rights and agency problems, the abuse of minority shareholders, family dominated ownership and contractual violations. Therefore many developing economies implemented reforms of corporate governance that were driven by international donors, for instance, the corporate governance related development agenda promoted by the World Bank and OECD.<sup>1</sup>

The corporate governance is a framework wherein companies are run or governed. The governance framework is established and set by law, by rules and regulations such as the company's own constitution that is made by those who own and fund the company. The corporate governance mechanism involving both rules and institutions may differ from country to country, because it owes much to history and culture, but its effectiveness depends upon its rationality and reliance of the corporate actors including the management and rest of the corporate constituency. For instance, the main weaknesses of the legal and judicial system weaken property rights and contract enforcement.

However, in family owned corporations, the equity ownership devolves through inheritance wherein the shareholders have complete control of companies as their personal business and they do not care to the corporate issues.<sup>2</sup> They run the companies as their own personal property to gain financial benefits, through oppression with minority and utilize the company loan for their own benefits instead of company long-term corporate stability. Therefore effective corporate governance framework requires their monitoring through creditors who fund the company as well as competent and responsible board of auditors. The responsible monitoring behavior of the corporate auditors depends upon the realization and an effective enforcement of their professional and fiduciary duties. The governance framework changes shape and develops through time. The corporate governance standards are determined by the measures that companies take for themselves, either voluntarily or otherwise, to improve their governance structure.

<sup>1</sup> Farooq Sobhan and Wendy Werner, *A Comparative Analysis of Corporate Governance in South Bangladesh* (Bangladesh Enterprise Institute 2003) 2-4

<sup>2</sup> Sobhan and Werner, 16-22