

CHAPTER I

INTRODUCTION

A. Context of Study

The capital market¹ plays significant role in the national economy. It mobilizes funds from people for further investments in the productive channels of economy, activating idle monetary resources and put them in proper investments.² Capital market unites the fund suppliers with the fund users in the purpose of *middle-term investment* and *long-term investment*. Capital markets consist mainly equity and debt instrument, it provides an avenue for raising the financial needs of business through equity and long-term debt by attracting investors with kinds of investments.³

Stock exchanges are pillars of a nation's economy.⁴ Stock exchanges⁵ have been viewed as an important catalyst of economic growth. They provide an organized market for the trading of securities to individuals and organizations which intend to invest their saving or excess funds through the purchase of securities. This market is regulated by established rules that promote and maintain fair, efficient, secure and transparent market and facilitate the orderly development of the stock exchange.⁶ A fair and

¹According to Rosenberg: Capital Market is *"the place through which the buying and selling of stock for the purpose of profit for both buyers and sellers of the security take place"*.

²http://www.finance.gov.pk/survey/chapter_12/06-CapitalMarkets.pdf page 81 accessed on 22nd October 2015 at 10.23pm.

³*Supra note* at 2, page 81.

⁴Subhashish Saha, *Stock Exchange Demutualization and Self Regulation*, Securities and Exchange Board of India Mumbai, Preliminary Draft, September 5, 2015, page 2.

⁵According to Rosenberg: Stock Exchange is *"the organization that provides a market for the trading of stocks and bonds"*.

⁶Arwa M. Morsy, *The Impact of Demutualization on the Performance of Stock Echanges*, Maastricht School of Management, 2007, page 7.

efficient performance of a stock exchange is a substantial benefit to the public.

Stock exchange plays several roles in the economy. Some of the various roles that stock exchange fills are; raising capital for businesses, mobilizing savings for investments, facilitating company growth, redistribution of wealth, corporate governance, creating investment opportunities for small investors and raising capital for the government to enable for carrying out development projects.⁷

In Indonesia, the capital market⁸ also play a significant role alongwith banking institution, this is due to the contribution of capital markets which contribute to Indonesian economy as one of the financing in business and investment area.⁹ The capital which is traded in capital market is in the form of commercial paper or in the financial terminology is known as securities.¹⁰ The term of securities can be defined as promissory notes, commercial paper, shares, bonds, evidences of indebtedness, mutual fund of collective investment contracts, futures contracts related to securities and all derivatives¹¹ of securities.¹²

⁷*Role of the Exchange in the Economy, Nairobi Stock Exchange.* Available from Nairobi Stock Exchange website (accessed October 2015).

⁸Based on Indonesian Law Number 8 of 1995 specifically on article 1 poin 13, Capital Market is "the activity of trading and offering securities to the pulic, the activity of a public company with respect to securities issued, and the activities of securities-related institutions and professions".

⁹C.S.T. Kansil, *Pokok-Pokok Hukum Pasar Modal*, Jakarta: Pustaka Sinar Harapan, 2004, page 1.

¹⁰M Paulus Situmorang, *Pengantar Pasar Modal*, Mitra Wacana Media, Jakarta, 2008, page 4.

¹¹"Derivatives" refers to rights that are derived from either debt or equity Securities, such as Options or Warrants."

¹²Article 1 poin 5 of Law Number 8 of 1995 about Indonesian Capital Market.

The structure of Indonesia Stock Exchange¹³ is different from the most of structure of Stock Exchange in the world, for example, London Stock Exchange, Hongkong Stock Exchange, New York Stock Exchange whereas a process of continuing an organization from its mutual ownership structure to a share ownership structure which is known as *Demutualization*.¹⁴ The members of mutually owned exchanges that are, Broker-Dealer dealers with “seats” on the exchange are also its owners, with all the voting rights conferred by ownership.¹⁵ In contrast, a demutualized exchange is a limited liability company owned by its shareholders. Trading rights and ownership can be separated; shareholders provide capital to the exchange and receive profits, but they need not conduct trading on the exchange. And as discussed later, although demutualized exchanges will continue to provide many if not most of the same services, they will have different governance structures in which outside shareholders are represented by boards of directors.¹⁶

Demutualization, in the strictest sense, refers to the change in legal status of the exchange from a mutual association with one vote per member

¹³The structure of Indonesia Stock Exchange is non-profit mutual organization.

¹⁴Arwa M. Morsy, *Op.Cit.*, page 8.

¹⁵For more discussion on ownership issue, see, for example, Report of the Technical Committee of the International Organization of Securities Commissions, *“Issues Paper on Exchange Demutualization.”* 2001 and Jennifer Elliot, *“Demutualization of Exchanges – The Regulatory Perspective.”* 2000, International Monetary Fund Technical Note.

¹⁶Reena Aggarwal, *Demutualization and Corporate Governance of Stock Exchanges*, Washington D.C. McDonough School of Business Georgetown University, 2002, page 6.

and possibly consensus-based decision making, into a company limited by shares, with one vote per share with majority-based decision making.¹⁷

Since the demutualization by the Stockholm Stock Exchange which took place in 1993 with the change of its organizational form from a non-profit to a for profit, publicly listed organization, a significant number of stock exchanges have experienced similar changes.¹⁸ For example, the Australian Stock Exchange became one of the first stock exchanges that went public and became a listed company. In the same way, the London Stock Exchange, the Deutsche Borse, alongside with other major European stock exchanges also become public companies. In Americas, the Toronto Stock Exchange demutualized in 2000, followed by its owner, the TSX Group, which went public in 2002. In Asia, both of the most important stock exchanges: Hong Kong Stock Exchange demutualized in 2000 and Singapore exchange in 1999. The only significant and important stock exchange which did not list its share (despite the fact that it demutualized in 2001), is the Tokyo Stock Exchange. Also the United State, the Chicago Mercantile Exchange demutualized in 2000. In 2003 CME conducted a later initial public offering (IPO) and listed its shares on the New York Stock Exchange. Also, India, Pakistan, Brazil, the Philippines, and some other

¹⁷Shamshad Akhtar, *Demutualization of Asian Stock Exchanges – Critical Issues and Challenges*, in *DEMUTUALIZATION OF STOCK EXCHANGES: PROBLEMS, SOLUTIONS AND CASE STUDIES*. Asian Development Bank, 2002, page 4.

¹⁸Saadia Altaf, *Demutualization of Stock Exchanges, A Case Research: London Stock Exchange and Hong Kong Stock Exchange*, Master Degree Project in Economic and Finance, University of Skovde, 2009, page 12.

countries' stock exchanges announced in 2005 their plans to demutualize and to their shares.¹⁹

According to the data of the World Federation of Exchanges, the weight of mutual dropped out dramatically from 40% in 1999 to only 25% in 2003. And the same period of time, the number of demutualized stock exchanges rose from 10% in 1999 to 25% in 2003.²⁰ The fact that almost all major exchanges have undergone demutualization and became public companies is showing the necessity of having a structure that will allow the exchange to be able to respond to the industry challenges.²¹

Technology improvements, increasing economic competition, and the associated costs led stock exchange to revise their entrepreneurial strategies. As an answer, a large number of stock exchanges have demutualized.²² Besides, the increasing conflicts in the stock exchanges member's interests and tough competition led to a reduction in the stock exchanges wealth. As a result, this led to a change in the stock exchanges governance structure or saying it otherwise to demutualization.²³ At the beginning, stock exchanges were conducted as non-profit firms with significant membership fees being charged for the access to trading floors. The rise of electronic trading system (ETS) allowed a reduction of the marginal cost close to zero for accepting a new member which at its turn is

¹⁹Saadia Altaf, *Loc.Cit.*, page 13.

²⁰*Ibid.*

²¹Otchere, I. & Abou-Zied, K, *Stock exchange demutualization, self-listing and performance: The Case of Australian stock exchange*, Journal of Banking & Finance Vol. 32, issued April 4' 2008, page 512.

²²Reena Aggarwal, *Loc.Cit.*, page 106.

²³Serifsoy, B, *Essays on stock exchange efficienct*, Business Models and Governance, 2006 <http://www.wiwi.uni-frankurt.de/schwerpunkte/finance/wp/1360.pdf>

a motive for demutualization. In addition, many of large institutional traders have developed capabilities to “internalize” a large volume of trade wherein they can match the buy and sell orders without going to the exchange.²⁴ These developments have strained the traditional organizational structure of stock exchanges. Alongside with other factors that fastened up the demutualization, for example, such initiatives as the Single European Market, and the Big Bang²⁵ reforms in the United Kingdom, made securities trading much more competitive.

The spirit of capital market itself is on the disclosure principle. This disclosure principle is one of the main principles which shall be enforced in capital market, in the case of “trust crisis” or “un-trust” from investor towards capital market and financial, therefore the investor will draw out their capital from the market. By the consequences that the market and financial will collapse either partly or in wholly.²⁶

Disclosure principle is main component and very important in the capital market all over the world.²⁷ In example that there was happened un-trust of investor towards the capital market in the United States of America,

²⁴Saadia Altaf, *Loc.Cit.*, page 15.

²⁵The reforms changes concerning the stock exchanges that came into effect in UK in 1986, were to be usually called in the literature to as the “Big Bang”. Fixed commission charges were abolished, leading to an alternation in the structure of the market, and the right of member firms to act as market makers as well as agents was also abolished.

²⁶Bismar Nasution, *Keterbukaan dalam Pasar Modal*, Universitas Indonesia, Program Pasca Sarjana, Jakarta, 2001, page 31.

²⁷Thomas Lee Hazen, *The Law of Securities Regulation*, West Publishing Co., St. Paul Minnesota, 1990, page 85.

specifically on 1929-1934, which caused the investor drew out their capitals from America's capital market.²⁸

By the disclosure, people will not only know several activities conducted by certain parties, because there had been information which provided, but by disclosure, it is expected the existence of a public control towards certain activities.²⁹

At least there are three functions of disclosure principle in the capital market, those are:

1. Disclosure principle has a function to maintain the public trust towards the market. The absence of disclosure in capital market causes investors distrust towards the market mechanism. Because the disclosure principle has an important role for investors before taking decision to conduct investment, the disclosure will be used to formulate judgments towards investment, so that the investor optimally able to determine their choices. The clearer of information, will impact towards the decision of investors to invest their capital.³⁰

²⁸Bismar Nasution, *Keterbukaan dalam Pasar Modal*, Universitas Indonesia, Program Pasca Sarjana, Jakarta, 2001, page 32.

²⁹What investors fear the most is having their money expropriated. Whether the company is private or public, expropriation of minority shareholders may be achieved by selling products or assets below-market price, buying products or assets at above-market prices, taking business opportunities away from the company and issuing loans at preferential rates. In many countries with legal protections, clever entrepreneurs can devise ways to deny fair to investors while remaining within the law. The International Bank for Construction and Development/World Bank, *Doing Business in 2005: Removing obstacles to Growth*, the World Bank, the International Finance Corporation and Oxford University Press, 2005, page 51.

³⁰Bismar Nasution, *Op.Cit.*, page 9.

2. Disclosure principle has a function to create an efficient market mechanism. This philosophy is based on giving of full information with the result of creating efficient capital market, that is the price of stock will fully reflected from whole information provided. By such conduct, the disclosure principle can play role in increasing the availability of real information in order to determine the price market accurately.³¹
3. Disclosure principle is important to prevent a fraud. Barry Rider argued that the more information provided, it will minimize the wrong conduct and miss-application. The function of disclosure principle to prevent a fraud is the oldest legal opinion.³²

The demand for the implementation of *good corporate governance* is one of the issues to attract the interest of coming investor on capital market in a state.³³ Because the more implementation of the principle of *good corporate governance* is conducted, it will automatically give good impact for the sustainability of capital market in general and as an indication of good treatment towards shareholders.³⁴ It is agreed that the important of shareholder's rights to get accurate information and on time. And also became the responsibility of the company to conduct the disclosure

³¹Bismar Nasution, *Op.Cit.*, page 10.

³²Bismar Nasution, *Op.Cit.*, page 11.

³³Ridwan Khairandy, Camelia Malik, *Good Corporate Governance Perkembangan Pemikiran dan Implementasinya di Indonesia dalam Perspektif Hukum*, Yogyakarta: Kreasi Total Media, 2007, page 1.

³⁴Hamud M. Balfas, *Hukum Pasar Modal Indonesia*, Jakarta:PT Tatanusa, 2007, page 231.

accurately, on time and transparently regarding informations on company's performance, ownership, and stakeholder.³⁵

A stakeholder is every party which has interest on the company's performance. Theoretically, stakeholder can be divided by two, which are:³⁶

1. *Primary Stakeholder*, it is the shareholder, investor, staff, and manager, supplier, business partners, and society;
2. *Secondary Stakeholder*, it is government, business institution, social group of society, academic, and competitor.

Corporate Governance is a set of rules which regulate the relationship between shareholders, managers of the company, creditors, government, officers and the internal stakeholders or its external which related to their rights and obligations or in the other word is a system which regulates and manage the company.³⁷ From this definition, it can be concluded that *corporate governance* is a set of rules which urge or requires the existence of management over corporation in a good way.

According to Organization for Economic Cooperation and Development (OECD) formulation, at least there are four main principles

³⁵Ridwan Khairandy, *Op.Cit.*, page 2.

³⁶Indra Surya dan Ivan Yustivandana, *Penerapan Good Corporate Governance: Mengesampingkan Hak-Hak Istimewa Demi Kelangsungan Usaha*, diterbitkan atas kerjasama dengan Lembaga Kajian Pasar Modal dan Keuangan (LPMK) dan Fakultas Hukum Universitas Indonesia, Jakarta: Kencana, 2006, page 67.

³⁷See, *Tata Kelola Perusahaan*, Forum for Corporate Governance in Indonesia, jilid I edisi ke-2, 2001, page 3. Whereas according to Robert A.G. Monks and Nell Minow, *Corporate Governance*, edisi kedua, 2001, page 1, stated that "Corporate Governance is the relationship among various participants in determining the direction and performance of corporations."

of *corporate governance* which finally conclude to the disclosure, those principles are:

- a. *Fairness*. This Principle guarantee the rights protection of shareholders, including the rights of minority shareholder.
- b. *Transparency*. This Principle oblige the existence of disclosure information, on-time and clear, and can be compared which related the financial condition of the management of corporation.
- c. *Accountability*. This Principle requires explanation the role and responsibility, and supporting the effort to guarantee the balance of management interest and shareholder, as the supervision of the commissioner.
- d. *Responsibility*. This Principle is ensuring the compliance of the regulation.

Nowadays, capital market activities in Indonesia are run by Indonesia Stock Exchange Ltd. Initially, there were two Indonesia Stock Exchanges, those are Jakarta Stock Exchange and Surabaya Stock Exchange, but on December 2007 both are merged and since then it became Indonesia Stock Exchange Ltd. (IDX).

Stock Exchange is the corporation which carries out and provides system and or infrastructure to unite selling and buying offers of securities from other parties in purpose to trade those securities among them.³⁸

³⁸Article 1 poin 4 of Law Number 8 of 1995.

Indonesia Stock Exchange was established in order to organize the securities trading with disciplinary, fairly and efficiently.³⁹

The disciplinary principle means that a trading should be organized based on the clear regulation and consistently well-implemented. Thus, the price is reflecting the market mechanism based on the power of demand and offer, with the result that the price will be fair. The efficient market is reflected by fast and cheap settlement of transaction. The securities trading in the stock exchange happened electronically, not by hand in hand so that it puts easy the transaction process between investor and issuer.

Initially BAPEPAM was the authorized institution to supervise Indonesia Stock Exchange activity based on article 3 of Law Number 8 of 1995 on Capital Market, but nowadays its function, duty and authorization had been shifted to Indonesian Financial Authority (OJK) in accordance with article 55 of Law Number 21 of 2007 on OJK.

Along with Indonesia Stock Exchange, some parties which positioning theirselves parallel in the capital market structure, and assisting the execution of capital market in Indonesia are Trust-Agent (PT Kliring Penjamin Efek Indonesia as known as KPEI) and also Custodians (PT Kustodian Sentral Efek Indonesia as known as KSEI) which acts as *Self-Regulatory Organization (SRO)*.⁴⁰

³⁹Article 7 poin 1 and its explanation of Law Number 8 of 1995.

⁴⁰Sekolah Pasar Modal Bursa Efek Indonesia Level 1-A, *Pengenalan Pasar Modal Produk Investasi di BEI Investasi di Pasar Modal Analisa Fundamental bersama KPEI IDX dan KSEI*, page 6.

An SRO is a non-governmental entity responsible for regulating its members through the adoption and enforcement of rules and regulations governing the business conduct of its members.⁴¹ Or in other word, SRO means that the institution has authority to regulate and to create regulations which are binding to every institution involved in its function.⁴² But those regulations can only be enforced after the permission given by OJK. As the example, Indonesia Stock Exchange makes regulations which concerns on its membership, securities trading regulation, and listing securities regulation.⁴³ It reflects that Indonesia Stock Exchange as SRO, is also as the supervision body within the securities trading in capital market because this institution which makes its own regulation so that it held the authority to supervise the trading activities as well.

Article 8 of Law Number 8 of 1995 has specifically defined that the one which is able to be a shareholder of Stock Exchange is Securities Company which hold business license to conduct the activity as Broker-Dealer. Based on the explanation on article 8, the purpose of Stock Exchange is to provide system and or facility of securities trading and parties in which able to conduct securities trading in Stock Exchange are only Securities Company which are conducting activity as Broker-Dealer,

⁴¹Christopher W. Cole, *Financial Industry Regulatory Authority (FINRA): Is the Consolidation of NASD and the Regulatory Arm of NYSE a Bull or a Bear for U.S. Capital Market*. 2006, 76 UMKC L. REV. 251, 255-56.

⁴²Article 9 of Law Number 8 of 1995 is legal basic of Indonesia Stock Exchange as SRO institution.

⁴³Tjiptono Darmadji dan Hendy M. Fakhruddin, *Pasar Modal di Indonesia Edisi 3*, Jakarta: Salemba Empat, 2011, page 34.

so that the shareholder is limited only to Securities Company which hold business license from OJK as the Broker-Dealer.

Besides that, article 1 point 2 of Law Number 8 of 1995 has stated that the Member of Stock Exchange is the Broker-Dealer who hold a business license from OJK and has right to use the system and or facility of Stock Exchange in accordance with the regulation of Stock Exchange. This reflects that the one which are able to be the member of Stock Exchange are the Broker-Dealer. Meaning that the member of the Stock Exchange is also the shareholder of the Stock Exchange.

This structure of Stock Exchange would be definitely causing problems. Because when the member of Stock Exchange is the shareholder, they conduct trading activities and also the Stock Exchange is SRO, it clearly means that in the first place they make the rules and they supervise themselves.

By that, many possibilities of problems may occurred such as crime in the form of fraud, manipulation of market, and insider trading.⁴⁴ The price manipulation is commonly done by collusion by some of the securities member or intermediaries. These intermediaries buy the low price and sell it to the higher price. So that the process of buying demand and selling offers that happens is not reflecting the power of the original market.⁴⁵

⁴⁴Article 90 – 99 of Law Number 8 of 1995.

⁴⁵Hamud M. Balfas, *Tindak Pidana Pasar Modal dan Pengawasan Perdagangan di Bursa*, Jurnal Hukum dan Pembangunan Edisi Januari-Juni 1998, page 16.

The mechanism of *Good Corporate Governance* will automatically lead to the development of *check and balance* in the surrounding of management specifically in the matter of giving attention towards the interest of shareholder and another stakeholder. Despitefully the protection of investor, the regulation also obliges the existence of a system which guarantees the transparency and accountability within the business transaction among the corporations which potentially raise a conflict of interest.⁴⁶ Therefore, another possibility is about the conflict of interest among the parties in the Stock Exchange's structure. As in mutual exchange, one of the main problems is imbalance of members-owners' interest and the the investors.⁴⁷ Just as stock exchanges become more and more sophisticated, the interests of various member groups began to diverge. This has led to tremendous tensions in the governance and decision making of stock exchanges. In some sense, demutualization can be perceived as a solution of conflict of interest by segregating the ownership from the membership and trading rights thus allowing a proper running of the stock exchanges' management. Also by transforming itself into a for-profit investor owned organization, the managers of the stock exchange are able now to focus on a single group, its owners. This simplification of governance structure allows for faster decision making.

Other than being alternative of investment done by investors and increasing the quality of economic development, the capital market has the

⁴⁶Ridwan Khairandy, *Op.Cit.*, page 6.

⁴⁷Saadia Altaf, *Loc.Cit.*, page 16.

black side by the raising of *white collar crime*,⁴⁸ which is very bringing disadvantages for the societies generally and investors specifically. Even the *white collar crime* which is done in the capital market is not recognized by the related parties because it is done smoothly and perfectly, therefore, the victims are not feeling to be inflicted financial losses. The societies respond to the crime, and giving losses for them, as the results which shall be carried by them because the negative power of market, and part of the market mechanism whereas they unfortunately become the victim.⁴⁹ Thus, the crime which is done in the capital market usually is difficult to be proven because it is different with the commonly crime.

Ideally, the Stock Exchange should be the market for fair stock transaction mechanism. But the fair stock transaction mechanism is difficult to be achieved due to the conflict of interest and transparency in this structure. Simply saying, when the shareholder is the member of the Stock Exchange, this might cause a problem. When Stock Exchange as the corporation or Limited Company, it means that there are organs like the common company such as general meeting of shareholder, director, and commissioner. When the shareholders are the member of stock exchange, the conflict of interest would be happened. The concentration of control on

⁴⁸According to Hazzel Croall in his book *White Collar Crime is defined as the abuse of a legitimate occupational role which is regulated by law. Then the term white collar with fraud, embezzlement and other offences associated with high status employees.* In Hamud M. Balfas, *Op.Cit.*, page 459.

⁴⁹*Ibid.*

a handful of shareholder, would lead to possibility in which the conflict of interest occurred.⁵⁰

For Example, when crime happened in the capital market in which the subject is the member of the stock exchange, it is very possible that the stock exchange response or decisions regarding that particular case will be emphasizing on its own interest at the very the first place. Another example, in the general meeting of shareholder of Stock Exchange, the shareholders are the Broker-Dealer in which this Broker-Dealer is also doing business activities within its system. By this, during the general meeting of shareholder, the shareholders have right to determine the future action of stock exchange itself. When those happened, therefore basically there is no check and balances and well implementation of *good corporate governance* in Indonesia Stock Exchange.

Since there is no separation of the ownership of the share and memberships of Stock Exchange it will arise problem and disadvantages to the investors. This is very contradictive with the purpose of Law Number 8 of 1995 and to the legal certainty principle and investor protection.

B. Problem Statement

Based on the explanation of background of this research, therefore the formulated problems of this research are as follows:

⁵⁰Indra Surya dan Ivan Yustivandana, *Op.Cit.*, page 4.

1. Has the structure of Indonesia Stock Exchange nowadays implemented the *good corporate governance* principles in order to create orderly, fair and efficient trading Exchange?
2. Why is demutualization necessary by Indonesia Stock Exchange to create orderly, fair and efficient trading in the Exchange?

C. Research Objective

Based on the problem statement, therefore the objectives of this thesis are:

1. To know the implementation of *good corporate governance* principles in order to create orderly, fair and efficient trading.
2. To know the necessity of demutualization by Indonesia Stock Exchange to create orderly, fair and efficient trading.

D. Research Advantage

1. As a referential literature for the development of legal studies.
2. As a consideration for all stakeholders related to this thesis.

E. Theoretical Review

Starting in the early 1990s, stock exchanges around the world have been undergoing major organizational and operational changes. One of the most visible changes has been the trend toward demutualization—the process of converting exchanges from non-profit, member-owned organizations to for-profit, investor-owned corporations.⁵¹ In 1993, the

⁵¹Reena Aggarwal, *Loc.Cit.*, page 3.

Stockholm Stock Exchange became the first exchange to demutualize. It was followed by several others, including the Helsinki Stock Exchange in 1995, the Copenhagen Exchange in 1996, the Amsterdam Exchange in 1997, the Australian Exchange in 1998, and the Toronto, Hong Kong, and London Stock Exchanges in 2000.

Historically, the stock exchange has been established before the independence of Indonesia. The stock exchange has been established since the Dutch colonization which specifically on 1912 in Batavia. The Dutch colonization government established it for the interest of government's colonization or VOC. Notwithstanding stock exchange has been established on 1912, the development and growth of stock exchange did not run effectively, even in some of periods the stock exchange's activities were vacuum. Those were caused by some factors such as First and Second World War, the movement of government's authority from Dutch to Indonesian Government, and several conditions which caused the operation of stock exchange did not run well which had been expected before. The Indonesian Government re-activated the stock exchange on 1977, and the years after that stock exchange developed along with some incentives and regulations issued by the government.⁵²

Since 1977 the Indonesian Government had tried to re-activated stock exchange which actually had been established before the Second World War. Until 1987 that the activities were sporadical, the amounts of

⁵²<http://www.idx.co.id/id-id/beranda/tentangbei/sejarah.aspx> last accessed on 6th November 2015, at 15.53 WIB.

activities were very little, while the corporations which listed on the stock exchange were pushed to conduct foreign investment which requires the participation of domestic shares. Since 1998, the Jakarta Stock Exchange actively run and also was established the Surabaya Stock Exchange.⁵³

Initially that in Indonesia were known that there were two stock exchanges those are Jakarta Stock Exchange (BEJ) and Surabaya Stock Exchange (BES), but since on December 2007 those two stock exchanges merged became Indonesia Stock Exchange (IDX).

Stock Exchange is the corporation which carries out and provides system and or infrastructure to unite the sell and buy offering of securities from another party for the purpose of trading that securities among them.⁵⁴

The law Number 8 of 1995 has specifically defined that Indonesia Stock Exchange as the *Self-Regulatory Organization* (SRO). SRO means that the institution has authority to regulate and authority to create regulations which are binding to every institutions which are involved in its function.⁵⁵ But those regulations can be enforced after the permission given by OJK. As the example, Indonesia Stock Exchange makes regulations which concern on its membership, securities trading regulation, and listing securities regulation.⁵⁶ It reflects that Indonesia Stock Exchange as the SRO, is also as the supervision body within the securities trading in capital market

⁵³Sjahrir, *Analisis Bursa Efek*, Jakarta: Gramedia Pustaka Utama, 1995, page 25.

⁵⁴Article 1 poin 4 of Law Number 8 of 1995 about Capital Market.

⁵⁵Article 9 of Law Number 8 of 1995 is legal basic of Indonesia Stock Exchange as SRO institution.

⁵⁶Tjiptono Darmadji and Hendy M. Fakhrudin, *Op.Cit.*, page 34.

because again, that this institution which makes its own regulation so that it has authority to supervise the trading activities too.

Article 8 of Law Number 8 of 1995 has specifically defined that the one which is able to be shareholder of Stock Exchange is Securities Company which hold business license to conduct the activity as Broker-Dealer. Based on the explanation on article 8, the purpose of Stock Exchange is to provide system and or facility of securities trading and parties which able to conduct securities trading in Stock Exchange is only Securities Company which conducting activity as Broker-Dealer, so that the shareholder is limited only to Securities Company which hold business license from OJK as the Broker-Dealer.

The job as intermediary of securities in the Exchange is conducted by accepting order to buy or sell the securities. For the securities which are listed the Stock Exchange, the investor shall communicate with Securities Company, who acts as the Broker-Dealer, in this sense is represented by its staff.⁵⁷ The term of Broker-Dealer has two senses:⁵⁸

1. Intermediary or agent of securities, it means that acting as the intermediary in the selling and buying of securities' activity, because the investor is not allowed to conduct selling and buying of securities without passing the Broker-Dealer. By the service of intermediary, therefore the intermediary gets fee from investor.

⁵⁷Hamud M. Balfas, *Op.Cit.*, page 343.

⁵⁸Tjiptono Darmadji and Hedy M. Fakhruddin, *Op.Cit.*, page 22.

2. Securities seller, it means that while acting as the intermediary so that the securities companies can also conducting activities of selling and buying of securities for the interest of that securities company.

The Securities Company and also its representative in term of conducting the activities shall get the license, which is issued by OJK.⁵⁹ By that, the Securities Company is permitted to conduct its activity such as acting as the Broker-Dealer. Therefore some of the obligations which owned by the Broker-Dealer can be defined as follows:⁶⁰

- a. Prioritizing the investors' interest before conducting its own transaction for its own interest;
- b. In giving recommendation towards the investors to buy or sell the securities is obliged to consider the financial condition and purpose of investment from investors;
- c. Listing the time, day and date of all the orders of investors on the order's form;
- d. Giving a confirmation towards the investors before the end of day on stock exchange after transaction done;
- e. Issuing the receipt after accepting the securities or money from investors;
- f. Finishing the mandate of sell or buy from the principal;
- g. Providing the data and information for the investors' interest;

⁵⁹Article 30 poin 1 and acrticle 31 poin 1 of Law Number 8 of 1995.

⁶⁰Sekolah Pasar Modal Bursa Efek Indonesia Level 1-A, *Loc.Cit.*, page 30.

- h. Helping in management of fund for the investors' interest;
- i. Giving a recommendation towards investors.

Meanwhile, the role, function, and duty of Securities Company are as follows:

- a. Supporting the existence of capital market, in term of smoothing the fund rotation and information;
- b. Supporting the system and Exchange's activities as part of capital market and business actor;
- c. Increasing the activities of capital market's investment to support the national economy.

The Securities Company has functions to:

- a. As intermediary the fund flow and information between investor to investor and investor to issuers;
- b. As one of the main player in the Exchange in developing the movement and investment volume.

And Securities Company has duty to:

- a. In recognizing the societies about capital market and increasing the societies' interest to invest within stock exchange as one of the investment's instrument;
- b. Helping to the mobilization of societies' fund by selling and buying the securities among either the investors to investors or issuers.

One of the elements of crime in capital market is the misuse of trust which is given to criminal. As the example is insider trading, this has element the utilization of information which owned by corporation by related parties (insider), before those information are published to public. Since the information is coming from the corporation, the parties which are very possible to misuse are the insider to gain the benefit.⁶¹

Transparency or disclosure is kind of investor or public protection. Substantially, transparency unable public to get access of information which is correlated with the company. A fair and efficient market is if all of the investors get information in the same time along with quality of information. Juridically, disclosure is a guarantee for public right to always get important access by the sanction for the barrier or dereliction which is done by the company.

F. Research Method

The method of writing which is used in this research is as follows:

1. Object
 - a. The implementation of *good corporate governance* principles which can improve the efficient trading.
 - b. The necessity of demutualization done by Indonesia Stock Exchange as a measure to improve efficient trading.
2. Legal Sources
 - a. Primary Legal Sources

⁶¹Hamud M. Balfas, *Op.Cit.*, page 461.

It is the sources which has legally binding, those are Law Number 8 of 1995 about Capital Market, Law Number 21 of 2011 about Indonesian Financial Authority (OJK), Law Number 40 of 2007 about Indonesian Limited Liability Company, Government Regulation Number 45 of 1995 about the Implementation of Activities in Capital Market, III-A Kep-00401/BEI/12-2010 about the Amendment of Regulation Number III-A about Exchange Membership by Indonesia Stock Exchange.

b. Secondary Legal Sources

It is the source which is not legally binding. In this matter, it is from the literatures and books.

c. Tertiary Legal Sources

It is supporting sources, such as Legal Dictionary and Economic Dictionary.

3. Method of Collecting the Sources

Literature Research, it is examining the books, literatures, books and related materials which supporting the problem of this research.

4. Method of Approach

Method of approach which is used is comparative normative approach; it is a method which examines the Law and regulation which are related to the Capital Market.

5. Data Analysis

Data analysis is done qualitatively, it means the data which are acquired then presented descriptively and analyzed qualitatively.