# Employee Financial Participation Plan Implementation in the United States and the Netherlands: Lessons for Indonesia

**Brimanti Sari**
Leiden University, The Netherlands

**Article Info**

**Keyword:**

shareholders;
employee financial participation plan;
employee stock option;
equity based compensation;
corporate governance

**Article History:**
Received: 01 Aug 2020
Reviewed: 31 Aug 2020
Accepted: 19 Oct 2020
Published: 18 Dec 2020

Corresponding Author:

Email: brimantisari@gmail.com

## ABSTRACT

Employees have a major role in the sustainability of an organization. Employee satisfaction and business accomplishment are equally significant for the company's sustainability. One of the strategies companies undertake to create a harmonious workplace and stimulate productivity is by giving recognition, awards and/or compensation to their employees. In recent years, equity-based compensation through employee financial participation plans has been becoming more popular. There are several tailor-made participation schemes which may vary among jurisdictions. There include Stock Grants, Direct Employee Stock Purchase Plans, Phantom Stock, Stock Appreciation Rights (SARs) and Employee Stock Ownership Plans (ESOP). Consequently, the employees could be the beneficiary owner of the shares or be actual shareholders in the company. When employees own shares, they will be treated as shareholders. Depending on the restrictions laid out in the employee financial participation plan. This means that employees could be involved in corporate governance in the company.

## ABSTRAK

Karyawan memiliki peran utama dalam keberlangsungan suatu organisasi. Kepuasan karyawan dan pencapaian bisnis sama pentingnya bagi keberlanjutan perusahaan. Salah satu strategi yang dilakukan perusahaan untuk menciptakan tempat kerja yang harmonis dan mendorong produktivitas adalah dengan memberikan pengakuan, penghargaan dan/atau kompensasi kepada karyawannya. Dalam beberapa tahun terakhir, kompensasi berbasis ekuitas melalui program *employee participation* menjadi lebih populer. Ada beberapa skema partisipasi yang disesuaikan dengan kebutuhan yang mungkin berbeda diantara yurisdiksi. Diantaranya adalah *Stock Grants, Direct Employee Stock Purchase Plans, Phantom Stock, Stock Appreciation Rights (SARs), dan Employee Stock Ownership Plans (ESOP).* Akibatnya, karyawan dapat menjadi penerima manfaat dari saham atau menjadi pemegang saham aktual di perusahaan. Ketika karyawan memiliki saham, mereka akan diperlakukan sebagai pemegang saham. Bergantung pada batasan yang ditetapkan dalam rencana partisipasi keuangan karyawan, hal ini menimbulkan ruang untuk karyawan supaya dapat terlibat dalam tata kelola perusahaan di perusahaan.

## INTRODUCTION

Employee satisfaction and the company's financial success are equally significant in determining its sustainability. Some empirical studies on this matter indicate that the impact of employee satisfaction on the success of the organization is undeniable.[1] Many strategies have been created to foster employees' sense of belonging to a company in order to create a harmonious workplace and stimulate their performance. Employee retention is one of the objectives of giving an award, recognition or pecuniary bonus as compensation to an employee. Ongoing recognition can provide the invaluable motivation that can maintain employee commitment and performance across an organization.[2]

Various approaches to recognition can be adopted by employers depending on the situation. It is not uncommon for a company to combine employee awards, recognition, and compensation bonus in order to improve their efficacy. Besides performance-based bonuses, compensation could be given in the form of supplemental wages or the right to be enrolled in an employee financial participation plan. The function of an employee financial participation plan is to allow eligible employees to purchase and own company shares or benefit from the increase of the value of the company's shares over a period of time. This usually involves a separate legal entity acting as a trust institution to manage such a plan. It is important to note that employees may also be required to contribute some form of payment in order to obtain the benefits as ruled in the plan.

There are two approaches that a company may adopt for its employee financial participation plan, namely a broad-based or narrow-based approach. Companies that implement the broad-based plan offer participation to the majority of employees in the company, including low-level employees. A narrow-based plan, on the other hand, only allows executives, high-level managers, and members of the board of directors to participate. in a narrow-based plan, a director may amend his or her approach to decision-making within the company to be less opportunistic. A company which offers a broad-based plan, maybe attempting to boost their employees' performance and sense of belonging.

Nevertheless, it is important to note that the consequences of giving such compensation are not always wholly positive. In a narrow-based plan, when a corporation chooses to compensate directors who achieve certain targets such as increasing company earnings. When compensation is given to a small group of employees, for example, executive employees, the tendency to act selfishly is greater than when it is offered to large numbers of employees.

In many countries, there has been an increase in the trend of involving employees in a company's financial participation plan. Some literature argues that allowing employees to purchase shares through employee financial participation may align the interests of the employees and the shareholders of the company. When the plan allows employees to own company shares, employees can become shareholders and, as such, are entitled to all rights and benefits attached to the shares. This in turn affects their behavior and leads to a greater sense of belonging within the company.

---

[1] A, Raziq and R, Maulabakhsh, *Impact of Working Environment on Job Satisfaction, Procedia Economics and Finance (Vol 23), at 724* (2015).

[2] K.M. Surji, *The Negative Effect and Consequences of Employee Turnover and Retention on the Organization and Its Staff*, *5 No.25, at 64* (2013).

In theory, financial participation plans can be used as a tool to settle the agency problem between managers and shareholders. Settling agency problem in a corporation becomes one of the most important issues that needs to be addressed to achieve good corporate governance. The interests of the stakeholders such as shareholders, managers, employees and/or other stakeholders should be balanced. One may argue that the company should carry out its business in the best interests of the shareholders and indeed this is supported by some literature, which argues that the shareholders are considered owners of the company and therefore the operations of the corporation should take into account the best interests of the owners.

This approach is referred to as shareholder primacy. A common criticism is that certain individuals who merely own shares in the company cannot be considered the owner of the corporations. Referring to the concept of ownership under the Dutch Civil Code, ownership is the most comprehensive property that a person, the “owner”, can have to (in) a thing and the owner is free to use the thing to the exclusion of everyone else, provided that he respects the rights and entitlements of others to the thing and observes the restrictions based on rules of written and unwritten law. This means as an owner of a thing you can do anything you want since the owner has full control. One of the basic tenets of corporate law, however, is the separation of ownership and control.[3] If we argue that shareholders are owners of a corporation, they should easily be able to take control of all assets of the corporation as an absolute right. In reality, they lack control over their assets. Despite the debates, some states in the United States of America have adopted the Model Business Corporation Act which explicitly states that the shareholders are indeed owners of a corporation.[4]

According to the Annual Economic Survey of Employee Share Ownership in European Countries 2016 issued by the European Federation of Employee Share Ownership (“EFES”). In 2016, 94% of all large European companies had employee share ownership, of which 86% had all types of employee share plans, while 53% had “broad-based” plans for all employees, 63% had stock option plans and 28% of all European companies had launched new employee share plans. In the United States, employee financial participation is quite common and a large number of corporations are 100% employee-owned. Based on the updated information issued by the National Center For Employee Ownership (“NCEO”) there were 61,717 ESOPs in the United States as of 2014, holding total assets of more than USD 1.4 trillion.

This phenomenon has been stimulated by the issuance of legislative instruments primarily the United States, as one of the leading countries implementing employees shares ownership through Employee Stock Ownership Plans (“ESOPs”), Employee Stock Purchase Plans and Stock Option Plans.[5] The ESOP itself is a special type of benefit plan authorized by the Employee Retirement Income Security Act (ERISA) of 1974 which constitutes a qualified defined-contribution employee benefit. Accordingly, employers exercising an ESOP within their organization become eligible for tax-favored treatment under the aegis of the qualified plan.[6]

[3] R.J, Rhee, *A Legal Theory of Shareholder Primacy, 102 Minn. L. Rev*, *at 10.*
[4] J, Velasco, *Shareholder Ownership and Primacy. Scholarly Works, Paper 319, at 913* (2010).
[5] A. Saptarina, S. Budisantoso & H. Siswanto, *Studi Tentang Penerapan ESOP (Employee Stock Ownership Plan) Emiten atau Perusahaan Publik di Pasar Modal Indonesia, at 43* (2012).
[6] R. S. Taft, The Fabled ESOP, William & Mary Annual Tax Conference Paper 456 (1975).

Similarly, the European Union's interest in this issue has increased extensively over the last decade. Regulatory density and differences in fiscal treatment across different schemes pose major difficulties in implementing cross-border employee financial participation plans however. Since some member countries have already established adequate methods of involving employees in a company, the efforts of the European Commission and European Parliament in drafting a supranational regulation may result in conflict. Therefore it may be conflicting with the effort of European Commission and European Parliament in drafting a supranational regulation since some of the countries had established adequate instruments for involving employees in a company. This may also be the reason why some countries were reluctant to implement employee financial participation plans.[7]

Thirty years of research undertaken by the European Commission have confirmed that companies partly or entirely owned by their employees are more profitable, create more jobs and pay more taxes than their competitors without employee ownership.[8] The European Commission also found that such employee financial participation plans could lead to higher productivity and as a consequence, greater competition at the macroeconomic level.

As compared to implementation rates of employee financial participation plans in the US and the promotion of these plans by the European Union, rates of employee financial participation in Indonesia are not yet optimal given the fact that only 6.5% of all public companies have stimulated employee financial participation through ESOPs.[9] According to Indonesian Company Law, in the event of capital increase all issued shares must be offered to the existing shareholders proportionally unless addressed to the employees of the company, among others through employee share ownership along with all the rights and liabilities attached to the shares.[10]

In 2014, the Indonesian Financial Services Authority *(Otoritas Jasa Keuangan)* issued a draft regulation on employee stock options in public companies to the public in order to attract a response from stakeholders, however, this draft was later revoked by the OJK. The OJK has only issued general provisions concerning the increase of capital without pre-emptive rights. In this research, the author will primarily analyze how employee participation addresses the agency problem in a corporation. Given the variety of employee participation vehicles around the world, I will begin the main discussion of this thesis by elaborating upon the most common types of employee financial participation plan. This will be followed by a comparative study of statutory employee participation plans in several jurisdictions, such as the United States, the Netherlands, and Indonesia.

[7] Note that after the issuance of the following legislations the employees participations become mandatory: Council Directive 2001/86/EC of 8 October 2001 supplementing the Statue for European company with regard to the involvement of employees; Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society; Council Directive 2005/56/EC on cross-border mergers of limited liability companies.

[8] European Commission Final Report October 2014 regarding The Promotion of Employee Ownership Participation. Study prepared by the Inter-University Centre for European Commission's DG MARKT (Contract MARKT/2013/0191F2/ST/OP).

[9] See Saptarina et all, supra note 13, at 93.

[10] Article 43 paragraph (3) and its elucidation of Law No. 40 of 2007 on Limited Liability ("Indonesian Company Law").

## METHODS

The research will be conducted by looking at legal literature, journals and articles specific to the topic of employee financial participation plans. I also refer to studies, research, reports and surveys issued by a handful of select organizations which focus on employee financial participation (eg. NCEO, EFES, SNPI etc).

Any existing regulations, recommendations and/or legal instruments published by the governmental institutions in the chosen jurisdictions will also be examined. An interview with the authorized officer from the relevant institutions will also be undertaken in order to get confirmation of the findings.

## RESULTS AND DISCUSSION

### 1. The Concept of Employee Financial Participation and Its Role in Addressing Agency Problems

Each company may take a different approach in deciding what kind of employee financial participation plan is best suited to its needs. A company which aims to incentivize its employees with stock may choose a different type of plan as compared to a company looking to gather additional funds. In some jurisdictions, there might be differences subject to the relevant regulations.

#### 1.1. Types of Employee Financial Participation

##### 1.1.1. Stock Grants

The essence of this program is to compensate high performing employees by giving them the right to own some of the company's shares with the employer paying a part or all of the fees.[11] Some stock grants are restricted and some others are not. A common restriction is that there is a vesting period which requires the employee to remain employed at the company for several years before they can exercise the right to own the shares. Often, if an employee resigns or is dismissed, they lose the right to exercise their stock options. The main idea behind stock grants is to retain the employees, therefore it follows that only loyal and high performing employees are given this privilege.

In general, the employee will only be taxed when the shares are vested at the vesting date. When the stock vests, the company must report the fair market value of the shares as ordinary income.[12] Depending on the agreement between the employees and the employer, this type of plan maintains that employees will only be treated as shareholders after passing the vesting period and that consequently he or she can only exercise his or her rights (including the governance rights) after an agreed period of time.

##### 1.1.2. Direct Employee Stock Purchase Plans

This participation plan gives employees the option to purchase the company's shares voluntarily with their own funds, either at market or discounted price.[13] The company may set certain limitations on purchase, for instance, that any employee owning more than 5%

[11] http://budgeting.thenest.com/stock-grants-vs-stock-options-20564.html, accessed on 15 March 2017.
[12] http://smallbusiness.chron.com/company-tax-deduction-restricted-stock-awards-74170.html, accessed on 15 March 2017.
[13] https://www.nceo.org/articles/restricted-stock-direct-stock-purchase-plans, accessed on 15 March 2017.

of the company shares may not participate in the plan.[14] The employee pays the purchase price via salary deduction during the offering period and is also required to pay the down payment.

An administrative structure may be required to manage the collection of funds, purchase shares or ensure legal compliance for this participation plan. Therefore, in many cases the company will establish a committee or trust to administer the participation scheme. This type of plan may be difficult to administer for a privately held company which has a large number of employees. Privately held companies need to take capital market regulations into account due to the possibility that such an offering would trigger Initial Public Offering requirements under the relevant securities law and its regulations.

Depending on the jurisdiction, if there is no restriction, public company may wish to set its own any limitations on the plan, it is possible for executive employees to come to own a high enough percentage of company shares that this begins to affect the company's decision making processes. If no limitations apply, an executive employee could use this scheme as a self-entrenchment method.

#### 1.1.3. Stock Option Plans

Stock options are simply options to buy or sell a specific quantity of stock at a designated price for a specified period regardless of shifts in market value.[15] Most employee stock options expire in ten years and are granted with a price equal to the market price to the date of the grant.[16] When a stock option can be exercised, then the option is said to be "vested".[17]

By allowing the employee to exercise options at a pre-determined price, the employee is presumed to have a greater incentive to pursue long-term growth prospects for the firm, which translates to greater corporate profits.[18] Since the rights pertain to the individual, the company can select who has this right. If the company believes that certain designated employees could potentially harm the organization upon becoming shareholders, the company would be able to avoid this by terminating their employment so that the option rights are no longer valid.

#### 1.1.4. Employee Stock Ownership Plans (ESOP)

According to the ESOP Association, an Employee Stock Ownership Plan ("ESOP") is defined as an employee benefit plan which makes employees of a company owners of stock in that company.[19] However, in practice employees only receive the benefits of the plan when they retire or leave the company since according to most plans the company will have the right to buy back such shares. Therefore, it is largely known as a retirement or pension plan for the interest of the employees.

---

[14] http://personal.fidelity.com/products/stockoptions/stockpurchase.shtml#two-types-of-stock-purchase-plans, accessed on 15 March 2017.
[15] Black's Law Dictionary, 1459 8th ed (2004).
[16] Hall J, Brian. and Kevin J. Murphy, *The Trouble With Stock Options," Journal of Economic Perspectives*, *v17(3,Summer)* (2003).
[17] *Id.*
[18] B. R. Ellig, *The Complete Guide to Executive Compensation* (2002).
[19] http://www.esopassociation.org/explore/how-esops-work/what-is accessed 15 March 2017.

Under non-leveraged ESOPs, the company can opt to directly contribute newly-issued shares or cash to the ESOP trust ("ESOT"). Depending on the provisions as stated in the plan, it is possible that the employees pay nothing for this plan. The acquired shares may be allocated to each employee's account and administered by the ESOT. In a leveraged ESOP, the ESOP trust borrows money from a bank or lender to purchase the company's stock where the company guarantees the loan. The guarantee requires the company to pay a contribution to the ESOP trust which helps ensure that the ESOP trust will pay back its loan on time.

ESOPs may allow the purchase the of shares through the company or existing shareholders. The employee will eventually receive the shares or cash once retirement age has been reached or they leave the company. In general, the ESOT has a fiduciary responsibility to the plan participant, their beneficiaries and the ESOT itself since the trust is entitled to use its voting rights arising from the allocated shares.

Unless combined with some form of profit-sharing plan, employees' shares in the ESOT are not redeemable until retirement, termination, disability or death.[20] In such jurisdictions, such as the United States, the allocated shares may be subject to tax advantages and may be considered as investment income within the ESOP.[21]

#### 1.1.5. Phantom Stock and Stock Appreciation Rights (SARs)

This type of plan is often referred to as a "synthetic equity program" since it does not result in any transfer of share ownership to employees.[22] The National Center For Employee Ownership ("NCEO")[23] categorizes phantom stock as a promise to pay a bonus in the form of the equivalent of either the value of company shares or the increase in that value over a period of time. Stock Appreciation Rights ("SARs") are fairly similar to phantom stock but SARs provides the right to the monetary equivalent of the increase in the value of a specified number of shares over a specified period of time.

Like any other participation scheme, both phantom stock and SARs are subject to a vesting period which aims to retain employees. However, in contrast to ESOPs, both phantom stock and SARs are taxed when the employee exercises his or her rights to such a benefit where the value of the benefit or award is treated as ordinary income to the employee and is deductible by the company as the employer.[24]

### 1.2. Addressing Agency Problems through Employee Participation Plans

---

[20] V, Smith, Sociology Of Work : *An Encyclopedia, Thousand Oaks, California: SAGE Publications, at 241* (2013). Available at: http://web.a.ebscohost.com/ehost/ebookviewer/ebook/bmxlYmtfXzcxOTU1OF9fQU41?sid=b5ae806a-d1c5-4ef3- afe8-a20d00ad7292@sessionmgr4006&vid=1&format=EB&lpid=lp_215&rid=0, accessed on 16 March 2017.

[21] M.S, Scholes,. and M.A, Wolfson. *The Employee Stock Ownership Plans and Corporate Restructuring: Myths and Realities, Journal of Financial Management, Working paper 3094 (Spring)* (1990).

[22] See Saptarina et all, supra note 13, at 26.

[23] NCEO is a non-profit membership organization providing unbiased information and research on broad-based employee stock plans, see: http://www.nceo.org/pages/nceo.php, accessed on 16 March 2017.

[24] https://www.nceo.org/articles/phantom-stock-appreciation-rights-sars, accessed on 18 March 2017.

Employee financial participation plans can be offered to two main categories of employees, namely executive employees (narrow-based plan) and non-executive employees (broad-based plan). An employee financial participation plan granted to executive employees would play a role in reducing agency problems between the owners of the company (shareholders) and the managers themselves. The presumption that a manager would act in their personal interest instead of the owners' interest would fade away as their interests fall into alignment. This is in line with some literature which argues that employee financial participation plans could be a solution to resolving the vertical agency problem between shareholders and managers.

Regardless, some companies still wish to extend employee financial participation plans to non- executive employees. It is widely believed that granting equity to non- executive employees is a method of retaining employees and improving their performance. Employee retainment is influenced via vesting period requirements. Normally, a company will require the eligible employee to stay with the company for a specific period of time in order to lay claim to the compensation.[25] Employee financial participation plans could also be an option for companies with cash constraints that prefer to offer equity-based compensation.

Particularly in plans with diffused (dispersed) share ownership, it is unclear whether employee share ownership actually protects the interests of employees as a group, since employees generally remain minority shareholders without significant governance rights.[26] Therefore when considering the horizontal agency problem between the majority and minority shareholders, it can be argued that employee financial participation plans do little to help. However, in certain jurisdictions there may be strategies to overcome this issue, such as veto rights for the minority shareholders to decide particular things.[27]

The conflict between those parties is in assuring that the company does not behave opportunistically, in this case by exploiting workers. Where employee financial participation plans are offered to low-level employees, it may balance the interests of both parties.[28] Once a coalition of employees gain an ownership position in the firm they are much more likely to participate in corporate governance for the rights of employees as owners are significantly greater than the rights of employees as workers.[29]

### 1.2.1. First Agency Problem: Shareholders vs. Managers

The statement that "man is irretrievably self-interested" illustrates the economics of human nature.[30] It seems clear if we extend this statement to the corporation context that although hired by the shareholders of a corporation to act in line with corporate objectives, managers would nevertheless remain opportunistic. Even if managers receive adequate

[25] A, Damodaran, *Employee Stock Options (ESOPs) and Restricted Stock Valuation Effects and Consequences, September (2005)*, available at :http://people.stern.nyu.edu/adamodar/pdfiles/papers/esops.pdf, accessed 18 March 2017.

[26] L, enriques et all, *The Anatomy of Corporate Law: A Comparative and Functional Approach, 1th Ed. (2009)* at 122.

[27] OECD, *Related Party Transactions and Minority Shareholders Rights, 2012,* available at https://www.oecd.org/daf/ca/50089215.pdf, accessed on 5 July 2017.

[28] *Id*, at 64.

[29] C.P, Dunn and C.M, Daily, *The Fusion of Privilege and Power: ESOPs in Theory and Practice, 4(1) Employee Responsibilities and Rights Journal 67* (1991).

[30] See C.P, Dunn and CM. Daily, supra note 41, at 61.

incentives (eg. salary, health insurance etc), there is always the possibility that in carrying their duties, they are inclined to prioritize their own interests.

Theoretically, the crucial difficulty with every agency problem is that, because the agent generally has better information than the principal about relevant facts, the principal cannot easily assure himself that the agent's performance is precisely what was promised.[31]

The agency problem between shareholders and managers may be exacerbated when a corporation has a dispersed share ownership structure which means no single shareholder, or affiliated group of shareholders, is capable of exercising control over the firm. Share ownership appears futile since one shareholder's vote is unlikely to affect the outcome.[32] Thus, the shareholders tend to be rationally apathetic and support incumbent managers believing that managers are experts and have access to greater information.[33] As for the risk, managers can easily put their own interests ahead of the business and its stakeholders. Implementing an employee financial participation plan in such a company could represent a risk transfer strategy because employees may feel they have more control over performance outcomes.[34] However, this may vary in some jurisdictions. The greater the authority of the directors, the greater the moral hazard to the shareholders' value.

The directors' behavior may likely fall in line with the shareholders' interest if they are given some ownership. Having a sense of belonging, the directors would be more likely to act on behalf of the company. However, it's important to bear in mind that, in most states, the board of directors of a corporation will have broad statutory authority to award compensation, including equity compensation so they may have a huge opportunity to act in their own interests through such program.[35]

Exercising the directors' duties with their duty of loyalty means that the directors take into account the interest of all constituencies not merely their own. The directors should have no conflict of interest in order to make a business judgment. Otherwise, allegations of undertaking unfair and self-serving transactions would likely be raised by other constituencies towards the directors.

An employee financial participation plan for executive employees may also be deemed an exit strategy. The existing shareholders may wish to sell their share ownership in a corporation partly or wholly, perhaps because the shareholders would like to try another business in another investment field, or to diverse their investment in another company and therefore offering share ownership to the employees through a participation scheme can be a viable exit strategy.

It is also common for ESOPs to be used as an exit strategy because they prevent the immediate transferal of control over the company to the employees, with the trust

---

[31] L, Enriques et all, supra note 38, at 35.
[32] A, Kuenyehia. *Women, Marriage, and Intestate Succession in the Context of Legal Pluralism in Africa, Rev. 385, at 471 (2007)*. Available at:
http://heinonline.org/HOL/Page?public=false&handle=hein.journals/davlr40&page=407&collection=journals accessed on 20 March 2017.
[33] J, Velasco, *The Fundamental Rights of the Shareholder, U.C. Davis Law Review 40(2), at 407-468 (2006).*
[34] N.F, Asyik, (ESOP): *Company Characteristic Evaluation in Indonesia, Journal of Modern Accounting and Auditing Vol 9 No.5, at 678-689*.
[35] T. J. St. Ville, *Stock Option Litigation Guide, at 1 (2002).*

remaining the legal owner of the shares before the point at which employees can exercise their rights over the shares.

### 1.2.2. Second Agency Problem: Minority Shareholders vs. Majority Shareholders

The United States of America is the leading country which implement the employee financial participation plans. At the other end of the spectrum there are countries such as Indonesia where there is a maximum ratio of shares to be offered to employees e.g. 10% from the total shares offered in the initial public offering. This restriction can easily result in a company's employees only being minority shareholders in the corporation. Even though the employees' interests are aligned with the shareholders' interests, however, there would still be an agency problem between them.

Fundamental rights are given to parties who are shareholders in a corporation. Each shareholder may have a different reason for retaining his shares in the company so there may be a potential clash between these parties. As a result, the shareholders will find a way to control the company as much as they can. Unless agreed otherwise, the shares acquired by the employees through the employee financial participation plan would give the employees voting rights. Theoretically, voting rights are a tool to obtain control over a corporation, but in practice, control can be achieved in various ways, for example, nominating specific preferred directors, putting items on the agenda in shareholders meetings, or voting on certain key issues etc. Logically speaking, the larger percentage of shares an individual or group holds, the more control they have. This situation construes the second agency problem, which occurs between majority shareholders and minority shareholders.

Giving veto rights to the minority shareholders could be one governance strategy whereby the minority shareholders' approval is required to carry out certain decisions. This is to prevent abuse of power by the majority shareholders over the minority shareholders. However, it is worth mentioning that all the shareholders must take into account the interests of the company, regardless the percentage of ownership.

Things can become extremely complicated in cases where the minority shareholders are actually executive employees and where the possibility of self-entrenchment issues may arise. Most jurisdictions see requiring the minority shareholders' approval as the legal strategy for lowering the risk of related-party transactions. In the event of the directors proposing a related- party transaction and somehow managing to assure majority shareholders, then the minority shareholders approval will not hold up such transactions as the law intended.

Trusteeship strategy would be a better approach to resolve these aforementioned issues. In many jurisdictions, trusteeship strategy is carried out through an "independent director". Independent directors are defined board members who are not strongly tied by high-powered financial incentives to any of the company's constituencies but who are motivated principally by ethical and reputational concerns. Independent directors could balance the situations where interested directors propose a related-party transaction. The decision of whether to carry out the risky transaction could be decided by the independent directors.

#### 1.2.3. Third Agency Problem: Corporation vs. Other Stakeholders (Employees)

The third agency problem is between the corporation and the other parties with whom the company contracts, such as creditors, customers, and the employees.[36] The corporation refers to them as the shareholders. Giving rewards in the form of share ownership to the employee through an employee financial participation plan arises from the idea that doing so could improve company performance. The privilege of having share ownership in the company is that you receive information relating to company performance, finances, strategy and any other important matters related to the business. When employees lack any motivation to participate in corporate governance, the possibility of employees' financial participation as a vehicle to address the agency problem becomes moot.

When an employee financial participation plan is offered to non-executive employees (broad-based plan) the company has a chance to manage employee retention. It is important for the types of corporations which rely on manpower for sustainability such as start-ups or small-medium enterprises. Especially when the company suffers from financial constraints, the company has the option of giving shares instead of cash to its employees with the expectation that the employees' sense of belonging increase and eventually will improve the company's profitability. In addition, the vesting period attached to the employees' financial participation plan give employees an incentive to stay at the company longer.

In an ideal situation, non-executive employees could influence the corporation to be more employee- friendly through their financial participation. Obliquely, the employees' interest as a whole would be taken into account. The impact would be even greater when there is a work council in the corporation in addition to an employee financial participation plan. In the absence of rational apathy, the employee financial participation plan offered to non-executive employees would result in good corporate governance and the third agency problem would be resolved. However, the employees' interest would not be effectively taken into account by the corporation in making business decisions.

Notwithstanding the above, in ESOP schemes the ESOT could arguably settle the tension inherent in the third agency problem. Having an employee representative could be beneficial for the company in balancing the interest of all of the stakeholders, particularly in this case the interest of the employees.

## 2. The Implementation of Employee Financial Participation Plans in the United States of America

### 2.1. Types of employee participation and their legal framework

Unlike mandatory compensations (e.g. salary, social securities etc), an employee financial participation plan is optional for the employer. The employer may opt to provide its employees with some type of employee financial participation which is in line with the company's strategy. As regards their tax treatment, there exist both qualified plans and non-qualified plans. In general, an employee financial participation plan is regulated under the Internal Revenue Code ("IRC") and Employee Retirement Income Security Act of 1974 ("ERISA"). Specifically, the main provisions for the qualified plans are laid down in

[36] See L, Enriques et all, supra note 38, at 3.

the ERISA while the scope and requirements of the qualified plans are stated in the IRC §§ 401-418E. According to ERISA, failure to comply with the requirements in the IRC will result in a plan being deemed non-qualified.

## 2.2. Qualified Plans

Any plan can be considered a qualified plan if it meets the requirements laid out in the legislation. The requirements under IRC and ERISA vary depending on the type of the plan. However, the general requirements are the plan must be permanent, in writing and must be for the exclusive benefit of the sponsor's employees. The key players for the qualified plans consist of the sponsor, the participant and the plan administrator.
Qualified plans fall in two categories: defined contribution and defined benefit plans. A defined-contribution plan is a retirement plan that establishes individual accounts for each plan participant and provides benefits based solely on the amount contributed to participants' accounts.[37] The contribution will be used by the plan administrator or the trustee to make the investment. As a general principle of the qualified plans, any earning resulting from the investment will be distributed for the benefit of the plan participants.

### 2.2.1. Defined Contribution Plan

#### 2.2.1.1. Profit-Sharing Plan

A profit-sharing plan could be a powerful tool to raise employee awareness to improve their performance knowing that the benefits from this plan are derived from the company's earnings. The benefits of this plan can be distributed in cash or in stock. However, normally this plan does not provide the employees/trustee with voting rights. As a part of the qualified plans category, this plan comes with tax benefits where the dividend paid on shares is not deductible.

#### 2.2.1.2. 401(k) Provisions and Plans

This type of savings plan, established for the benefit of employees, allows employees to elect to defer a certain percentage of their compensation to provide for their retirement benefits.[38] This type of plan also enjoys tax exemption unless it is maintained by a State or local government or political subdivision thereof, or any agency or instrumentality thereof. The salary deferrals shall be deemed employer contributions and are not taxable to employees until distributed.[39]

#### 2.2.1.3. Money Purchase Pension Plans

In general, money purchase pension plans are known as retirement-oriented plans that commit the employer as the sponsor to a minimum annual contribution.[40] These are similar to the profit-sharing plans, except the contribution is fixed in the money purchase pension plan while it is variable in the profit-sharing plans.

#### 2.2.1.4. Target Benefit Plans

[37] See A, Schneeman, supra note 80, at 503.
[38] See A, Schneeman, supra note 80, at 505.
[39] *Id,* at 504.
[40] S. Rodrick., *An Introduction to ESOPs: How an employee stock ownership plan (ESOP) can benefit your company its owners, and its employees, 15th Ed. at 2 (2015).*

Similar to money purchase pension plans, target benefit plans must meet the minimum requirements of the IRC. A failure to operate the plan in relation to its written terms is an operational failure that may result in the loss of the plan's favorable tax treatment under the Internal Revenue Code.[41] Consequently, the plan will be disqualified and deemed a nonexempt trust plan where it will affects not only the trustee but also the employer and the participant.

##### 2.2.1.5. Stock Bonus Plans

This plan is similar to profit-sharing plans in terms of contribution. The main investment of this plan is in the employer's stock. The participants must have the right to demand distribution in the form of company stock. If the stock to be distributed is not publicly traded, the plan participant is granted the option of receiving cash instead of shares of stock, at a fair price according to a formula established in the plan.[42]

##### 2.2.1.6. Employee Stock Ownership Plans (ESOP)

The purpose of these plans is to give partial ownership of the company shares to eligible employees. The reason for this is because the company or the ESOT could borrow money from the lender (e.g. banks or any financial institution) which will be used for the investment. The company will be the guarantor for the ESOT loan and it will also make contributions to the ESOT in order to make sure the ESOT can repay the loan. Through the ESOT, the participants will receive stock or cash after retirement, death, disability, or termination of employment as provided for in the plan.

In relation to the tax benefit, dividends are deductible if used to repay an ESOP loan, are passed through to participants, or are voluntarily reinvested in company stock by the participants. Voting rights is one of the beneficial elements for ESOP participants. The vesting rules of the ESOP are the same as other types of qualified plans as regulated under the IRC and the ERISA.

#### 2.2.2. Defined Benefit Plans

It is understood from its name that the benefits of defined benefit plans are determined in the benefit formula as set out in the plan. The benefits of this plan are not subject to the company's profit because it is specified from the beginning that the benefit will be distributed based on the paid contribution. Unlike some types of defined contribution plans where the income or losses of the investment managed by the trustee will affect the amount of the benefit received by the participant, in this plan, the income or losses will only affect the amount of the contribution made by the employer annually.

### 2.3. Non-qualified Pension Plans

Unlike qualified plans, this plan does not come with the same tax benefit. Once a plan fails to meet the requirements of a qualified plan, the plan will be considered a non-qualified plan. Non-qualified plans do not have to be subject to the nondiscrimination, funding, participation, and vesting requirements of qualified plans under the IRC and the ERISA. A

[41] https://www.irs.gov/retirement-plans/vcp-submission-kit-failure-to-make-timely-required-contributions-to-a-money-purchase-or-target-benefit-plan, accessed on 1 May 2017.
[42] *Id.*

non-qualified plan allows an employee to defer the receipt of taxable salary or bonuses until some future year when the employee is in a lower tax bracket, thereby paying less in taxes when compensation is received.[43]

## 3. The Implementation of Employee Financial Participation Plans in the Netherlands

### 3.1. The Role of a STAK *(Stichting Administratiekantoor)*

The most unique features in the arena of employee financial participation in the Netherlands is the role of STAK *("Stichting Administratiekantoor")* as a special purpose vehicle which has a legal form as its foundation. The company itself establishes a STAK and appoints the members of the board of the STAK who will be in charge of managing the employee financial participation plan. In this case, employee representatives could be eligible to be appointed to the STAK board of directors provided that he or she does not meet the provisions in Article 2:297a paragraph (2) of the Dutch Civil Code.[44]

The purpose of establishing a STAK is to hold the shares of the company. The STAK can also issue certificates as the depository receipts giving the employees as the participants a right to dividends and other distributions attributable to the shares.[45] The STAK is a foundation that is the legal owner of certain assets since it acts as the custodian and administrator of the assets of the company: in this case, the company's stock.[46]

### 3.2. Types of Employee Financial Participation Plan

#### 3.2.1. Stock Purchase Plans

In the Netherlands, employers carrying out stock purchase plans can opt to provide eligible employees with the stock (shares) or depository receipts upon meeting the conditions stated in the plan. This plan could be used as the reward for employees who have met certain milestones in the company such as performance, sales achievement, period of employment etc. However, it is important for the company to consider to what type of employees which will be eligible for this plan.

Giving shares to eligible employees through this plan allows employees to retain their status as shareholders. Even if the shares do not contain voting rights, the remaining rights of the employees as shareholders may not be reduced in any way. Subject to the articles of incorporation of the company, shareholders could possibly attend the general meeting of shareholders regardless of their voting rights. Even they cannot directly affect the company's decision through voting rights, the employees can still express their opinion.

[43] https://www.wallstreetinstructors.com/ce/continuing_education/nonqualified/id51.htm, accessed on 2 May 2017.

[44] Article 2:297a paragraph (2) of Dutch Civil Code regulates persons who cannot be appointed as Director of a STAK such as (i) persons who are a Supervisory Director or who, if the tasks of the Directors within that legal person are divided between executive and non-executive directors, are a non-executive director for more than two legal persons; (ii) persons who are chairman of the Supervisory Board of a legal person or of the Board of Directors of a legal person if the tasks of the directors are divided between executive and non-executive directors.

[45] I. M, Meeuwenoord, *Share Options as instrument to attract & retain talent for Dutch startups, University of Twente, at 13 (2014).*

[46] R, van der Velden and M, Vogel, *The Dutch Foundation as Fiduciary Entity: Dutch Tax Aspect, Trusts & Trustee 2016; vol.22, at 696.*

As an alternative, a stock purchase plan provides employees with depository receipts. Depository receipts will be issued by the STAK. The depository receipt limits the rights of the employees to economic rights alone such as receipt of dividends and other distributions. Therefore the employees do not have voting rights nor rights to attend the general meeting of shareholders. This approach is suitable if the company would like to offer participation to non-executive employees with this plan.

#### 3.2.2. Stock Options Plans

Employees who have met certain conditions (e.g. qualified financing or meeting defined milestones) will be entitled to exercise their options to buy shares at a discounted price. These options could also result in the receipt of depository receipts instead of shares. However, the distinction of this plan with the stock purchase plan is that the shares in the stock options plan do not have to be issued yet.[47] The loophole of this provision is that risk of tax avoidance is high when the actual exercise moment of the stock option never took place.

#### 3.2.3. Stock Appreciation Rights (SARs)

This plan will provide eligible employees with a contractual claim on the value growth of the holding or operating company. The eligible employees will not be entitled to receive any shares or depository receipts and therefore no shares or depository receipts need to be issued. The rights of the employees rely on the company share valuations and the benefit will be payable in cash based on the formula stated in the plan. STAK involvement would not be necessary in this type of plan. It is important for the company to make sure that employees understand how this type of benefit works because it may affect their performance.

## 4. Improvements to Legislation Relating to Employee Financial Participation Plans in Indonesia

### 4.1. Recent Developments around Employee Financial Participation Plans in Indonesia

Based on the latest information stated in the Indonesia Corporate Governance Roadmap released by the Financial Services Authority (*Otoritas Jasa Keuangan "OJK")* in 2014, of a total of 494 issuers and publicly listed companies in Indonesia which submitted their annual reports to the regulator, approximately 11% have implemented an employee financial participation plan. These employee financial participation plans take the form of stock or stock options.

To date, employee shares ownership is only recognized through general regulations on limited liability and capital markets. According to Indonesian Company Law, all issued shares in the event of capital increase must be offered to the existing shareholders proportionally unless addressed to the employees of the company, for example, through an ESOP along with all the rights and liabilities attached to the shares.[48] For public

[47] https://www.blatterlegal.com/employee-participation-stock-purchase-plans-stock-options-plans-and-sars/?lang=en, accessed on 11 May 2017.
[48] See Article 43 paragraph (3) and its elucidation of Law No. 40 of 2007 on Limited Liability (Indonesian Company Law).

companies, there is no particular legislation on employee financial participation plans or employee ownership except on fixed rationing in the event of an Initial Public Offering.

According to the Capital Market and Financial Institutions Supervisory Agency (*Badan Pengawas Pasar Modal dan Lembaga Keuangan "Bapepam-LK")* Regulation No. IX.A.7 on Subscription and Rationing of Shares in the Initial Public Offering, the fixed rationing for the employee in the initial public offering allows for a maximum of 10% of the total offered shares in the initial public offering. In relation to the employee stock ownership program, the preemptive rights waiver can only be done within five years after passing the resolution of the general meeting of shareholders in which the capital increase without preemptive rights is approved and the rationing shall not exceed 10% of the paid-up capital of the public company.

In 2014, the OJK released a draft regulation on the employee stock ownership program of the public companies as its attempt to establish a legal framework on the employee financial participation plan, specifically the ESOP. The draft regulation aims to govern public companies and therefore private companies shall remain subject to Indonesian Company Law. However, it was confirmed by the head of Mining and Agrobusiness Companies Monitoring Division ("Officer") in the draft OJK regulation was that these regulations were revoked by the OJK and will not be enacted.[49] Unfortunately, to date, OJK has not yet compiled and published the data on the improvement percentage of the employee financial participation plan in Indonesia.

In 2019, the OJK released OJK Regulation No. 14/POJK.04/2019 regarding the Amendment to the Financial Services Authority Regulation No. 32/POJK.04/2015 concerning Increase of Capital for Public Companies by Providing Pre-emptive Rights. In this regulation stated that employees can be offered for the Share Ownership Program if there are remaining shares and/or equity stock that are not subscribed by the Pre-emptive Rights holder. The Share Ownership Program offered to employees can also be carried out in the context of increasing the capital of a public company, which can be done within 5 (five) years from the time the GMS was held.[50] With this provision, additional capital can only be made at the maximum of 10% (ten percent) of the number of shares that have been issued and fully paid or paid up capital.

As for the Initial Public Offering as regulated in Bapepam-LK Regulation No. IX.A.7, employees can be offered and order securities by filling out the order form and in accordance with the order conditions as stated in Article 2 of the regulation and giving it to the Rationing Manager. The implementation of the public offering to employees in the Bapepam-LK regulation is clearly different from the provisions for the public offering to employees in the OJK Regulation as aforementioned. This Bapepam-LK regulation does not regulate the existence of Pre-emptive Rights under which employees can directly order the available stocks. However, the Bapepam-LK Regulation No. IX.A.7 has been revoked and the current prevailing regulations regarding the Employee Financial Participation Plan is the OJK Regulation No. 14/POJK.04/2019.

### 4.2. Comparison of ESOP Implementations in Unilever in Different Jurisdictions

[49] Interview with the head of Mining and Agrobusiness Companies Monitoring Division of the Financial Services Authortiy (Otoritas Jasa Keuangan) on 21 June 2017.
[50] See Article 8C paragraph (1) letter b of OJK Regulation No 14/POJK.04/2019.

Based on its annual report ("REPORT") in 2016, Unilever launched Unilever's new global employee plan ("SHARES") in 17 countries. The plan offers a company share match, which will vest if the employees hold their investment shares for at least three years. SHARES is open for all employees below senior management level with various possibilities for investment depending on the jurisdiction.

#### 4.2.1. United States

The latest enrollment period of SHARES in the United States was in 1 November – 22 November 2016. The range of monthly contribution must be between USD32-253. Similar to the plan in Canada and Puerto Rico, the type of shares to be offered is the shares Unilever N.V listed in the New York Stock Exchange (NYSE) which have a USD share price. The eligible employees will receive following the vesting date: (i) vested investment shares; (ii) a dividend equivalent to vested matched shares; (iii) dividend payment.

Since SHARES is not a qualified plan, SHARES is not subject to ERISA and Section 401 of the IRC. For the investment shares, when the employees are subject to United States Federal income tax, all base salary and wages are treated according to the ordinary income tax regulations. The investment shares on the other hand will be received by the employees on an after-tax basis. Unilever may only deduct the applicable taxes from the employees' other compensation and Unilever may require that the employees pay to Unilever any or all of the taxable amount.

#### 4.2.2. The Netherlands

The contribution shall be in the range of EUR 25 – 200. The type of Unilever shares that the employee receives are Unilever N.V ordinary shares which are traded on the Euronext Amsterdam Stock Exchange ("AEX") and have a Euro share price. Similar to SHARES in the United States, no tax should be due when you acquire your investment shares because employees purchase the investment shares with their after-tax salary. However, 15% mandatory tax deduction will be due when the employees receive actual dividends that are paid on the investment shares.

According to the SHARES Plan rules in the Netherlands, there is time-based vesting and vesting due to certain conditions. It is up to the Plan Administrator discretion to determine the conditions. After the vesting date, the employee will have the rights of a shareholder, including dividend and voting rights in accordance with the employees' investment shares. This makes the benefits received by the employees in the Netherlands similar to the Plan in the United States.

#### 4.2.3. Indonesia

In 2014, Unilever Indonesia only offered their ESOP to managers, whereby after three years, an employee at managerial level is entitled to a share match equal to the value of their purchased shares.[51] The employee can contribute a minimum of IDR 387,250 and a maximum of IDR 3,098,000. The biggest difference in SHARES in Indonesia is the distribution will be in the form of cash at an equal value to the share price. Even though the

[51] See the 2014 Annual Report of Unilever Indonesia, at 136, available at https://www.unilever.co.id/id/Images/annual-report-2014-final_tcm1310-507725_1_id.pdf, accessed on 5 July 2017.

vesting period is 3 years, the employees are not forbidden to cash out their rights over the investment shares, matched shares and dividends, however there may be tax implications for doing so. In regard to tax advantages, employees do not have to pay tax when purchasing the investment shares because they are purchasing them with their after-tax salary.

### 4.3. The Role of Trust or Foundation in the ESOP Implementation in Indonesia

The preceding paragraphs indicate that employee financial participation plans in the United States and the Netherlands often involve a trust. In most cases where an ESOP is set up in the United States, the employer as the sponsor of the plan may establish a trust as the special purpose vehicle which will retain its status as the legal owner. The research paper released by the *Bapepam-LK* shows that the use of a trust is not recognized in employee financial participation plans in Indonesia. In practice, a lot of companies handle the employee financial participation plan through a committee where the directors or commissioners will be in charge of administering the employees' shares.

There are two possible vehicles that might be fit to carry out the role of a trust in a company which wishes to implement an ESOP. These are Foundations and Cooperatives.

A Foundation or "Yayasan" is subject to Law No. 16 of 2001 on the Foundations ("Foundation Law"). A Foundation is defined as a legal entity that has assets set aside and used to achieve specific objectives in the social, religious and humanitarian fields, and has no members. Foundations may conduct business activities in order to achieve their purposes and objectives by establishing business entities and/or participating in business entities. It is explained that Foundations shall not be drawn on as platforms of business and Foundations may not perform business activities directly unless through other business entities in which the Foundations invest their assets. Given this, it is assumed that a Foundation could be fit as a trust considering that the trust will investment the shares that it holds through an ESOP where the employees will be the beneficial owners. There is no formal data showing a precedent in Indonesia for whether any Foundation could act as a trust.

A Cooperative is regulated under Law No. 25 of 1992 on Cooperatives ("Cooperative Law"). A Cooperative is a business entity which consists of individuals (primary cooperatives) for a minimum of twenty individuals or cooperatives entities (secondary cooperatives) for a minimum of three cooperatives. The purpose of a Cooperative is to enhance the welfare of its members and, more broadly, society in accordance with the Indonesian Constitution. With regard to the ESOP, the Cooperative might be ideal to function as a trust. The members of the Cooperative could be specifically designated by the employees who are eligible for the ESOP. Also, a Cooperative could specify that membership will be terminated due to resignation or dismissal. Similar to other jurisdictions where the trust will act as the legal owners of the shares before vesting, in this case the employees as a whole will act as a shareholder since the highest authority of the Cooperative is the members' meeting.

Looking at these two possibilities, it seems that a Cooperative rather than a Foundation fulfills the needs of a trust for an ESOP best. Firstly, there is major doubt regarding whether a Foundation it can be used to represent employees' interest in the ESOP since there is no clear explanation on what is meant by its "social" obligations. Meanwhile, the

objective of the Cooperative is to increase the welfare of its members and when a Cooperative is established for ESOP participants then it is possible for a Cooperative to act as a trust.

## CONCLUSION

In recent times, awareness has increased of the benefits to the employer of having an employee financial participation plan. This is proven by the increase in employee financial participation plans in the United States, the Netherlands and Indonesia. As supported by many pieces of research and scientific studies, the linear relationship between employee satisfaction and business success is undeniable. Each type of participation scheme has it own unique characteristics. Stock Grants, Direct Employee Stock Purchase Plans, Phantom Stock Ownership Plans and Stock Appreciation Rights as well as Employee Stock Ownership Plans are the most common options at this point in time. Companies may select the type of participation scheme that best suits their purposes.

Some participation plans provide the employees with shares and consequently make the employees shareholders of the company. Subject to the plan's restrictions, employees will also be entitled to the rights attached to the shares, such as to vote, to attend the general meeting of shareholders, to put an item on the agenda in the general meeting of shareholders and to receive dividends. Otherwise, the employee will receive only the economic benefit depending on the valuation of the shares. Both types of compensation be beneficial to the good corporate governance of the company.

The main challenge surrounding the relationship between managers and shareholders is that managers have better information than the shareholders and therefore there is a chance for the managers to act only in their own interests. Since the cost of obtaining information for the shareholders is relatively high, minority shareholders may become apathetic. Implementing an employee financial participation plan in such a company could be used as a risk transfer strategy because monitoring costs are high and the employees will tend to have more control over performance outcomes.[52]

Indonesia is one example of a jurisdiction which has restrictions on the shares that can be offered to the employees e.g. 10% from the total shares offered shares in the initial public offering. This requirement ensures that employees will stay the minority shareholders in a corporation, especially public companies. Issues between the perspectives of minority and majority shareholders pertaining to certain matters are known as the second agency problem. A strategy to address this could be as follows (i) give veto rights to the minority shareholders to decide certain matters; (ii) appoint an independent director; (iii) derivative suits rights.

The third agency problem is between the corporation and the other parties with whom the company contracts, such as creditors, customers, and the employees. The challenge here is the existence of ratio apathy on the employees' part in participating in corporate governance. Even though the employee has access to information on the company, it is still difficult motivate employees to participate in corporate governance. The role of trust may not significantly impact the resolution of the third agency problem since there remain concerns around whether the trust is truly independent and neutral.

[52] N.F, Asyik, supra note 46.

**Acknowledgment**
This article is based on the Advanced LL.M. Thesis the author submitted in fulfilment of the requirements of the Master of Laws: Advanced Studies Programme in International Civil and Commercial Law degree, Leiden Law School (Leiden University).

## REFERENCES

**Statutes and statutory instruments**
Dutch Civil Code.

Law No. 40 of 2007 on Limited Liability ("Indonesian Company Law").

**Books**
B. R. Ellig, *The Complete Guide to Executive Compensation*, (McGraw-Hill 2002).

L, Enriques, et all, *The Anatomy of Corporate Law: A Comparative and Functional Approach,* (1th Ed. 2009) 122.

T. J. St. Ville, *Stock Option Litigation Guide,* (Pike & Fisher, Inc 2002) *1.*

**Encyclopedias**
Black's Law Dictionary, 1459 8th ed (2004).

**Journal articles**
A, Raziq and R, Maulabakhsh, "Impact of Working Environment on Job Satisfaction, Procedia Economics and Finance", (Vol 23), 724 (2015).

A. Saptarina, S. Budisantoso & H. Siswanto, "Studi Tentang Penerapan ESOP (Employee Stock Ownership Plan) Emiten atau Perusahaan Publik di Pasar Modal Indonesia", 43 (2012).

C.P, Dunn and C.M, Daily, "The Fusion of Privilege and Power: ESOPs in Theory and Practice", 4(1) Employee Responsibilities and Rights Journal 67 (1991).

J, Velasco, "Shareholder Ownership and Primacy", Scholarly Works, Paper 319, 913 (2010).

J, Velasco, "The Fundamental Rights of the Shareholder", U.C. Davis Law Review 40(2), 407-468 (2006).

Hall J, Brian. and Kevin J. Murphy, "The Trouble With Stock Options," Journal of Economic Perspectives", v17(3,Summer) (2003).

I. M, Meeuwenoord, "Share Options as instrument to attract & retain talent for Dutch startups", University of Twente, 13 (2014).

K.M. Surji, "The Negative Effect and Consequences of Employee Turnover and Retention on the Organization and Its Staff', 5 No.25, 64 (2013).

M.S, Scholes,. and M.A, Wolfson, “The Employee Stock Ownership Plans and Corporate Restructuring: Myths and Realities”, Journal of Financial Management, Working paper 3094 (Spring) (1990).

N.F, Asyik, “(ESOP): Company Characteristic Evaluation in Indonesia”, Journal of Modern Accounting and Auditing Vol 9 No.5, 678-689.

R.J, Rhee, “A Legal Theory of Shareholder Primacy”, 102 Minn. L. Rev, 10.

R. S. Taft, The Fabled ESOP, William & Mary Annual Tax Conference Paper 456 (1975).

R, van der Velden and M, Vogel, “The Dutch Foundation as Fiduciary Entity: Dutch Tax Aspect, Trusts & Trustee 2016”, vol.22*,* 696.

**Online journals**

A, Damodaran, Employee Stock Options (ESOPs) and Restricted Stock Valuation Effects and Consequences, September (2005), <:http://people.stern.nyu.edu/adamodar/pdfiles/papers/esops.pdf> accessed 18 March 2017.

A, Kuenyehia. Women, Marriage, and Intestate Succession in the Context of Legal Pluralism in Africa, Rev. 385, at 471 (2007). <http://heinonline.org/HOL/Page?public=false&handle=hein.journals/davlr40&page=407&collection=journals> accessed on 20 March 2017.

S. Rodrick., An Introduction to ESOPs: How an employee stock ownership plan (ESOP) can benefit your company its owners, and its employees, 15th Ed. at 2 (2015). <https://www.irs.gov/retirement-plans/vcp-submission-kit-failure-to-make-timely-required-contributions-to-a-money-purchase-or-target-benefit-plan> accessed on 1 May 2017.

V, Smith, Sociology Of Work : *An Encyclopedia, Thousand Oaks, California: SAGE Publications, at 241* (2013), <http://web.a.ebscohost.com/ehost/ebookviewer/ebook/bmxlYmtfXzcxOTU1OF9fQU41?sid=b5ae806a-d1c5-4ef3- afe8-a20d00ad7292@sessionmgr4006&vid=1&format=EB&lpid=lp_215&rid=0> accessed on 16 March 2017.

**Command papers and Law Commission reports**

European Commission Final Report October 2014 regarding The Promotion of Employee Ownership Participation. Study prepared by the Inter-University Centre for European Commission’s DG MARKT (Contract MARKT/2013/0191F2/ST/OP).

**Websites and blogs**

Blatterlegal, <https://www.blatterlegal.com/employee-participation-stock-purchase-plans-stock-options-plans-and- sars/?lang=en> accessed on 11 May 2017.

Fidelity, ‘Stock Plan Services’, <http://personal.fidelity.com/products/stockoptions/stockpurchase.shtml#two-types-of-stock-purchase-plans> accessed on 15 March 2017.

Hunkar Ozyasar, ‘Stock Grants Vs. Stock Options’ <http://budgeting.thenest.com/stock-grants-vs-stock-options-20564.html> accessed on 15 March 2017.

National Center for Employee Ownership, ‘About’, <http://www.nceo.org/pages/nceo.php> accessed on 16 March 2017.

National Center for Employee Ownership, ‘Phantom Stock and Stock Appreciation Rights (SARs)’, <https://www.nceo.org/articles/phantom-stock-appreciation-rights-sars> accessed on 18 March 2017.

National Center for Employee Ownership, ‘Restricted Stock and Direct Stock Purchase Plans’, <https://www.nceo.org/articles/restricted-stock-direct-stock-purchase-plans> accessed on 15 March 2017.

OECD, ‘Related Party Transactions and Minority Shareholders Rights’, 2012, <https://www.oecd.org/daf/ca/50089215.pdf> accessed on 5 July 2017.

Steve McDonnel, ‘Does a Company Get a Tax Deduction for Restricted Stock Awards?’, <http://smallbusiness.chron.com/company-tax-deduction-restricted-stock-awards-74170.html> accessed on 15 March 2017.

The ESOP Association, <https://esopassociation.org/explore/how-esops-work/what-is%20accessed%2015%20March%202017> accessed 15 March 2017.

Unilever, ‘2014 Annual Report of Unilever Indonesia’, <https://www.unilever.co.id/id/Images/annual-report-2014-final_tcm1310-507725_1_id.pdf> accessed on 5 July 2017.

Wall Street Instructors Inc, ‘Nonqualified Plans’, <https://www.wallstreetinstructors.com/ce/continuing_education/nonqualified/id51.htm> accessed on 2 May 2017.

**Interview**

Interview with the head of Mining and Agrobusiness Companies Monitoring Division of the Financial Services Authority *(Otoritas Jasa Keuangan)* on 21 June 2017.