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REPURCHASE AGREEMENT UNDER INDONESIAN LAW: PRESERVING TITLE TRANSFER STRUCTURE AND RETHINKING MARGIN TRANSFER

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Abstract

Repurchase agreements play an important role in modern financial markets by providing short-term liquidity through the transfer of securities coupled with an obligation to repurchase equivalent securities at a later date. In Indonesia, however, legal uncertainty remains in two closely connected respects. First, a repurchase agreement may be recharacterised as a collateralised loan rather than a true sale and repurchase transaction, with significant consequences for the legal status of the securities, the parties' rights, and enforcement. Second, margin transfers in repurchase agreements raise a distinct doctrinal question under Indonesian law, particularly regarding how such transfers can be accommodated without undermining the transaction's title-transfer structure. This study employs normative legal research, drawing on statutory, conceptual, and comparative approaches. It examines the Indonesian regulatory framework governing repurchase agreements, relevant principles of Indonesian private law on transfer of rights and security interests, and comparative developments in financial collateral law. This article argues that the risk of recharacterisation may be reduced through clearer contractual drafting, conceptual consistency, and appropriate dispute resolution mechanisms. It further argues that although classical pledges may appear to offer a familiar analogy for margin transfers, relying on pledges as the legal basis for repurchase agreement margining risks blurring the distinction between repurchase agreements and collateralised loans and may therefore increase recharacterisation risk. The preferable approach is to preserve the title-transfer logic of repurchase agreement documentation by relying, in the short term, on sell-and-buyback mechanisms available within the repurchase agreement framework, while, in the longer term, Indonesia would benefit from a regulatory framework dedicated to financial collateral.

Keywords: *financial collateral, legal basis, margin transfer, recharacterisation risk, repurchase agreement*

I. INTRODUCTION

In modern financial markets, repurchase agreements serve as a key mechanism for short-term liquidity management, enabling market participants to obtain funding by transferring securities subject to an obligation to repurchase them at a predetermined price and time. This function has been conceptualised as a 'repurchase agreement trinity' in central banking practice, whereby repurchase agreement markets are simultaneously expected to preserve safe and liquid collateral, ensure stable short-term funding, and support financial stability. Three objectives that can prove difficult to reconcile in practice and that make legal certainty over the transaction's characterisation especially important.[1] Their widespread use in supporting liquidity management, funding efficiency, and the efficient circulation of funds reflects their central role in contemporary financial practice.[2] Despite their economic importance, however, the legal characterisation of repurchase agreements remains problematic in some jurisdictions, including Indonesia.[3] A central legal difficulty lies in determining whether a repurchase agreement should be treated consistently with its formal design as a true sale and repurchase transaction, or instead recharacterised as a collateralised loan based on its economic substance.[4] This issue is significant because the legal characterisation of the transaction affects the status of the transferred securities, the parties' rights and obligations, and the enforceability of the agreed transaction structure.

Under Indonesian law, legal uncertainty surrounding repurchase agreements appears in at least two important respects. First, there is a risk of recharacterisation, namely the possibility that a court or other adjudicating body may reclassify a repurchase agreement as a loan secured by collateral rather than an outright transfer followed by a repurchase obligation. Such recharacterisation may have serious legal consequences, particularly regarding ownership of the securities, the parties' rights upon default, and the broader legal treatment of the transaction. Second, repurchase agreements also raise a

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1 Daniela Gabor, "The (Impossible) Repo Trinity: The Political Economy of Repo Markets," *Review of International Political Economy* 23, no. 6 (2016): 967–1000, https://doi.org/10.1080/09692290.2016.1207699

2 Moorad Choudhry, *The Repo Handbook*, 2nd ed. (Butterworth-Heinemann, 2010), 1–15, DOI: 10.1016/C2009-0-16714-4; Richard Comotto, *A Guide to Best Practice in the European Repo Market* (Zurich: ICMA, 2021), 6–8, https://www.icmagroup.org/assets/documents/Regulatory/Repo/ERCC-Guide-to-Best-Practice-March-2021-300321.pdf.

3 Ivan Tot, "The Risk of Re-characterization of Title Transfer Financial Collateral Arrangements," *InterEULawEast : Journal for the International and European Law, Economics and Market Integrations* 5, no. 2 (2018): 123–150; Matthias Haentjens, "Title Transfer and Recharacterization," in *Financial Collateral: Law and Practice*, ed. Matthias Haentjens (Oxford University Press, 2020), 254–284.

4 Hans Tjio, "Form or Substance: Construction or Characterisation," in *SAL Conference 2011: Developments in Singapore Law between 2006 and 2010—Trends and Perspectives*, eds. Yeo Tiong Min et al. (Academy Publishing, 2011), 814.

distinct issue concerning the transfer of securities as margin. Although margin transfer serves an important function in financial practice, its legal treatment under Indonesian law remains uncertain, especially when attempts to explain margining through traditional securities law may undermine the transaction's intended title-transfer structure.

These issues are important not only for dispute resolution, but also for crafting agreements that pre-emptively address them. The legal analysis of repurchase agreements should not be limited to the consequences of recharacterisation after the fact. It should also consider whether the doctrinal framing of repurchase agreements, including the treatment of margin transfer, reinforces or weakens the transaction's intended legal structure from the outset. This preventive perspective is particularly relevant in financial market transactions, where predictability, legal certainty, and enforceability are essential to market confidence and transaction stability.

This article, therefore, addresses two central questions. First, how should the risk of recharacterisation of repurchase agreements under Indonesian law be understood and mitigated? Second, how should margin transfer in repurchase agreement transactions be characterised under Indonesian law without conflating repurchase agreements and collateralised loans? These questions are examined within the Indonesian legal framework governing repurchase agreements, including the relevant principles of the Civil Code and the regulatory framework applicable to repurchase agreements.

In answering these questions, this study employs normative legal research using statutory, conceptual, and comparative approaches. The analysis focuses on Indonesian legal principles concerning contracts, transfers of title and ownership rights, and security interests, while also considering comparative legal developments relevant to repurchase agreements and financial collateral arrangements. Through this method, the article assesses both the doctrinal basis of repurchase agreements under Indonesian law and the adequacy of the existing framework in responding to the legal needs of modern financial market practice.

This article argues that the risk of recharacterisation may be reduced through clearer and more carefully structured contracts, supported by greater legal certainty, conceptual consistency, and appropriate dispute resolution mechanisms. It further argues that, although classical pledges may appear to offer a familiar doctrinal analogy for margin transfers, reliance on pledges as the legal basis for repurchase agreement margining risks blurring the distinction between repurchase agreements and collateralised loans and increasing recharacterisation risk. The preferable approach is to preserve the title-transfer logic of repurchase agreements by relying, in the short term, on sell-and-buyback mechanisms available within the repurchase agreement framework, while, in the longer term, Indonesia would benefit from developing a dedicated financial collateral framework.

This article proceeds as follows. The first part explains the concepts, structures, and legal characteristics of repurchase agreements and analyses the risk of recharacterisation under Indonesian law. The second part examines margin transfer in repurchase agreements, evaluates the limits of classical pledge doctrine in this context, and argues that sell-and-buyback mechanisms provide a more coherent short-term approach. The final part sets out the conclusions and recommendations.

II. THE LEGAL AND REGULATORY FRAMEWORK FOR REPURCHASE AGREEMENTS IN INDONESIA

Repurchase agreements are important instruments for short-term liquidity management in financial markets. In a repurchase agreement, one party transfers securities to another party in exchange for cash and undertakes to repurchase equivalent securities at a later date and at a predetermined price. Economically, this structure enables market participants to obtain short-term funding while allowing the counterparty to hold securities during the term of the transaction. In practice, repurchase agreements play an important role in enhancing market liquidity and supporting the efficient circulation of capital. Repurchase agreements are therefore widely recognised as a principal mechanism for short-term funding and liquidity management in modern financial markets.[5] Evidence from the 2007–2009 financial crisis indicates that repurchase agreement market illiquidity, especially involving special collateral, serves as a primary vector for systemic contagion across interconnected financial networks, thereby necessitating stringent legal governance.[6]

In Indonesia, the legal framework for repurchase agreements is principally governed by Financial Services Authority (*Otoritas Jasa Keuangan* or OJK) Regulation No. 9/POJK.04/2015 concerning Guidelines for Repurchase Agreement Transactions for Financial Services Institutions (the Repurchase Agreement Regulation), which defines a repurchase agreement as a contract to sell or buy securities with a promise to buy or sell them back at a predetermined

5 Choudhry, *The Repo Handbook*, 3–18; ASIFMA and ICMA, *Guide on Repo in Asia* (2015), 4–6; Angus Duncan and Robert Cannon, *Repos of Loans – Now Possible* (Cadwalader, Wickersham & Taft LLP, n.d.), 1–5, accessed March 17, 2026, https://www.cadwalader.com/uploads/books/105f9f59f9b4806acab6368322ebbb31.pdf.

6 Stefano Corradin and Angela Maddaloni, "The Importance of Being Special: Repo Markets During the Crisis," *Journal of Financial Economics* 137, no. 2 (2020): 392, https://doi.org/10.1016/j.jfineco.2020.02.006.

time and price.[7] This framework provides the regulatory foundation for repurchase agreements in Indonesia and reflects the intention to structure them as sale-and-repurchase transactions rather than as secured or collateralised loans.

In addition to the Repurchase Agreement Regulation, the legal context of repurchase agreements in Indonesia should also be read within the broader framework of Indonesian capital market and financial sector regulation. In this regard, Law No. 4 of 2023 concerning the Development and Strengthening of the Financial Sector is relevant, as it shows that repurchase agreement practice operates within a broader regulatory environment beyond private and contract law alone.[8]

An important feature of the Indonesian framework is the requirement that repurchase agreement transactions result in a transfer of ownership of the securities and are documented through a standardised master agreement.[9] The Repurchase Agreement Regulation, Article 2, requires that repurchase agreement transactions result in a transfer of ownership of the purchased securities from the seller to the buyer. Article 5 requires that repurchase agreement transactions be conducted and documented through a standardised master agreement as issued or recognised by OJK. In this regard, the Indonesian Global Master Repurchase Agreement (Indonesian GMRA) serves as the principal contractual framework for repurchase agreements.[10] The emphasis on transfer of ownership is intended to distinguish repurchase agreements from collateralised loans and to clarify that the rights attached to the securities follow the structure agreed upon by the parties under the repurchase agreement. This feature is not merely a formality. It indicates that the Indonesian regulatory framework explicitly adopts a title-transfer architecture as the legal model for repurchase agreement transactions and therefore requires conceptual consistency in interpreting repurchase agreements.

That regulatory choice is significant to the analysis in this article. If the Indonesian repurchase agreement regulation is built on the premise that ownership over the securities is transferred to the buyer, then the legal treatment of rights and obligations arising during the life of the transaction, including margining arrangements, should, as far as possible, be consistent with that title-transfer structure. Otherwise, the legal analysis could inadvertently reintroduce the very collateral-based understanding that the repurchase agreement framework is designed to avoid.

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7 Indonesia, Otoritas Jasa Keuangan (OJK), *Regulation No. 9/POJK.04/2015 on Guidelines for Repurchase Agreement Transactions for Financial Services Institutions* (2015).

8 Indonesia, *Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector* (2023).

9 Indonesia, OJK, *Regulation No. 9/POJK.04/2015*.

10 OJK, *Indonesia Global Master Repurchase Agreement (Indonesia GMRA)*, annex to OJK Circular Letter No. 33/SEOJK.04/2015 (Jakarta, 2015).

Nevertheless, the existence of this regulatory framework does not entirely remove the legal difficulties surrounding repurchase agreements in Indonesia. In particular, two significant issues remain. First, despite the formal transfer-of-title structure, repurchase agreements may still be recharacterised as a secured loan in certain legal disputes. Second, market practices relating to margin transfers raise further questions regarding the proper legal treatment of the transfer of securities under Indonesian law. The significance of the second issue lies not only in identifying a doctrinal explanation for margin transfer, but also in ensuring that such an explanation does not undermine the title-transfer logic that the Indonesian repurchase agreement framework seeks to preserve. These two issues are examined separately in the following sections.

III. RECHARACTERISATION RISK IN REPURCHASE AGREEMENTS

The principal legal risk in repurchase agreements lies in the possibility of recharacterisation. Although a repurchase agreement is formally structured as a sale of securities followed by an agreement to repurchase equivalent securities, a court may, in certain circumstances, look beyond that form and assess the transaction according to its economic substance. Where the transaction is regarded primarily as a financial arrangement, it may be treated not as a true sale and repurchase but as a collateralised loan. This issue is significant because the legal character of the transaction affects the ownership of the securities, the parties' rights upon default, and the legal framework governing enforcement and dispute resolution. This section therefore examines the doctrinal basis of recharacterisation risk, its illustration in Indonesian case law, and several measures that may reduce that risk in practice.

III.A. Why a Repurchase Agreement May Be Recharacterised as a Collateralised Loan

Recharacterisation risk arises from the tension between the legal form of repurchase agreements and their underlying economic function. On its face, a repurchase agreement is documented as an outright sale of securities with a corresponding obligation to repurchase equivalent securities at a later date. From this perspective, the buyer acquires ownership of the securities and, in principle, may exercise the rights attached to them, including the right to transfer, dispose of, or otherwise use the securities during the term of the transaction.[11] Paragraph 1 of the Indonesian GMRA structures the transaction

[11] OJK, *Indonesian GMRA*; Haentjens, "Title Transfer and Recharacterization," 254–258; Duncan and Cannon, *Repos of Loans*, 10–14.

as an outright sale of securities with an obligation to repurchase equivalent securities at a later date.

This formal position, however, does not necessarily mean that the seller ceases to retain all economic benefits associated with ownership of the securities. Under the Indonesian GMRA, where an income payment date occurs during the term of the repurchase agreement, the buyer is required to transfer or credit the seller an amount equal to any coupon, dividend, or other income paid by the issuer. In market terms, such compensatory amounts are commonly referred to as manufactured payments.[12] This shows that, although legal title is transferred to the buyer, the economic benefit associated with the securities may still be contractually retained by the seller. That arrangement does not, by itself, negate the transfer of title, but it may strengthen the view that the seller retains a continuing economic interest in the securities notwithstanding the transaction's formal structure. This tension between legal form and economic substance is not unique to Indonesia. Comparative studies of repurchase agreement markets across different legal systems suggest that the risk of recharacterisation arises wherever the economic function of a repurchase agreement transaction as a financing arrangement is perceived as inconsistent with its formal legal structure as a sale and repurchase. The legal treatment of repurchase agreement contracts differs significantly between the EU and the United States, with consequential implications for recharacterisation risk and collateral enforcement.[13] This transatlantic divergence reflects a deeper structural choice between title-transfer and pledge-based collateralisation, with the former prevailing in European civil law and common law jurisdictions alike through outright transfers of legal ownership, and the latter accommodating US bankruptcy law through recharacterisation fall-back provisions that treat repurchase agreements as secured lending if title transfer proves unenforceable.[14]

However, the analysis does not necessarily end with formal ownership transfer. A court may instead consider whether the transaction, in substance, functions as a financing arrangement in which securities are transferred to secure the repayment of a loan.[15] In such a situation, the seller's continuing

[12] OJK, *Indonesia GMRA*, para. 5(a); ICMA, "Frequently Asked Questions on Repo" (Zurich: ICMA, 2019), FAQ no. 22, www.icmagroup.org/assets/documents/Regulatory/Repo/Repo-FAQs-January-2019.pdf.

[13] Songjiwen Wu and Hossein Nabilou, "Repo Markets Across the Atlantic: Similar but Unalike," *European Business Law Review* 30, no. 4 (2020): 520–528, https://dx.doi.org/10.2139/ssrn.3165720.

[14] Luca Meneghini, "The Legal and Economic Underpinnings of Repo Transactions: A Comparative Overview," *Rivista di Diritto del Risparmio*, no. 3 (2019): 38, https://www.dirittodelrisparmio.it/wp-content/uploads/2020/05/Rivista-di-Diritto-del-Risparmio-Fascicolo-3_2019.pdf.

[15] Tot, "The Risk of Re-characterisation," 130–140; Haentjens, "Title Transfer and Recharacterization," 265–275; Tjio, "Form or Substance," 1–3, 6–10.

obligation to repurchase the securities may indicate that the seller retains a substantial economic interest in the transaction, even though legal title has formally passed to the buyer. The resulting tension between legal form and economic substance is what gives rise to the risk of recharacterisation.

Several elements may support such a substantive reading of the transaction. First, although the buyer is the legal owner of the securities during the term of the repurchase agreement, the seller may retain the economic benefit associated with the securities, including income that is contractually passed back or economically preserved by the seller.[16] Second, margining mechanisms may further indicate that the transaction is structured to manage credit exposure rather than to achieve a final transfer of ownership. In paragraph 4 of the Indonesian GMRA, governing margin maintenance, a party may call for a margin transfer where the market value of the purchased securities diverges from the repurchase price.[17] The requirement to transfer additional securities or funds in response to market fluctuations may be viewed as consistent with a financing relationship in which the securities serve as collateral. These factors do not, however, automatically convert a repurchase agreement into a secured loan, but they may influence how a court could assess the true nature of the transaction. For the same reason, doctrinal explanations that frame aspects of the transaction in the language of securities law may carry consequences for interpretation of the agreement. Where margin transfer is explained through concepts that emphasise collateralisation rather than title transfer, the legal analysis may unintentionally reinforce the very substantive reading that gives rise to recharacterisation risk.

If a repurchase agreement is recharacterised as a collateralised loan, the legal consequences are substantial. The buyer may no longer be treated as an outright owner of the securities, but rather as a creditor holding the securities as collateral for the seller's repayment obligation. This shift may affect the parties' rights to dispose of the securities, the applicable enforcement mechanisms, and the treatment of the transaction in a dispute or insolvency proceedings. Under Indonesia's law on insolvency and suspension of payments, which governs the treatment of assets and contractual arrangements upon insolvency, the legal position of the parties to a repurchase agreement may be affected if the transaction is recharacterised as a collateralised loan.[18] In practical terms, the legal protections expected from a title-transfer structure may be weakened if the transaction is instead analysed under the law of secured obligations.

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[16] OJK, *Indonesia GMRA*, para. 5.

[17] OJK, *Indonesia GMRA*, para. 4.

[18] Tot, "The Risk of Re-characterisation," 140–148; Thomas Keijser, *Financial Collateral Arrangements: The European Collateral Directive Considered from a Property and Insolvency Law Perspective*, Law of Business and Finance Series 9 (Kluwer, 2006), 80–100, http://doi.org/10.2139/ssrn.2859072; Indonesia, *Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations* (2004).

From the standpoint of Indonesian law, this issue may also be addressed by determining the parties' intent. Article 1343 of the Indonesian Civil Code permits courts to examine the parties' true intent where the literal wording of an agreement does not fully reflect its substance. When dealing with repurchase agreements, this means a court may examine whether the arrangement was genuinely intended to transfer ownership or merely a financing relationship. Comparative scholarship on the sale-versus-loan problem underscores that courts often recharacterise contracts that purport to transfer title if, notwithstanding their formal designation, substantive terms are indicative of a secured loan, creating serious real-world consequences for market participants.[19] This does not mean that every repurchase agreement should be treated as a collateralised loan, but it does mean that formal language alone may not always be determinative where the transaction's economic function points in a different direction. The Indonesian relevance of this issue is evident in the case discussed in the following section.

III.B. An Indonesian Illustration of Recharacterisation Risk

Indonesian case law on the recharacterisation of repurchase agreements appears to be limited. [20] Nevertheless, the dispute between Benny Tjokrosaputro and Platinum Partners Value Arbitrage Fund, LP, provides an important illustration of how a repurchase agreement may be viewed by the courts not solely by its formal structure, but also by the substantive relationship between the parties. In that sense, the case is significant not because it establishes a general rule that all repurchase agreements are collateralised loans, but because it demonstrates that recharacterisation risk is a real possibility under Indonesian law.

The dispute concerned PT Hanson International shares that were the subject of a repurchase agreement. Benny Tjokrosaputro, as the original owner of the shares, sought to repurchase them from Platinum Partners on the agreed date. Before that repurchase could take place, however, Platinum Partners transferred the shares to Goldman Sachs International. The dispute, therefore, raised a central legal question: whether Platinum Partners, as the transferee under the repurchase agreement, had full ownership rights to dispose of the shares, or whether the shares should have instead been treated as collateral for a loan.

In Decision No. 618/Pdt.G/2016/PN JKT.SEL, the South Jakarta District Court ruled in favour of Benny Tjokrosaputro and declared the transfer of the shares by Platinum Partners to Goldman Sachs International null and

[19] Steven L. Schwarcz and Isabelle Stewart, "Recharacterizing Contracts: The Sale-versus-Loan Problem of Receivables Financing," *American Bankruptcy Law Journal* 100 (2026): 68–115.

[20] South Jakarta District Court, Decision No. 618/Pdt.G/2016/PN JKT.SEL (November 21, 2017); Jakarta High Court, Decision No. 314/PDT/2018/PT.DKI (July 9, 2018).

void. The court treated Benny Tjokrosaputro as having retained ownership of the shares and ruled that the shares were collateral for the funds advanced in the transaction. This approach was subsequently upheld by the Jakarta High Court in Decision No. 314/PDT/2018/PT.DKI. In effect, the courts did not treat the transaction as conferring unrestricted ownership on the buyer in the manner usually associated with a true sale and repurchase transaction.

The courts' approach in this case is consistent with the interpretive principle established under Article 1343 of the Indonesian Civil Code, which permits courts to look beyond the literal terms of an agreement where those terms do not fully reflect the parties' true intentions. Where the words of an agreement are capable of more than one interpretation, preference shall be given to the construction that reflects the true intention of the parties over the literal meaning of the words used.[21] By treating the transferred shares as collateral rather than as assets owned outright by Platinum Partners, the court effectively subordinated the formal language of the agreement to its economic substance. This suggests that, in Indonesia, a repurchase agreement structured as a title-transfer transaction is not immune to substantive judicial scrutiny, particularly where the totality of the circumstances indicates that the securities were transferred primarily to secure a loan rather than to effect a genuine transfer of ownership.

This case is important because it shows that, in an Indonesian dispute, the formal title-transfer structure of a repurchase agreement may not always be determinative.[22] Where a court considers that the transaction serves to secure a financing arrangement, it may characterise the transferred securities as collateral rather than as assets freely disposable by the buyer. The case therefore illustrates the practical significance of the doctrinal concerns discussed above and underscores the need for careful contractual drafting, conceptual clarity, and legal certainty in structuring repurchase agreements in Indonesia. It also shows why legal analysis should avoid unnecessarily importing the language of classical securities law into a repurchase agreement structure that is intended to operate by transfer of title, since such language may reinforce the judicial tendency to privilege substance over form and characterisation should be approached with caution and generally reserved for cases involving third-party effects or state interests.[23]

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[21] Indonesia, *Civil Code (Burgerlijk Wetboek)*, Art. 1343.

[22] South Jakarta District Court, Decision No. 618/Pdt.G/2016/PN JKT.SEL (November 21, 2017); Jakarta High Court, Decision No. 314/PDT/2018/PT.DKI (July 9, 2018).

[23] Tjio, "Form or Substance".

III.C. Mitigating Recharacterisation Risk

The case shows that in Indonesia recharacterisation risk in repurchase agreements is not merely theoretical. Even where a repurchase agreement is formally documented as a sale and repurchase transaction, a court may still examine the substance of the arrangement and, in certain circumstances, treat it as a collateralised loan rather than as an outright transfer of underlying securities. The relevant question is not how to eliminate recharacterisation risk entirely, but how to reduce the likelihood that the transaction could be characterised in a manner inconsistent with the parties' intended legal treatment. In Indonesia, three measures are key to preserving the parties' intentions. First, the contractual terms of the repurchase agreement must clearly and consistently reflect a title-transfer structure. Second, the parties should consider an appropriate dispute-resolution mechanism and forum capable of addressing the legal and commercial complexities of repurchase agreements. Third, the legal explanation of related mechanisms, including margin transfer, should remain conceptually consistent with the title-transfer architecture of the repurchase transaction and avoid unnecessary reliance on the language of collateralisation or secured lending.

III.C.1. Clear and Structurally Consistent Contractual Terms

Clear contractual terms are an important preventive measure against recharacterisation. If the parties intend a repurchase agreement to operate as a true sale and repurchase rather than as a collateralised loan, that intention must be reflected not only in the title of the agreement, but also in the substantive clauses governing the transfer and repurchase of the securities. In this respect, the agreement should expressly provide for the transfer of title to the buyer, the buyer's legal rights over the securities during the repurchase agreement term, and the seller's obligation to repurchase equivalent securities at the agreed time and price.

The contractual structure should also avoid provisions that could undermine the intended sale-and-repurchase nature of the transaction. In particular, the agreement should not suggest that ownership of the securities remains with the seller or that the securities are transferred solely to secure the repayment of funds.[24] If the seller is contractually entitled to receive economic benefits associated with the securities, such entitlements should be framed

[24] ICMA, "Why is it Important to Document Repos?" ICMA ERCC Publications, May 4, 2024, accessed March 17, 2026. www.icmagroup.org/market-practice-and-regulatory-policy/repo-and-collateral-markets/icma-ercc-publications/frequently-asked-questions-on-repo/18-why-is-it-important-to-document-repo/; SIFMA/ICMA, *Guidance Notes for Use with the Global Master Repurchase Agreement (2011 Version)* (SIFMA/ICMA, 2011), 5–10; Comotto, *Guide to Best Practice in the European Repo Market*, 82–85.

as contractual rights arising from the repurchase agreement, rather than as a retention of ownership rights in the securities themselves. The clearer this distinction is, the stronger the argument that the repurchase agreement should be treated in accordance with its legal form.

This point is consistent with the function of the Indonesian GMRA, which emphasises the transfer of ownership,[25] the seller's authority to transfer the securities, including the requirement under paragraph 9(h) that any transfer of securities under the agreement is made free and clear of any lien, claim, charge, or encumbrance,[26] and the need to distinguish between repurchase agreement and lending terminology. Accordingly, parties should avoid describing the purchase price as a "loan", the repurchase price as "repayment", or the transferred securities as ordinary "collateral".[27] This consistency should not be limited to the master agreement; it should also be maintained in transaction confirmations and other documents that record the specific deal terms. Instead, the documentation should consistently use the language of sale, repurchase, transfer of title, seller, buyer, and equivalent securities. Clear drafting alone cannot fully eliminate the risk of recharacterisation, but it can materially strengthen a transaction's intended legal character. The same need for consistency extends to margin treatment. If margin transfer is described in terms that suggest the creation of a classical security interest, that language may weaken the broader contractual claim that the repurchase agreement operates as a title-transfer transaction. This emphasis on terminological consistency reflects a broader principle underlying the standardisation of financial collateral documentation: that the legal characterisation of a transaction depends in significant part on the coherence and internal consistency of the contractual framework within which it is structured, and that departure from recognised market terminology increases the risk of judicial reinterpretation. Standardisation of master agreement documentation serves legal certainty through terminological consistency.[28]

From a comparative perspective, studies examining anti-recharacterisation legislation in the United States context suggest that clearer statutory protection of true sale structures can have measurable effects on market confidence and risk management behaviour,[29] further underscoring the importance of

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[25] OJK, *Indonesia GMRA*, para. 1.

[26] OJK, *Indonesia GMRA,* para. 9(h).

[27] SIFMA/ICMA, *Guidance Notes for Use with the Global Master Repurchase Agreement (2011 Version)*, 8–12; Duncan and Cannon, *Repos of Loans*, 20–25.

[28] Hijmans van den Bergh, "Financial Collateral Transactions and Their Standardization," in *Financial Collateral: Law and Practice*, ed. Matthias Haentjens (Oxford University Press, 2020), 70–82.

[29] Douglas Fairhurst and Yoonsoo Nam, "Collateral Constraints, Financial Constraints, and Risk Management: Evidence from Anti-Recharacterization Laws," *Journal of Financial and Quantitative Analysis* 58, no. 2 (2023): 805–836, https://doi.org/10.1017/S0022109022000254.

legal certainty in this area. More broadly, studies of repurchase agreement market regulation further suggest that the legal characterisation of repurchase agreements, as either title transfer or collateralised lending, has significant implications for market structure, risk allocation, and regulatory treatment, reinforcing the importance of clarity and consistency in contractual documentation.[30]

III.C.2. Arbitration as a Dispute Resolution Mechanism in Repurchase Agreements

In addition to careful contractual drafting, the choice of dispute resolution mechanism may also influence how a repurchase agreement is interpreted in practice. This does not mean that arbitration is the only proper mechanism for resolving disputes arising from repurchase agreements. However, arbitration may be considered appropriate where the parties wish to submit disputes to decision-makers with greater familiarity with financial market transactions and repurchase agreements.

Under Indonesian law, civil disputes may be resolved through arbitration, provided that the parties agree in writing.[31] In the context of repurchase agreements, this is significant because disputes may involve technical issues concerning title transfer, contract structure, market practice, and the distinction between a true sale and a collateralised loan. A forum with adequate commercial and financial expertise may therefore reduce the risk that the transaction is misunderstood or characterised solely through analogies to ordinary lending relationships.

The Indonesia GMRA provides several options for arbitration, including domestic arbitration through Badan Arbitrase Pasar Modal Indonesia (BAPMI) or Badan Arbitrase Nasional Indonesia (BANI Arbitration Centre), the Singapore International Arbitration Centre (SIAC), or another institution agreed upon by the parties.[32] The importance of these options lies not in making arbitration mandatory, but in allowing parties to select a forum that is capable of addressing the legal and market-specific features of repurchase agreements. In this sense, arbitration should be understood as a risk-management tool in dispute resolution, rather than as a guarantee against recharacterisation.

Accordingly, the principal advantage of arbitration in repurchase agreement disputes is not merely procedural efficiency, but the possibility of having the dispute decided by adjudicators who are more familiar with the structure and functioning of repurchase agreements. This may help ensure that a transaction

[30] Wu and Nabilou, "Repo Markets Across the Atlantic," 530–540.

[31] Indonesia, *Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution* (1999), art. 1(1); OJK, *Indonesia GMRA*, Indonesian Annex.

[32] OJK, *Indonesia GMRA*, Indonesian Annex.

is assessed with proper deference to its contractual language, market context, and the parties' intended legal structure. Nevertheless, arbitration cannot, by itself, eliminate the risk of recharacterisation, since the substance of the transaction and the consistency of the contractual terms remain decisive.

III.C.3. Conceptual Consistency in the Treatment of Margin Transfer

A further measure to mitigate recharacterisation risk is to maintain conceptual consistency throughout the repurchase agreement architecture, including margin transfer. If the principal transaction is documented and defended as a title-transfer sale and repurchase arrangement, related mechanisms should not be explained in terms that substantially introduce the language of a collateralised loan unless such departure is unavoidable and carefully justified.

This concern is especially relevant in Indonesia. Because the risk of recharacterisation arises when the transaction is perceived as a financing arrangement secured by securities, using the classical pledge doctrine to explain margin transfer may unintentionally reinforce that perception. Even if the pledge appears doctrinally familiar, its use may encourage an adjudicator to view the underlying securities of a repurchase agreement as collateralisation rather than a transfer of title.

Accordingly, mitigating recharacterisation risk requires not only careful drafting and appropriate dispute resolution mechanisms, but also a legal analysis that preserves the internal coherence of the title-transfer model adopted in the Indonesian repurchase agreement framework. This point becomes particularly important in examining the legal treatment of margin transfer in the following section.

IV. LEGAL TREATMENT OF MARGIN ADJUSTMENT

The second principal issue arising in repurchase agreements concerns the legal treatment of margin adjustment. In market practice, margining serves to manage credit exposure arising from fluctuations in the value of the underlying securities. However, the issue should not be framed solely as a search for a classical proprietary basis for the transfer of securities as margin. The more precise question is whether exposure arising during the duration of a repurchase transaction can be managed in a manner that preserves the consistency of the transaction's title-transfer structure.[33]

[33] Hossein Nabilou, "Regulating Financial Collateral: A Comparative Perspective," Amsterdam Law School Legal Studies Research Paper No. 2024-44 / Amsterdam Center for Law & Economics Working Paper No. 2024-15 (August 2024), 4–8, https://ssrn.com/abstract=4917242.

This issue is significant because the legal treatment of margin adjustment affects the parties' legal protections, the enforceability of their rights, and the coherence of the repurchase agreement structure as a whole. In light of this, this part of the study examines the doctrinal difficulties posed by margin adjustment under Indonesian law, explains the limits of classical pledge doctrine, and argues that a more coherent short-term solution lies in using sell-and-buy-back mechanisms rather than reconstructing margin adjustment through the classical pledges.

IV.A. Why Margin Adjustment Raises a Distinct Legal Problem

Margin adjustment in a repurchase agreement cannot be analysed solely from the perspective of contractual convenience. Although Indonesian contract law recognises the principle of freedom of contract, the proprietary consequences of any transfer of securities remain subject to the requirements of property law.[34] Under Indonesian law, title to property is acquired only through recognised legal means, including delivery by a person authorised to make the transfer, based on a valid juridical basis (*titel*).[35] For that reason, any proposed transfer of additional securities as "margin" raises the question of whether such a transfer constitutes an independent proprietary transaction requiring its own legal basis, or whether it should instead be understood as part of the continuing contractual operation of the repurchase agreement itself. The delivery of movable property is effected by actual handing over to the acquirer or to another person on the acquirer's behalf.[36] The answer matters because an unclear legal basis may invite judicial scrutiny, not only as to the validity of the transfer, but also as to the legal character of the broader transaction. An agreement without cause, or founded upon a false or unlawful cause, shall have no effect. [37]

This problem is especially important because margin adjustment does not necessarily follow the same structure as an ordinary sale of securities for an agreed purchase price. In a margin arrangement, additional assets or value may be conveyed not as the principal subject of exchange, but as part of a mechanism intended to manage exposure during the life of the repurchase agreement. Margin transfers are made to manage credit exposure arising from market value fluctuations in the purchased securities, and do not constitute independent proprietary transactions separate from the main repurchase agreement.[38] If that mechanism is characterised as a separate collateral

[34] Indonesia, Civil Code *(Burgerlijk Wetboek)*, Art. 1338(1).

[35] Indonesia, Civil Code *(Burgerlijk Wetboek)*, Art. 584.

[36] Indonesia, Civil Code *(Burgerlijk Wetboek)*, Art. 612.

[37] Indonesia, Civil Code (*Burgerlijk Wetboek*), Art. 1335.

[38] OJK, *Indonesia GMRA*, para. 4; ICMA, "Frequently Asked Questions on Repo," FAQ no. 29–31.

transfer, the analysis quickly shifts toward the law of secured obligations. But if the mechanism is treated instead as an internal contractual adjustment to the repurchase agreement structure, the legal inquiry becomes different. The central issue is therefore not simply what classical legal category margin most closely resembles, but which legal treatment best preserves the intention of a repurchase agreement as a title-transfer sale and repurchase transaction.[39]

Under Article 584 of the Indonesian Civil Code, delivery is not an independent legal act but must rest upon a valid predicate legal basis.[40] Accordingly, while the parties may agree contractually on mechanisms for managing exposure, Indonesian law still requires clarity as to how the resulting transfer or adjustment is to be interpreted. That need for clarity does not, however, compel the conclusion that margin must be forced into the mould of classical securities law. On the contrary, where such forcing would distort the legal character of the principal transaction, a different contractual technique may be more coherent.[41]

IV.B. The Limits of Classical Pledge Doctrine and the Preferable Use of Sell-and-Buyback Mechanisms

IV.B.1. Why Classical Pledge Is Not a Satisfactory Solution

At first glance, a classical pledge may appear attractive because it is a recognised institution under Indonesian law for securing the performance of an obligation secured by movable property.[42] In that limited sense, a pledge may seem to offer a familiar doctrinal analogy for margin adjustment, particularly where margin protects against credit exposure. Yet that initial attraction is misleading. The issue is not merely whether a pledge resembles a margin in functional terms, but whether its adoption preserves or undermines the legal structure of a repurchase agreement.

The difficulty with the pledge is that it frames the arrangement through the language of security interests and collateralisation. Once the margin is explained as a pledge-like device, the transaction is more easily understood as one in which securities serve to secure a financial exposure rather than as one governed by outright transfer of title. That move is conceptually significant. As discussed in the preceding part, recharacterisation risk arises precisely where a repurchase agreement is perceived as a financing arrangement secured

[39] Indonesia, OJK, *Regulation No. 9/POJK.04/2015*, art. 2; OJK, *Indonesia GMRA*, para. 1.

[40] Indonesia, *Civil Code (Burgerlijk Wetboek)*, art. 584.

[41] OJK, *Indonesia GMRA*, para. 4; SIFMA/ICMA, *Guidance Notes for Use with the Global Master Repurchase Agreement (2011 Version)*.

[42] Indonesia, *Civil Code (Burgerlijk Wetboek)*, Arts. 1150 and 1155(1).

by securities. Reliance on the pledge, therefore, risks reinforcing the very interpretive logic that makes unintended recharacterisation more likely.[43]

The pledge is also structurally ill-suited to the operational reality of repurchase agreements. There is a distinction between security financial collateral arrangements and title-transfer financial collateral arrangements, and the prevalence of title transfer in repurchase agreement markets.[44] Classical pledge doctrine was not designed for modern market practice in which the receiving party may need broad rights of use, dispose of, substitute, or re-transfer. There is tension between traditional pledge regimes and the right of use over collateral expected in modern financial market transactions.[45] Nor does the pledge sit comfortably within a framework that is expressly built on the transfer of ownership under standardised repurchase agreement language.[46] In this sense, the problem is not only that the pledge is incomplete; it also points in the wrong conceptual direction. It encourages the transaction to be read through the lens of a collateralised loan at the very moment when the legal analysis should preserve the distinction between collateralised lending and a title-transfer repurchase agreement.

For these reasons, a pledge should not be treated as a legal solution to margin adjustments in repurchase agreement transactions. At most, it may help explain why the margin has a protective function. However, it should not determine the legal character of the mechanism itself, as doing so could distort the repurchase agreement structure and may increase the risk of recharacterisation.

IV.B.2. Sell-and-Buyback as the Preferable Contractual Mechanism

The preferable approach is not to reconstruct the margin adjustment through classical pledge doctrine, but to rely on sell-and-buyback mechanisms already available within repurchase agreement documentation itself. In repurchase agreement practice, changes in valuation may be addressed through sell-and-buyback arrangements that operate within a transaction's existing sale-and-repurchase architecture rather than outside it.[47]

This point is important because a sell-and-buy-back should not be presented as an external substitute for a repurchase agreement, but rather as a contractual

[43] Tot, "The Risk of Re-characterisation," 130–148; Haentjens, "Title Transfer and Recharacterization," 265–275.

[44] Nabilou, "Regulating Financial Collateral," 6–9.

[45] Indonesia, *Civil Code (Burgerlijk Wetboek)*, art. 1154, 1155(1); Matthias Haentjens, "Security Interest and Right of Use," in *Financial Collateral: Law and Practice*, ed. Matthias Haentjens (Oxford University Press, 2020), 220–245.

[46] Indonesia, OJK, *Regulation No. 9/POJK.04/2015*, art. 2; OJK, *Indonesia GMRA*, para. 1.

[47] OJK, *Indonesia GMRA*; SIFMA/ICMA, *Guidance Notes*.

device internal to it. Where such a mechanism is already recognised within the relevant master agreement framework, including the documentation applied in the Indonesian GMRA, its use is more coherent than attempting to reframe margin as a separate pledge-based collateral transfer.

The advantage of this approach is threefold. First, it remains conceptually consistent with the Indonesian regulatory framework, which treats repurchase agreements as a transfer-of-ownership transaction documented through a standardised master agreement. Repurchase transactions must result in a transfer of ownership of the purchased securities from the seller to the buyer and must be conducted and documented through a standardised master agreement as issued or recognised by OJK.[48] Second, it avoids unnecessary recourse to the language of security rights and collateralisation, thereby reducing the risk that the transaction could be interpreted as a collateralised loan. Third, it allows exposure management to be handled within the legal form already chosen by the parties and recognised by the regulatory structure.

Accordingly, where the parties seek to preserve the legal character of a repurchase agreement as a title-transfer transaction, the more coherent position is to use and defend sell-and-buyback mechanisms rather than to search for a separate doctrinal basis in the law of pledge.

IV.B.3. Financial Collateral Framework as a Longer-Term Solution

Accordingly, the preferable position appears to be twofold. Under the current Indonesian legal framework, margin adjustment should, as much as possible, be managed through sell-and-buyback mechanisms that remain internally consistent with the title-transfer structure of the repurchase agreement. The development of a dedicated financial collateral framework for Indonesia would also reflect broader international trends. Recent comparative scholarship suggests that the adequacy of existing private law frameworks has increasingly come under scrutiny because these traditional rules were not designed with modern financial market transactions in mind. Dedicated legal regimes provide more coherent and enforceable solutions for collateral arrangements in contemporary financial practice.[49] Comparative analysis of collateralised lending frameworks identifies at least three distinct legal paradigms relevant to the structuring of collateral transactions: ordinary private and insolvency law, a more liberal approach reflected in instruments such as the EU Financial Collateral Directive, which establishes a dedicated European legal regime for financial collateral arrangements that eliminates formality requirements and provides

[48] Indonesia, OJK, *Regulation No. 9/POJK.04/2015*, Arts. 2 and 5; OJK, *Indonesia GMRA*.

[49] Thomas Keijser, "From Intermediated Securities to Digital Assets: The Debate on Collateral Transactions," *Uniform Law Review* 30, no. 2 (2025): 143–151, https://doi.org/10.1093/ulr/unaf031.

enhanced enforcement protections, thereby reducing recharacterisation risk,[50] and post-crisis regulatory law. Indonesia's current framework operates primarily within the first paradigm, whereas developing a dedicated financial collateral regime would bring it closer to the second. This title-transfer approach to financial collateral reflects an established practice of international financial markets, predating and informing the EU Financial Collateral Directive itself.[51] Haentjens et al. argue that three legal paradigms govern financial collateral transactions and that dedicated regulatory frameworks offer more coherent solutions than general private law alone.[52] In this regard, the definition of a title transfer financial collateral arrangement in the EU Financial Collateral Directive has been argued to carry a system-neutral meaning applicable in most legal systems, including those based on civil law traditions, suggesting that a dedicated financial collateral framework modelled on similar principles is not doctrinally incompatible with the Indonesian legal context.[53] The Directive further distinguishes between security financial collateral arrangements and title transfer financial collateral arrangements by reference to identifiable legal features, providing a doctrinal foundation that permits jurisdictions adopting dedicated frameworks to draw clear boundaries between the two structures.[54] For the longer term, Indonesia would benefit from developing a specialised financial collateral framework that responds more directly to the structure and needs of contemporary repurchase agreements.[55] Such a framework would also provide the legal basis for insolvency safe harbours currently unavailable under general property and insolvency law. The primary justification for such safe harbours in financial markets lies not in systemic risk prevention alone, but in supporting market liquidity by enabling parties to terminate and net their positions efficiently upon counterparty default, a function that is critical to the operation of repurchase agreement markets.[56] The policy debate surrounding

[50] European Union, Council Directive 2002/47/EC of 6 June 2002 on Financial Collateral Arrangements, *Official Journal of the European Communities* L 168 (June 27, 2002); Netherlands, *Dutch Civil Code (Burgerlijk Wetboek)*, Book 7, Chapter 7.2 (arts. 7:51–7:56).

[51] Ivan Tot, "Financial Market Lex Mercatoria and Its Influence on the Financial Collateral Directive," *InterEULawEast: Journal for the International and European Law, Economics and Market Integrations* 5, no. 1 (2018): 37-45. https://doi.org/10.22598/iele.2018.5.1.3.

[52] Matthias Haentjens et al., "Financial Collateral: From Private to Regulatory Law Reform," in *Transnational Securities Law*, 2nd ed., ed. Thomas Keijser (Oxford University Press, 2022), 26–59.

[53] Obiora Ezike, "Identifying a System-Neutral Meaning of a Title Transfer Financial Collateral Arrangement in the Financial Collateral Directive," *Uniform Law Review* 26, no. 3 (2021): 554–582.

[54] Obiora Ezike, "The EU Financial Collateral Directive: The Distinguishing Features of a Security Financial Collateral Arrangement?" *Uniform Law Review* 27, no. 3 (2022): 460–471.

[55] Nabilou, "Regulating Financial Collateral," 2–5, 11–17.

[56] Philipp Paech, "The Value of Financial Market Insolvency Safe Harbours," *Oxford Journal of Legal Studies* 36, no. 4 (2016): 855–884.

insolvency safe harbours for repurchase agreements and derivatives remains contested, with some scholars arguing that such protections weaken market discipline during ordinary times while exacerbating financial instability during crises, yet the consensus supports their necessity for maintaining liquid and efficient financial markets.[57]

Subsequent to the completion of this analysis, Indonesia enacted Law No. 4 of 2026, inserting a new Article 39A into the Law on the Development and Strengthening of the Financial Sector to govern margin transfer in financial market transactions. The provision defines margin transfer as effected through the transfer of ownership rights, with the margin recipient retaining the right to use, transfer, or further encumber the margin received, a structure consistent with the title-transfer approach advanced in this Part rather than classical pledge.[58] The provision's scope, however, remains confined to margin transfer, leaving the broader repurchase agreement transaction and the treatment of initial margin to be addressed elsewhere, with its operationalisation left to forthcoming implementing regulations. The analysis above accordingly retains relevance as doctrinal support for this legislative direction.

V. CONCLUDING REMARKS

This article has examined two principal legal issues surrounding repurchase agreements under Indonesian law. The first concerns the risk of recharacterisation, namely the possibility that a repurchase agreement may be treated not as a true sale-and-repurchase transaction but as a collateralised loan. The second concerns the legal treatment of margin adjustment in repurchase agreements.

With regard to the first issue, this article finds that recharacterisation risk arises from the tension between the formal structure of a repurchase agreement as a transfer of title and its economic function as a financing transaction. Although Indonesian regulation on repurchase agreements adopts a sale-and-repurchase structure and emphasises change of ownership, the risk of recharacterisation cannot be entirely excluded where the substance of the transaction suggests that the transferred securities perform a collateral function. The Indonesian case discussed in this article illustrates that formal documentation alone may not always be decisive. Even so, the risk of recharacterisation may be reduced, though not entirely eliminated, through clearer, more internally consistent

[57] Mark J. Roe, "Derivatives and Repos in Bankruptcy," in *Research Handbook on Corporate Bankruptcy Law*, ed. Barry E. Adler (Cheltenham: Edward Elgar, 2020), 102.

[58] Indonesia, *Law No. 4 of 2026 on the Amendment to Law No. 4 of 2023 concerning the Development and Strengthening of the Financial Sector* (2026), art. 39A.

contractual drafting and the selection of an appropriate dispute resolution mechanism. This is consistent with the analysis in Part III.C above, which identifies clear contractual terms, appropriate dispute resolution mechanisms, and conceptual consistency across the repurchase agreement structure as the principal mitigation measures.

With regard to the second issue, this article concludes that margin adjustment in repurchase agreements should not be explained through the classical pledge doctrine. Although freedom of contract alone is insufficient to dispense with the requirements of Indonesian property law, it does not follow that the margin must therefore be reconstructed as a pledge-based collateral transfer. Such an approach would risk blurring the distinction between a repurchase agreement and a collateralised loan, increasing the risk of recharacterisation. The preferable position under the current Indonesian legal framework is to preserve the title-transfer character of repurchase agreements by relying on sell-and-buy-back mechanisms. In this way, valuation changes may be addressed within the contractual architecture of sale and repurchase, rather than through a separate secured transactions law construct.

Accordingly, the most defensible position is twofold. First, under the current Indonesian legal framework, recharacterisation risk should be addressed through contractual and procedural safeguards that reinforce the intended sale-and-repurchase structure of the transaction, including the use of terminology and market adjustment techniques consistent with title transfer. Second, margin adjustment should, for the time being, be managed through sell-and-buyback mechanisms incorporated into the repurchase agreement language, while future legal development should move toward a specialised secured lending framework. *De lege ferenda*, Indonesia would benefit from legislation that expressly recognises financial collateral arrangements as a distinct category, clarifies the legal effect of collateral-related transfers in financial transactions, and provides a coherent enforcement regime that operates independently of general property law. Such a framework would not only reduce the doctrinal uncertainties identified in this article but would also strengthen the legal infrastructure supporting the development of Indonesian financial markets.

As a postscript, Law No. 4 of 2026, enacted after the completion of this article, introduced Article 39A into the Law on the Development and Strengthening of the Financial Sector, establishing an explicit legal basis for margin transfer through the transfer of ownership rights, consistent with the analysis advanced in Part IV. The provision, however, falls short of a comprehensive financial collateral regime. Initial margin remains under a separate, security-like treatment rather than the title-transfer approach applied to margin transfer, the repurchase agreement transaction itself remains outside its scope, and its implementation remains dependent on forthcoming regulation by the relevant financial sector authorities. The recommendation for a dedicated financial collateral framework advanced in Part IV thus remains relevant, and the analysis in this article continues to offer a useful reference for the regulatory work that lies ahead.

REFERENCES

Legislation

European Union. Council Directive 2002/47/EC of 6 June 2002 on Financial Collateral Arrangements. *Official Journal of the European Communities* L 168 (June 27, 2002).

Indonesia. *Civil Code (Burgerlijk Wetboek).*

———. *Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution.* 1999.

———. *Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations*. 2004.

———. *Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector*. 2023.

———. *Law No. 4 of 2026 on the Amendment to Law No. 4 of 2023 concerning the Development and Strengthening of the Financial Sector*. 2026.

———. Otoritas Jasa Keuangan (OJK). *Regulation No. 9/POJK.04/2015 on Guidelines for Repurchase Agreement Transactions for Financial Services Institutions.* 2015.

———. OJK. *Circular Letter No. 33/SEOJK.04/2015 on Indonesia Global Master Repurchase Agreement*. 2015.

Netherlands. *Dutch Civil Code (Burgerlijk Wetboek). Book 7, Chapter 7.2 (Articles 7:51-7:56) on Financial Collateral Arrangements*.

Cases

Indonesia. South Jakarta District Court. Decision No. 618/Pdt.G/2016/PN JKT.SEL. 21 November 2017.

———. Jakarta High Court. Decision No. 314/PDT/2018/PT.DKI. 9 July 2018.

Journal Articles

Corradin, Stefano, and Angela Maddaloni. "The Importance of Being Special: Repo Markets During the Crisis." *Journal of Financial Economics* 137, no. 2 (2020): 392–429. https://doi.org/10.1016/j.jfineco.2020.02.006.

Ezike, Obiora. "Identifying a System-Neutral Meaning of a Title Transfer Financial Collateral Arrangement in the Financial Collateral Directive," *Uniform Law Review* 26, no. 3 (2021): 554–582. DOI: https://doi.org/10.1093/ulr/unab023.

———, "The EU Financial Collateral Directive: The Distinguishing Features of a Security Financial Collateral Arrangement?" *Uniform Law Review* 27, no. 3 (August 2022): 460–471. DOI: https://doi.org/10.1093/ulr/unac025.

Gabor, Daniela. "The (Impossible) Repo Trinity: The Political Economy of Repo Markets." *Review of International Political Economy* 23, no. 6 (2016): 967–1000. https://doi.org/10.1080/09692290.2016.1207699.

Fairhurst, Douglas, and Yoonsoo Nam. "Collateral Constraints, Financial Constraints, and Risk Management: Evidence from Anti-Recharacterization Laws." *Journal of Financial and Quantitative Analysis* 58, no. 2 (2023): 805-836. https://doi.org/10.1017/S0022109022000254

Keijser, Thomas. "From Intermediated Securities to Digital Assets: The Debate on Collateral Transactions." *Uniform Law Review* 30, no. 2 (2025): 143–151. https://doi.org/10.1093/ulr/unaf031.

Meneghini, Luca. "The Legal and Economic Underpinnings of Repo Transactions: A Comparative Overview." *Rivista di Diritto del Risparmio*, no. 3 (2019): 38–63. https://www.dirittodelrisparmio.it/wp-content/uploads/2020/05/Rivista-di-Diritto-del-Risparmio-Fascicolo-3_2019.pdf.

Paech, Philipp. "The Value of Financial Market Insolvency Safe Harbours," *Oxford Journal of Legal Studies* 36, no. 4 (2016): 855–884. DOI: https://doi.org/10.1093/ojls/gqv041.

Schwarcz, Steven L., and Isabelle Stewart. "Recharacterizing Contracts: The Sale-versus-Loan Problem of Receivables Financing." *American Bankruptcy Law Journal* 100 (2026): 68–115

Tot, Ivan. "Financial Market Lex Mercatoria and Its Influence on the Financial Collateral Directive." *InterEULawEast: Journal for the International and European Law, Economics and Market Integrations* 5, no. 1 (2018): 37-72. https://doi.org/10.22598/iele.2018.5.1.3.

Tot, Ivan. "The Risk of Re-characterization of Title Transfer Financial Collateral Arrangements." *InterEULawEast: Journal for the International and European Law, Economics and Market Integrations* 5, no. 2 (2018): 123-150. https://doi.org/10.22598/iele.2018.5.2.4.

Wu, Songjiwen, and Hossein Nabilou. "Repo Markets Across the Atlantic: Similar but Unalike." *European Business Law Review* 30, no. 4 (2020): 513–546. https://doi.org/10.2139/ssrn.3165720.

Books and Book Chapters

Asia Securities Industry and Financial Markets Association (ASIFMA) and the International Capital Market Association. *Guide on Repo in Asia*. 2015.

Choudhry, Moorad. *The Repo Handbook*. 2nd ed. Butterworth-Heinemann, 2010. DOI: 10.1016/C2009-0-16714-4.

Haentjens, Matthias, ed. *Financial Collateral: Law and Practice*. Oxford University Press, 2020. https://doi.org/10.1093/law/9780198816935.001.0001.

———. "Security Interest and Right of Use." In *Financial Collateral: Law and Practice*, edited by Matthias Haentjens, 220–245. Oxford University Press, 2020.

———. "Title Transfer and Recharacterization,." In *Financial Collateral: Law and Practice*, edited by Matthias Haentjens, 254–284, Oxford University Press, 2020.

Haentjens, Matthias, Thomas Keijser, and Guy Morton. "Financial Collateral: From Private to Regulatory Law Reform." In *Transnational Securities Law*, 2nd ed., edited by Thomas Keijser, 26–59. Oxford University Press, 2022.

Hijmans van den Bergh, Lodewijk. "Financial Collateral Transactions and Their Standardization." In *Financial Collateral: Law and Practice*, edited by Matthias Haentjens. Oxford University Press, 2020. https://doi.org/10.1093/law/9780198816935.003.0003.

Keijser, Thomas, *Financial Collateral Arrangements: The European Collateral Directive Considered from a Property and Insolvency Law Perspective*. Law of Business and Finance Series 9. Kluwer, 2006. http://doi.org/10.2139/ssrn.2859072.

Roe, Mark J. "Derivatives and Repos in Bankruptcy." In *Research Handbook on Corporate Bankruptcy Law*, edited by Barry E. Adler, 102-128. Cheltenham: Edward Elgar, 2020

Tjio, Hans. "Form or Substance: Construction or Characterisation." In *SAL Conference 2011: Developments in Singapore Law between 2006 and 2010: Trends and Perspectives*, edited by Yeo Tiong Min, Tang Hang Wu, and Hans Tjio. Academy Publishing, 2011.

Market Documentation

Comotto, Richard. *A Guide to Best Practice in the European Repo Market*. Zurich: International Capital Market Association (ICMA), 2021. https://www.icmagroup.org/assets/documents/Regulatory/Repo/ERCC-Guide-to-Best-Practice-March-2021-300321.pdf.

International Capital Market Association. "Frequently Asked Questions on Repo." ICMA, 2019. www.icmagroup.org/assets/documents/Regulatory/Repo/Repo-FAQs-January-2019.pdf.

OJK. *Indonesia Global Master Repurchase Agreement (Indonesia GMRA)*, annex to OJK Circular Letter No. 33/SEOJK.04/2015. Jakarta, 2015.

Securities Industry and Financial Markets Association and International Capital Market Association. *Global Master Repurchase Agreement (2011 Version)*. Washington, DC/Zurich: SIFMA/ICMA, 2011.

———. *Guidance Notes for Use with the Global Master Repurchase Agreement (2011 Version)*. Washington, DC/Zurich: SIFMA/ICMA, 2011.

Working Papers

Nabilou, Hossein. "Regulating Financial Collateral: A Comparative Perspective." Amsterdam Law School Legal Studies Research Paper No. 2024-44; Amsterdam Center for Law & Economics Working Paper No. 2024-15. August 2024. https://ssrn.com/abstract=4917242.

Online Materials

Duncan, Angus, and Robert Cannon. *Repos of Loans – Now Possible*. Cadwalader, Wickersham & Taft LLP. Accessed March 17, 2026. https://www.cadwalader.com/uploads/books/105f9f59f9b4806acab6368322ebbb31.pdf.

International Capital Market Association. "Why is it Important to Document Repos?" ICMA ERCC Publications. May 4, 2024. Accessed March 17, 2026. www.icmagroup.org/market-practice-and-regulatory-policy/repo-and-collateral-markets/icma-ercc-publications/frequently-asked-questions-on-repo/18-why-is-it-important-to-document-repo/.

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