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Reassessing the Ne Bis in Idem Principle in Administrative Sanctions within the Financial Sector

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ABSTRACT

Indonesia's financial regulators increasingly rely on administrative sanctions, heightening the risk that overlapping mandates may yield duplicative penalties for the same misconduct. This paper examines the application of the ne bis in idem principle to administrative enforcement within the financial sector and evaluates the extent to which the Una Via mechanism introduced by the 2023 Financial Sector Law mitigates "double punishment." Using a normative juridical method that combines statutory, conceptual, and case approaches, we develop a doctrinal test for "the same offence" (fact pattern, protected legal interest, and punitive purpose) and adapt the Engel criteria to identify when administrative fines are criminal-like. A complementarity-versus-duplication framework is proposed for OJK–IDX coordination, supported by offsetting and single-cap rules to preserve proportionality. Comparative insights from the EU and ASEAN underscore the need for integrated procedures and total-sanction proportionality control. We recommend a triage MoU, a joint case registry, and a no-piling-on policy across OJK, IDX, and the Ministry of Finance to safeguard legal certainty while maintaining credible deterrence.

1. Introduction

In recent years, Indonesian financial regulators have increasingly relied on administrative sanctions to enforce compliance. The Financial Services Authority of Indonesia (Otoritas Jasa Keuangan, OJK), the Indonesia Stock Exchange (Bursa Efek Indonesia, IDX), and the Ministry of Finance have actively imposed monetary penalties on market participants for regulatory breaches. Throughout 2024, for example, OJK sanctioned 55 capital-market entities with aggregate administrative fines exceeding IDR 22.3 billion, alongside approximately IDR 33.8 billion in penalties against 328 financial-service actors for reporting delays (Media Indonesia, 2024). This stricter enforcement posture signals a more assertive regulatory environment. It also raises concerns about overlapping mandates that can produce duplicative sanctions for the same underlying misconduct.

Cross-institutional jurisdiction in the financial sector creates a nontrivial risk of overlapping sanctions. A single breach may fall within the remit of multiple

authorities. In the capital market, for instance, a public company's delay in submitting periodic financial statements can trigger an IDX fine under exchange rules and a concurrent OJK administrative fine under OJK reporting regulations (Hutama, 2017). Likewise, before banking supervision was fully consolidated within OJK, banks could face separate sanctions from Bank Indonesia and OJK for the same violation. Such overlaps generate uncertainty for regulated entities and may expose them to multiple penalties for one wrongful act.

The principle of *ne bis in idem* is directly relevant in this setting. *Ne bis in idem* prohibits punishing a person or entity twice for the same offense. While traditionally developed in criminal law as a bar against double jeopardy, the concept serves broader rule-of-law values of fairness and legal certainty across legal domains (Asshiddiqie, 2020). Applying *ne bis in idem* within administrative law, particularly in financial regulation, helps ensure that enforcement remains fair and proportionate and that regulated parties' rights are not unduly burdened. Scholars emphasize that legal certainty is a core objective of administrative sanctions regimes (Asshiddiqie, 2020; Herlina, 2019). Repeated penalties by different financial authorities for a single breach risk undermining both fairness and legal certainty guaranteed by the constitution.

Indonesian legislation has begun to acknowledge these concerns, although cross-agency anti-duplication rules remain incomplete. Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector (UU P2SK) introduces the *una via* principle in capital-market enforcement, which aligns with *ne bis in idem*. Article 100A authorizes OJK to elect the enforcement track to pursue, administrative or criminal, for a given violation, thereby avoiding simultaneous processes in both tracks for the same case. This policy operationalizes criminal law as an *ultimum remedium* and helps prevent sanction duplication (Alchemist Law Office, 2025). These reforms underscore the urgency of embedding *ne bis in idem* safeguards to deliver legal certainty and protection for market participants without diminishing the effectiveness of regulatory enforcement.

Against this background, it is necessary to examine how *ne bis in idem* should apply to administrative sanctions in Indonesia's financial sector, why such application is urgent to prevent duplicative penalties across authorities, and how recent practice is evolving.

2. Method

Veteran Law Review
Volume: 8 Issue: 2
P-ISSN: 2655-1594 E-ISSN: 2655-1608

This study adopts a normative juridical research method incorporating several complementary approaches. The statutory approach examines regulatory instruments governing administrative sanctions within the financial sector, such as the Financial Services Authority Law (OJK Law), the Capital Market Law, and the Ministry of Finance Regulations (PMK). The conceptual approach seeks to elucidate the substance of the *ne bis in idem* principle through the lens of administrative law theory and the general principles of legal certainty and proportionality. Meanwhile, the case approach explores practical instances in Indonesia where overlapping sanctions have occurred or may occur, for example, the simultaneous imposition of penalties by the IDX and OJK for delays in periodic reporting, in order to evaluate how the principle has been, or should be, implemented in actual regulatory practice..

3. Result and Analysis

3.1. Concept of *Ne Bis In Idem*

Ne bis in idem prohibits a person from being tried or punished twice for the same act. Indonesian criminal law codifies this guarantee most clearly in Article 76(1) of the Criminal Code (KUHP), which bans a second prosecution for an offense already resolved by a final and binding judgment (*inkracht*). The same guarantee appears in Article 18(5) of the Human Rights Law (Law No. 39 of 1999), which affirms the right not to be prosecuted again for the same case after a final decision (KUHP art. 76(1); Law No. 39/1999 art. 18). The principle serves the aims of legal certainty and fairness for the accused, ensuring that once a case is conclusively decided, the state may not revisit the same facts through a duplicative charge or penalty.

Contemporary enforcement practice blurs the boundary between criminal and administrative sanctions, since many administrative penalties have a punitive character. The resulting "dual-track" landscape creates a risk of double jeopardy when a single unlawful act triggers both administrative punishment and a criminal case. In response, legal systems have adapted *ne bis in idem* to administrative contexts through the *una via* principle, which channels a case into one enforcement track only, administrative or criminal, to avoid cumulative punishment for the same violation.

Although the 1945 Constitution does not mention *ne bis in idem* expressly, Article 28D(1) guarantees fair legal certainty. This constitutional commitment underpins the idea that one dispute or violation should not be decided twice in a contradictory manner. *Ne bis in idem* operationalizes that guarantee by preventing multiple proceedings over the same matter.

Veteran Law Review
Volume: 8 Issue: 2
P-ISSN: 2655-1594 E-ISSN: 2655-1608

Beyond KUHP and the Human Rights Law, safeguards appear in KUHAP and in Supreme Court Circular No. 3 of 2002, all of which reinforce the finality of criminal judgments in the interest of legal certainty.

The most explicit migration of the principle into administrative enforcement appears in Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector (P2SK). By amending the capital-market framework, P2SK adds a dedicated *una via* chapter (Chapter XIIIA) and authorizes OJK to elect either an administrative or a criminal route for a given financial-sector breach, but not both simultaneously (P2SK art. 100A). In exercising this election, OJK may weigh criteria such as transaction value, the existence and remediation of loss, and the market impact of the violation. Where OJK proceeds administratively, criminal investigation is not pursued for the same conduct, and the offender can be required to disgorge unlawful gains or avoided losses. The statutory design thus advances *ultimum remedium* in financial enforcement, curbs duplicative punishment, and strengthens legal certainty for firms while preserving regulatory credibility.

Even before P2SK, the capital-market and banking statutes embedded choices that functionally separated tracks, with administrative measures such as fines, license suspension, or revocation often serving as first-line tools, and criminal referrals reserved for more serious or irremediable misconduct. The Government Administration Law (Law No. 30 of 2014) does not name *ne bis in idem*, yet its general principles of good administration, proportionality, and legal certainty require fair, definite decisions and disfavor repetitive sanctioning of the same person and facts absent a clear legal basis. Read together, these instruments align administrative practice with the spirit of *ne bis in idem* and discourage re-punishment once a matter has been finally determined.

3.2. Regulatory Competences and Overlap in Indonesia's Financial Sector: OJK, IDX (BEI) as SRO, and the Ministry of Finance

3.2.1. Authority of the Financial Services Authority (OJK) in Supervising the Financial Services Sector

The Financial Services Authority (Otoritas Jasa Keuangan, or OJK) holds broad authority as the regulator and supervisor of Indonesia's financial services sector under Law No. 21 of 2011. OJK has the mandate to regulate and oversee the banking, capital market, and non-bank financial industries, including issuing OJK Regulations (Peraturan OJK – POJK) and imposing administrative sanctions for violations in these sectors. In the capital market domain, OJK assumed the supervisory role previously held by Bapepam-LK in 2013 and has the authority to impose sanctions on

Veteran Law Review
Volume: 8 Issue: 2
P-ISSN: 2655-1594 E-ISSN: 2655-1608

market participants, issuers, securities companies, and supporting professionals, in the form of written warnings, administrative fines, suspension, or revocation of business licenses. For example, throughout 2025 OJK imposed various administrative sanctions in the capital market sector, including cumulative fines amounting to billions of rupiah on several securities firms and revocation of licenses of non-compliant broker-dealers. This authority reflects OJK's role as the central regulator ensuring compliance with financial laws and stability within the financial system.

Recent enforcement practice illustrates the breadth of OJK's mandate in capital markets. In July 2025, OJK announced administrative fines totaling Rp8.63 billion against 19 parties and revoked the licenses of two securities firms (Pratama Capital Sekuritas as underwriter/broker and PT Masindo Artha Sekuritas as underwriter) (Binekasri, 2025). OJK also reported cumulative penalty activity for late reporting in 2025. These actions were publicly conveyed by OJK.

3.2.2. Authority of IDX (BEI) as a Self-Regulatory Organization (SRO)

The Indonesia Stock Exchange (Bursa Efek Indonesia, BEI) functions as a Self-Regulatory Organization (SRO) in the capital market with statutory authority to formulate and enforce regulations governing securities trading and to supervise market participants within the exchange. Through its Exchange Rules, the IDX regulates the obligations of issuers and exchange members (broker-dealers) and may impose sanctions for violations. For instance, the IDX requires listed companies to submit financial statements punctually, failure to do so results in Written Warnings I–III, monetary fines, and ultimately suspension of trading. According to Exchange Rule I-H, if an issuer delays submission of its financial statements for more than 60 days after the deadline, the IDX issues a third written warning and imposes a fine of IDR 150 million (approximately USD 10,000). Should the delay exceed 91 days, the IDX may suspend trading in the issuer's securities as a disciplinary measure. Such SRO authority operates under OJK's oversight and aims to maintain transparency and protect investors in the capital market.

3.2.3. Role of the Ministry of Finance (MoF) through the Directorate General of Taxes, Customs and Excise, and Fiscal Policy

The Ministry of Finance holds a distinct mandate covering fiscal authority and supervision of financial professions. Through the Directorate General of Taxes (DJP), the Ministry enforces tax law by imposing administrative penalties (e.g., late-payment interest, underpayment penalties) and initiating criminal prosecution in serious cases. The *una via* principle in tax

Veteran Law Review
Volume: 8 Issue: 2
P-ISSN: 2655-1594 E-ISSN: 2655-1608

enforcement dictates that for a single tax violation, only one sanction channel, administrative or criminal, should be pursued to avoid double punishment (*ne bis in idem*). In the customs domain, the Directorate General of Customs and Excise may levy administrative fines on importers or exporters for regulatory breaches. The Ministry, through the Financial Profession Development Center (P2PK), also supervises public accountants and related financial professionals, and may sanction public accountants or firms for professional misconduct by issuing warnings, fines, or suspension or revocation of licenses (Article 7, Law No. 5 of 2011 on Public Accountants). In fiscal policy, the Ministry establishes tax-compliance incentives and administrative sanctions through regulatory instruments. Hence, the Ministry's role primarily concerns public-finance law enforcement (taxation and customs) and professional oversight, which may intersect with financial-sector supervision when fiscal or accounting-standard violations occur.

3.2.5. Points of Potential Overlapping Authority

In practice, grey areas exist where OJK, the IDX, and the Ministry of Finance share overlapping jurisdictions, leading to the possibility that a single entity or incident may be sanctioned by more than one authority. The clearest example occurs in the capital market: issuers that delay financial-statement submission breach both OJK and IDX regulations. OJK may impose administrative fines under its disclosure regulations, while the IDX simultaneously enforces its listing rules with warnings and trading suspensions. Both institutions act upon the same violation, for example delayed reporting, creating potential double sanctions. The *ne bis in idem* principle, prohibiting double punishment for the same offense, thus becomes pertinent. On one hand, each institution is legally mandated to enforce its respective rules; failure to do so would constitute regulatory negligence. On the other hand, from the perspective of the issuer, receiving two financial penalties for the same act appears inequitable and analogous to double jeopardy.

Overlapping authority may also arise between OJK and the Ministry of Finance, for example, in supervising public accountants: OJK can sanction auditors for errors in auditing listed-company financial statements, while the Ministry may independently penalize the same auditors for professional-standard violations. Similarly, financial institutions committing tax-related infractions (e.g., manipulating financial statements with fiscal consequences) might face both OJK and the Ministry of Finance (through Directorate General of Taxes) sanctions. Such overlaps highlight the need for inter-agency coordination to ensure consistent enforcement and prevent substantive *ne bis in idem*. Although

Veteran Law Review
Volume: 8 Issue: 2
P-ISSN: 2655-1594 E-ISSN: 2655-1608

recent legislation (such as the 2023 Financial Sector Development and Strengthening Law – UU PPSK) generally adopts the *una via* approach to distinguish between criminal and administrative sanctions, explicit mechanisms to prevent cross-agency duplication remain limited. Coordinated regulation and synchronized enforcement are therefore essential to achieve effective oversight while preserving fairness.

3.3. Case Study and Analysis of Indonesian Practice

3.3.1 Potential Double Sanctions: OJK and IDX Fines for Late Financial Reporting

A concrete test of the ne bis in idem principle in Indonesia's capital market appears when a listed company files its financial statements late. At the regulatory level, OJK mandates periodic and annual disclosures through Regulation No. 29/POJK.04/2016 on the Annual Reports of Issuers or Public Companies. This regulation provides the legal basis for administrative sanctions when reporting obligations are not fulfilled (OJK, 2016). In parallel, the Indonesia Stock Exchange, acting as a self-regulatory organization, enforces listing discipline through Exchange Rule No. I-H. The rule prescribes a graduated series of measures, namely a first written warning up to day 30, a second written warning with a IDR 50 million fine for days 31 to 60, a third written warning with a IDR 150 million fine for days 61 to 90, and a trading suspension on day 91 if the issuer still fails to comply or to settle outstanding fines (adams.co.id, 2024).

These pathways can overlap in time and in effect. As a result, a single issuer can face an OJK administrative fine for reporting delays while also receiving IDX written warnings, fines, and, if non-compliance persists, a trading suspension. Although this looks like factual double punishment, regulators argue that it does not breach ne bis in idem because OJK and IDX operate under distinct sources of authority and protect different legal interests. OJK focuses on the integrity of the statutory disclosure regime, while IDX safeguards listing order and trading continuity within the marketplace. Indonesian doctrine has recognized that both bodies possess parallel enforcement powers that obligate action even when the same underlying non-compliance is involved, which supports the view that the sanctions are complementary rather than duplicative (Hutama, 2017).

3.3.2 Evidence From Practice

Real case 1. Mass IDR 150 million fines for quarterly reporting delays. On 11 July 2024, the IDX issued third written warnings and IDR 150 million fines to 62 listed companies that failed to submit interim financial statements for the period ending 31 March 2024 or had not paid earlier

Veteran Law Review
Volume: 8 Issue: 2
P-ISSN: 2655-1594 E-ISSN: 2655-1608

penalties. The Exchange framed this as a mass enforcement action under Rule I-H, which sets nominal amounts and timing thresholds explicitly (IDN Financials, 2024).

Real case 2. Market suspensions after the 91st day. On 30 to 31 July 2025, the IDX temporarily suspended trading in 59 issuers that still had not submitted their interim financial statements as of 31 March 2025 or had not settled late-reporting fines. This action followed Article II.6.4 of Rule I-H that requires suspension on the 91st calendar day after the filing deadline. Trading resumes only once the report is submitted and all fines have been paid (Indo Premier, 2025).

Real case 3. OJK's pattern of sanctions for delays. Throughout 2024 to 2025, OJK's official releases recorded cumulative administrative fines in the billions of rupiah for reporting delays, separate from investigations into other disclosure violations. In addition to POJK 29/2016 for annual reports, the Authority applies specialized reporting regimes that can impose per-day fines. For example, POJK 3/2021 is frequently cited as providing approximately IDR 2 million per day of delay for certain capital market entities, although application depends on the specific obligation and entity type (Iru, 2024 to 2025; A and O Shearman, 2024).

3.3.3 Extending the Lens: When the Ministry of Finance Enters the Field

In cases such as delayed reporting, the Ministry of Finance is not directly involved because the issue falls under capital-market supervision rather than taxation or professional-accounting regulation. However, when financial misconduct implicates fiscal or auditing aspects, the Ministry's role becomes significant. The 2019 Garuda Indonesia case exemplifies such multi-authority coordination. Garuda Indonesia Tbk was found to have misstated its 2018 financial statements, resulting in sanctions from OJK, the IDX, and the Ministry. OJK imposed IDR 100 million fines on the company and its directors, while the IDX ordered a restatement of the financials and issued warnings. Concurrently, the Ministry of Finance, through P2PK, sanctioned the external audit firm with a formal warning, mandated quality-control improvements, and suspended the lead auditor's license for 12 months. OJK also suspended the auditor's registration to practice in the capital market for one year.

This case illustrates that when violations involve misleading financial reporting, the Ministry's involvement emerges via its authority over the auditing profession, complementing OJK's and IDX's market-discipline roles. Similarly, when misrepresentation affects taxation, the DGT may impose corrective tax assessments and administrative fines. Hence, the Ministry's absence in pure capital-market reporting cases stems from jurisdictional boundaries rather than inaction.

Veteran Law Review
Volume: 8 Issue: 2
P-ISSN: 2655-1594 E-ISSN: 2655-1608

3.4. Comparative Perspective with Other Jurisdictions

In the European Union, the *ne bis in idem* principle is enshrined in Article 50 of the Charter of Fundamental Rights of the European Union and Article 4 of Protocol No. 7 to the European Convention on Human Rights (ECHR), both of which prohibit double punishment for the same act (eucrim.eu). For instance, in *A. and B. v. Norway* (2016), the European Court of Human Rights (ECtHR) held that a tax penalty precludes subsequent criminal prosecution only if the administrative sanction is *criminal in nature* and has become final (European Union Agency for Fundamental Rights, 2016). The Court further clarified that administrative and criminal proceedings may coexist only if they are complementary and form part of an integrated enforcement mechanism, with safeguards ensuring that the overall severity of sanctions remains proportionate (European Criminal Law Associations' Forum, 2016). Similarly, the Italian Constitutional Court in 2020 ruled that once an administrative sanction has become final, criminal proceedings for the same offense are impermissible (Cleary Gottlieb Steen & Hamilton LLP, 2020), illustrating the European system's strict framework against double punishment.

In Southeast Asia, Singapore and Malaysia emphasize inter-agency coordination in enforcement. In Singapore, the Monetary Authority of Singapore (MAS) routinely coordinates with the Attorney-General's Chambers (AGC) to determine appropriate enforcement channels for capital-market violations. For example, in a 2016 enforcement action, MAS imposed administrative fines on a company's management but refrained from pursuing criminal proceedings, considering that the administrative sanctions were sufficient. This approach prioritizes efficiency and avoids redundant prosecutions. Malaysia adopts a more cautious stance: the *una via* principle applies in a semi-strict manner. Although Malaysian regulations do not explicitly prohibit double sanctions, enforcement practice remains selective and guided by institutional prudence.

The key lesson for Indonesia from these comparative examples lies in the integration and coordination of legal systems. Singapore demonstrates that effective inter-agency coordination can prevent duplicative sanctions without undermining enforcement efficiency, while Malaysia's selective approach allows regulatory authorities to act proportionately. Indonesia could adopt a hybrid model combining Singapore's coordination mechanisms and Malaysia's prudential enforcement, as comparative studies suggest that such a hybrid system would best fit Indonesia's legal and institutional context.

Veteran Law Review
Volume: 8 Issue: 2
P-ISSN: 2655-1594 E-ISSN: 2655-1608

3.5. Determining "the Same Offence" and the Punitive Nature of Sanctions

In applying the principle of *ne bis in idem* within the realm of financial administrative law, a key deficiency in Indonesian research and practice lies in the lack of clarity regarding the test for "the same offence," which is a fundamental prerequisite for its application. Regulatory authorities such as the Financial Services Authority (OJK), the Indonesia Stock Exchange (IDX), and the Ministry of Finance tend to interpret this principle narrowly, focusing primarily on the sameness of the legal provision violated or the identity of the offender. However, comparative legal studies demonstrate that the proper assessment should be multi-layered, encompassing three dimensions: (i) *idem factum* or the sameness of the factual circumstances, time, and actor; (ii) *idem crimen* or the sameness of the legal norm used as the basis for imposing sanctions; and (iii) the *same protected legal interest*, namely the legal interest safeguarded by both proceedings. These three dimensions determine whether two administrative processes address genuinely identical conduct or merely thematically related violations.

Understanding the *same protected legal interest* is crucial, as many administrative sanctions in the financial sector pursue different policy objectives. For example, an OJK sanction for failure to disclose material information serves to protect the integrity of the capital market system, whereas an IDX sanction for the same omission aims to preserve good governance within the exchange and ensure members' compliance with internal regulations. When the protected legal interests differ, *ne bis in idem* does not automatically apply. Conversely, when two sanctions cumulatively impose punitive burdens for the same conduct, the risk of duplication increases and the legal protection afforded to market participants is undermined.

Moreover, the assessment of the punitive nature of administrative sanctions remains underdeveloped in Indonesia. Many administrative fines are excessively high, imposed without an effective appeal mechanism, and have social and economic consequences equivalent to criminal punishment. It is therefore essential to adopt the *Engel criteria* as developed by the European Court of Human Rights (ECtHR) in *Engel and Others v. Netherlands* (1976), which provides three factors for determining whether a measure is "criminal in nature": (a) the nature of the offence, that is, whether it concerns public order rather than a mere administrative obligation; (b) the nature and purpose of the sanction, whether it is punitive rather than purely remedial; and (c) the degree of severity of the potential penalty. If these criteria indicate that an administrative sanction

Veteran Law Review
Volume: 8 Issue: 2
P-ISSN: 2655-1594 E-ISSN: 2655-1608

is "criminal-like," the *ne bis in idem* principle must be applied more strictly, imposing on authorities the duty to avoid double punishment and to ensure proportionality in the aggregate level of sanctions.

Accordingly, the combined application of *idem factum*, *idem crimen*, and the *Engel criteria* should be integrated into inter-agency enforcement guidelines. This approach not only clarifies the doctrinal boundaries of *ne bis in idem* but also strengthens the protection of regulated entities' rights and upholds the credibility of financial administrative enforcement in Indonesia.

3.6. Complementarity, Due Process, and Cross-Authority Coordination Reform

The second major weakness in the enforcement of administrative sanctions within Indonesia's financial sector lies in the absence of a coherent coordination framework that balances *complementarity* with the prevention of *duplication*. In practice, both the Financial Services Authority (OJK) and the Indonesia Stock Exchange (IDX) often impose separate sanctions for the same violation, such as delays in financial reporting, without synchronization in timing or information sharing. This fragmented approach creates a risk of *over-deterrence* and a *chilling effect*, as regulated entities may refrain from voluntary disclosure out of fear of being punished multiple times for the same conduct. To ensure a balance between regulatory effectiveness and procedural fairness, a four-step coordination framework should be established: (1) verifying that the same set of factual circumstances is involved; (2) differentiating whether each sanction serves a complementary or duplicative function; (3) ensuring coordination in timing and information exchange among authorities; and (4) applying the principle of *offset* or a *single sanction cap* to maintain the proportionality of the total penalty imposed.

On the other hand, the *due process of law* remains a vital element to prevent administrative enforcement from descending into procedural arbitrariness. Under Law No. 30 of 2014 on Government Administration, every administrative decision must adhere to the principles of legal certainty, prudence, and proportionality. These principles require adequate notification, a genuine opportunity to be heard, and a reasoned written decision. The internal review or objection mechanisms within OJK and IDX should be systematically mapped, including the possibility of judicial review before the Administrative Court (Pengadilan Tata Usaha Negara, PTUN) for final decisions deemed to violate these fundamental administrative principles.

Veteran Law Review
Volume: 8 Issue: 2
P-ISSN: 2655-1594 E-ISSN: 2655-1608

From a comparative perspective, following the *A. and B. v. Norway* (2016) judgment, European jurisprudence allows parallel administrative and criminal proceedings only when they are truly integrated, pursue distinct yet complementary objectives, and are subject to overall proportionality control. Similarly, the Court of Justice of the European Union (CJEU) in *Menci*, *bpost*, and *Nordzucker* reaffirmed that Article 50 of the *Charter of Fundamental Rights of the European Union* prohibits double punishment except when both proceedings form part of a procedurally unified framework. This principle holds particular relevance for Indonesia, where the institutional relationship between OJK and IDX embodies a *regulator–self-regulatory organization* model.

Moving forward, cross-authority coordination should be institutionalized through a *Memorandum of Understanding* (MoU) on case triage, a *joint case registry*, and the adoption of a *no-piling-on* policy, which prohibits the imposition of multiple punitive sanctions without a clear justification of complementarity. Integrating *offset* mechanisms and establishing a single sanction cap across authorities would make the administrative enforcement system more transparent, predictable, and efficient. From a law and economics perspective, such an approach mitigates excessive compliance costs, reduces regulatory uncertainty, and sustains deterrence at a proportionate level by improving the certainty of enforcement rather than escalating the severity of sanctions.

With these institutional reforms, the *ne bis in idem* principle evolves beyond a mere normative safeguard into a substantive governance mechanism that enhances integrity, efficiency, and fairness in the enforcement architecture of Indonesia's financial regulatory system.

3.7. Practical Framework for Complementarity versus Duplication in OJK–IDX Cases

Example, for late submission of periodic reports and similar disclosure breaches, the following four-step test operationalizes the foregoing principles:

1. **Same factual sequence.** Confirm that both proceedings arise from the same timeline, actor, and operative facts. If not, parallel action may proceed without *ne bis in idem* concerns.
2. **Distinct and complementary functions.** Identify whether IDX acts to preserve orderly exchange operations in its role as an SRO, while OJK enforces issuer disclosure in its role as public regulator. Where functions are genuinely distinct and complementary, parallel measures can be justified.

Veteran Law Review
Volume: 8 Issue: 2
P-ISSN: 2655-1594 E-ISSN: 2655-1608

3. **Coordinated timing and information.** Align investigative steps, share information, and sequence decisions to avoid cumulative penalties imposed in isolation.
4. **Offset and cap.** Where both authorities impose sanctions, apply mechanical offsets and a single cap to ensure proportionality of the aggregate penalty.

If any step fails, the risk of substantive duplication increases, and *ne bis in idem* may operate as a constraint on further punitive action. Embedding this test in joint guidance and case management protocols would translate high-level principles into predictable day-to-day enforcement.

To reconcile the principle of complementarity with the imperative of fairness, several safeguards may be formulated within the existing statutory and regulatory framework.

1. **Sequential Coordination and Information Exchange**
   The OJK and the IDX should formalize service level agreements establishing real-time coordination mechanisms for monitoring compliance, confirming payment of fines, and verifying document submissions. Before imposing a suspension on the ninety-first day, both institutions should jointly verify that the issuer has neither submitted the required report nor settled the fines, and should duly consider any credible evidence of bona fide remedial efforts.
2. **Notional Offset and Proportional Reduction**
   In circumstances where the OJK has already imposed an administrative fine for the same factual delay, the IDX may apply a proportional reduction to its monetary sanction while retaining written warnings and, where appropriate, temporary suspension measures. Such calibrated enforcement preserves deterrence and market discipline while preventing excessive duplication of pecuniary penalties.
3. **Materiality and Intent Assessment**
   Regulatory policy should distinguish between minor administrative delays that produce limited market impact and recurrent or deliberate non-compliance that reflects deficiencies in corporate governance. Only the latter should justify escalation of sanctions without reduction, thereby aligning the severity of enforcement with culpability and impact.
4. **Enhancement of Procedural Safeguards**
   Both authorities should standardize notice formats, establish short but reasonable hearing periods, and provide transparent criteria for the lifting of suspensions. An issuer that subsequently files the required report, fulfills all outstanding obligations, and demonstrates remedial action should be promptly reinstated to ensure procedural fairness and proportionality.

Veteran Law Review
Volume: 8 Issue: 2
P-ISSN: 2655-1594 E-ISSN: 2655-1608

5. **Referral to the Ministry of Finance in Cases Involving Integrity Breaches**
   Where regulatory review indicates elements of misleading disclosure, auditor misconduct, or potential tax misstatements, established referral protocols should trigger the competencies of the Ministry of Finance and the Directorate General of Taxes. The *Garuda Indonesia* case serves as a precedent for multi-authority coordination that targets distinct protected legal interests without imposing redundant punishment for mere procedural lateness (Tempo, 2019).

3.8. The Urgency of Cross-Authority Implementation of the *Ne Bis In Idem* Principle

Implementing the *ne bis in idem* principle across regulatory authorities is essential to ensure legal certainty for investors and business actors. The *una via* principle is designed to guarantee fairness and predictability in the resolution of capital-market disputes. Without assurance that a single violation will result in only one sanction, regulated entities face considerable legal uncertainty. Ambiguous procedures may expose businesses to the risk of double enforcement, such as being fined by OJK and later prosecuted criminally for similar misconduct, creating confusion and potentially constituting an abuse of supervisory powers.

The importance of inter-agency coordination has already been recognized by the Indonesian government. Recently, OJK and the Ministry of Finance established a joint working group with the Indonesia Stock Exchange (IDX) to strengthen capital-market governance and align regulatory policies. The Chair of OJK emphasized that "cross-ministerial and inter-agency coordination" is vital to uphold legal certainty and improve the national investment climate. A systematic and coordinated enforcement framework would enhance investor confidence by reducing the risk of double sanctions, thereby fostering a more conducive investment environment and protecting businesses from potential regulatory overreach.

4. Conclusion

This study shows that Indonesia's administrative enforcement in the financial sector increasingly relies on parallel sanctioning powers that can expose firms to cumulative penalties for a single course of conduct. Using the late filing of periodic financial statements as a working case, the analysis demonstrates how OJK's statutory disclosure regime and the IDX's listing discipline can operate simultaneously. While authorities justify dual action by reference to distinct legal interests and institutional mandates, the aggregate effect on

issuers can resemble double punishment and can erode legal certainty if not carefully coordinated.

To structure decision making and reduce duplication risks, the paper proposes a doctrinal test for "the same offence" that integrates three elements. First is *idem factum*, which focuses on sameness of facts, timeline, and actor. Second is *idem crimen*, which assesses whether the normative basis of liability is the same. Third is the "same protected legal interest," which clarifies whether two proceedings truly safeguard different interests or merely describe them differently. The paper supplements this test with the *Engel* criteria to identify when administrative fines are criminal-like, which then requires a stricter application of *ne bis in idem* and tighter control of total sanction severity.

The 2023 Financial Sector Law's *una via* architecture is an important step toward channeling cases into a single enforcement track where appropriate. It advances ultimum remedium in financial enforcement and provides a statutory lever to avoid simultaneous administrative and criminal proceedings. Yet *una via* alone does not eliminate cross-agency duplication, particularly across the regulator–SRO boundary and in matters that implicate auditor conduct or fiscal consequences. Gaps remain in day-to-day coordination, information sharing, and proportionality controls across OJK, IDX, and the Ministry of Finance.

Comparative lessons from the European Union and selected ASEAN jurisdictions reinforce two messages. First, parallel proceedings are acceptable only when they are genuinely integrated, complementary in purpose, and subject to an overall proportionality check. Second, institutionalized cooperation, transparent referral protocols, and predictable procedural safeguards are essential to align deterrence with fairness. These insights support an Indonesian model that preserves credible enforcement while preventing redundant punishment.

Accordingly, the paper recommends operational reforms that can be implemented within existing mandates. Authorities should adopt service level agreements for real-time status sharing, verify factual overlap before escalating to suspension, and apply notional offsets or a single-cap rule to the monetary component when both OJK and IDX sanction the same lateness. Materiality and intent filters should distinguish inadvertent delay from sustained non-compliance that signals governance weaknesses. Due process guarantees should include standardized notices, short hearing windows, and clear criteria for lifting suspensions once the issuer files, pays dues, and documents remediation. In cases that implicate misleading disclosures, auditor failures, or tax misstatements, authorities should trigger predefined

referral pathways to the Ministry of Finance and the Directorate General of Taxes.

If implemented, these measures would reconcile complementarity with fairness, improve predictability for regulated entities, and strengthen investor confidence. They would also reduce compliance deadweight costs by improving the certainty of enforcement rather than escalating penalties. In this way, *ne bis in idem* would function not only as a doctrinal shield against double punishment, but also as a governance principle that guides proportional, coordinated, and transparent administrative practice across Indonesia's financial regulatory system.

Future research should evaluate the effectiveness of *una via* selections across case cohorts, quantify the deterrence impact of offset and cap mechanisms, and assess how coordinated enforcement affects market quality metrics such as liquidity and price efficiency. Empirical evidence on these fronts would help calibrate sanction design and would further align Indonesia's practice with international standards on integrated, proportionate enforcement.

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