

ANALYSIS OF LEGAL PROTECTION FOR CAPITAL MARKET INVESTORS

Muhammad Fauzi¹, Ewaldo Asirwadana², Maharani Pratama Milasari³

¹Faculty of Law, Universitas Muhammadiyah Yogyakarta, Indonesia.

²Faculty of Law, Universitas Muhammadiyah Yogyakarta, Indonesia. ewaldo.a.law19@mail.umy.ac.id

³Faculty of Law, Universitas Muhammadiyah Yogyakarta, Indonesia.

Abstract: *This research discusses the legal protection for capital market investors. The capital market industry in a country is urgently needed as a source of national development funds. In its activities, there are actors who fully support and support capital market activities in accordance with their respective duties and functions. The existence of investor funds has been able to move the capital market industry in particular. In general, investor funds can be a source of funds for national development. However, due to the unbalanced share composition between founders and public investors, this weakens the position of investors, so that investors often become victims of crimes and capital market violations. Law No. 8 of 1995 concerning the Capital Market which is The legal basis for the existence of the capital market in Indonesia has provided legal guarantees for the parties conducting activities in the capital market sector as well as protection for investors. Protection for investors is a requirement to establish the principle of full and fair disclosure or transparency. The writing method used by the writer in this research is the normative method. The results show how legal protection for capital market investors is based on Law Number 8 of 1995 concerning the Capital Market and Law Number 21 of 2011 concerning the Financial Services Authority.*

Keywords: Capital markets, investors, legal protection

How to Site: Muhammad, Ewaldo, & Maharani Pratama. (2021). ANALYSIS OF LEGAL PROTECTION FOR CAPITAL MARKET INVESTORS. Jurnal Hukum to-Ra : Hukum Untuk Mengatur Dan Melindungi Masyarakat, 7(2), 215–226. Retrieved from <https://ejournal.fhuki.id/index.php/tora/article/view/4>

1. Introduction

Law and investment are like an inseparable piece of currency, the law is an instrument that regulates all matters of public life, including investment. One of the important schools of thought is "financial theory" which tries to link the legal system with investment behavior. Legal protection is one of the elements to improve the aspect of law enforcement in a country. Of course, legal protection is provided by the state to its people in order to create stability in any case, including in economic and legal matters. According to the terminology of legal protection, the meaning of legal protection can be separated into two words, namely protection and law. Linguistically speaking, the word protection in

English is called protection. The term protection according to the Big Indonesian Dictionary (KBBI) can be equated with the term protection, which means the process or act of protecting, while according to Black's Law Dictionary, protection is the act of protecting.¹

Article 1 number 13 of Law Number 8 Year 1995 concerning Capital Markets explains that the Capital Market is an activity concerned with Public Offerings and Securities trading, Public Companies related to the Securities they issue, as well as institutions and professions related to Securities. Capital market is a translation of the term capital market. The term capital market can mean a place with a system that regulates the procedures for meeting the funding needs of a company. Capital market can also be interpreted as a place where people buy and sell securities.² The Capital Market has a strategic role in the development of the Indonesian economy, namely as a source of financing for the business world and a vehicle for investment for the community. To support this role, it requires regulations in the Capital Market sector that are effective and with integrity so that they can support the growth of the Capital Market. This regulation must be able to protect every element involved in the Capital Market, especially investors. Investors will need protection of their assets and protection of investor assets will provide a sense of security and increase investor confidence to continue investing in the Capital Market. In investing in the capital market, investors are more dominant in dependence on securities companies, because securities companies are parties legally having the authority to store, control, transfer, and use investor assets in the context of transaction activities for the benefit of investors.³

2. Discussion

Legal protection provided by a country has two characteristics, namely preventive (prohibited) and punitive in nature (sanction).⁴ The most obvious form of legal protection is the existence of law enforcement institutions such as courts, police and dispute resolution institutions outside the court (non court). -litigation) others. This is in line with the definition of law according to Soedjono Dirdjosisworo which states that law has various meanings in society and one of the most obvious definitions of law is the existence of law enforcement institutions. Legal protection is closely related to aspects of justice. According to Soediman Kartohadiprodjo's opinion, in essence the goal of law is to achieve justice.

¹ Bryan A. Garner, *Black's Law Dictionary*, ninth edition, (St. Paul: West, 2009), p. 1343.

² Hadi, N, *Acuan Teoritis dan Prakts Investasi di Instrumen Keuangan Pasar Modal*, (Yogyakarta: Graha Ilmu, 2013). p. 30.

³ Hakim, R. F, *Perlindungan Aset Nasabah Oleh Penyelenggara Dana Perlindungan Pemdal (Investor Protection Fund) Akibat Pailitnya Perusahaan Efek*. Jurnal Hukum Universitas Brawijaya, p. 4.

⁴ Rafael La Porta, "Investor Protection and Corporate Governance", *Journal of Financial Economics*, no. 58, (Oktober 1999): p. 9.

Therefore, the existence of legal protection is one of the mediums to uphold justice, one of which is upholding justice in the economic sector, especially the capital market.

2.1 Consumen Protection

One of the aspects or considerations for the establishment of a financial services authority as regulator and supervisor of the integrated financial services industry in Indonesia is to protect the rights and interests of parties with the status of consumers in the financial services industry. This is aimed at improving the performance of the financial services industry in Indonesia, particularly the capital market services industry. In addition, regulations regarding service industry consumers in Indonesia are contained in two laws and regulations, namely Law Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as UUPK) and Law Number 21 of 2011 concerning the Financial Services Authority (hereinafter referred to as the OJK Law).⁵

In addition, in the consideration of Law Number 8 of 1999 concerning Consumer Protection, it is stated that the importance of consumer protection for national economic development in the era of globalization must be able to support the growth of the business world so that it is able to produce goods / services that contain technology that can improve the welfare of many people and at the same time. obtain certainty of goods and / services obtained from trade without causing loss to consumers. Indeed, at first the concept of consumer protection was sparked in response to economic globalization.

2.2 Legal Protection for Investors According to Law Number 8 of 1995 concerning the Capital Market

In article 4 of Law Number 8 Year 1995 Capital Market, it is stated that "Bapepam shall carry out the guidance, regulation and supervision as referred to in Article 3 with the aim of creating an orderly, fair and efficient Capital Market activity and protecting the interests of investors and the public." The Regime of Law Number 8 Year 1995 concerning Capital Market (hereinafter referred to as UUPM) determines and regulates that the competent authority over the capital market is Bapepam-LK. This authority is under the Ministry of Finance to foster, regulate and supervise the capital market. In its activities, Bapepam-LK is under and responsible to the Minister of Finance. Bapepam-LK has the authority to implement preventive and repressive capital market legal protections. In the UUPM regime, Bapepam-LK is the embodiment of an institution to restore public confidence in a

⁵Hamud M. Balfas, OJK akan membawa perubahan besar terhadap lansekap industri keuangan di Indonesia. [Hamud M. Balfas, Hukum Pasar Modal Indonesia (edisi revisi), (Jakarta: PT. Tatanusa, 2012), p. 7.

market that has experienced depression since the emergence of the financial crisis in a number of Asian countries. In the end, it was this financial crisis that contributed to the formation of the OJK as a financial services supervisory agency in Indonesia. In carrying out its functions, Bapepam-LK has the authority in the form of:

- a) Granting business licenses to Stock Exchanges, Clearing Guarantee Institutions, Depository and Settlement Agencies, Mutual Funds, Securities Companies, Investment Advisors, and Securities Administration Agencies; give licenses to individuals for Underwriter Representatives, Broker-Dealer Representatives, and Investment Manager Representatives; and give approval for the Custodian Bank
- b) requires registration of Capital Market Supporting Professionals and Trustees
- c) determine the requirements and procedures for nominating and temporarily dismissing commissioners and / or directors and appointing the temporary management of the Stock Exchange, Clearing Guarantee Institution, and Depository and Settlement Institution until new commissioners and / or directors are elected.
- d) determine the requirements and procedures for the Registration Statement and declare, postpone or cancel the effectiveness of the Registration Statement
- e) conduct examination and investigation of each Party in the event of an event that is suspected to be a violation of this law and or its implementing regulations.
- f) require each Party to stop or improve advertisements or promotions related to activities in the Capital Market; or take the necessary steps to resolve the consequences of the intended advertisement or promotion
- g) conduct examination of any Issuer or Public Company that has or is required to submit a Registration Statement to Bapepam; or Parties that are required to have business licenses, individual licenses, approval, professional registration based on this law
- h) appoint other parties to carry out certain examinations in the context of exercising the authority of Bapepam as referred to in letter g
- i) announce the results of the examination
- j) freeze or cancel the listing of a Securities on the Stock Exchange or terminate Exchange Transactions on certain Securities for a certain period of time in order to protect the interests of investors
- k) stop trading activities of the Stock Exchange for a certain period of time in case of an emergency
- l) examine objections submitted by Parties that are subject to sanctions by the Stock Exchange, Clearing Guarantee Institution, or Depository and Settlement Institutions and provide a decision to cancel or strengthen the imposition of the said sanctions

- m) stipulating fees for licensing, approval, registration, examination, and research as well as other fees for Capital Market activities
- n) take necessary measures to prevent losses to the public as a result of violations of the provisions on Capital Market activities
- o) provide further technical explanations for this law or its implementing regulations
- p) determines other instruments as securities, other than those stipulated in Article 1 point 5
- q) do other things given under this law.

To protect investors, the issuer that will sell the securities in the Public Offering must provide the opportunity for investors to read the prospectus regarding the securities issued, before ordering or at the time the order is placed. In the end, Bapepam-LK pays attention to the completeness and clarity of the issuer's documents to conduct a Public Offering in order to comply with the principle of capital market transparency⁶. This is important considering the prospectus of securities is the starting point and time for investors to consider whether or not to decide to buy securities. The next precautionary measure taken by Bapepam-LK is to stipulate that the securities prospectus is prohibited from containing misleading content or false information about material facts or presenting information about the advantages and disadvantages of the securities offered. In practice, Bapepam-LK makes a standard for preparing prospectuses for the securities to be offered. This protective action starts when Bapepam-LK gives permission for SROs, mutual funds, securities companies, and supporting professions to carry out activities in the capital market.

Apart from preventive measures, Bapepam-LK is also authorized to carry out examinations and investigations. This is a consequence of the supervisory function given by law to Bapepam-LK. Audit activities are carried out on all parties who are suspected of having been, are currently, or trying to commit or order, participate in, persuade, or assist in violating the capital market law and its implementing regulations.²⁰ In carrying out investigations, Bapepam-LK has the authority²¹ to: a). request information and or confirmation from parties suspected of committing or being involved in violations of this law and / or its implementing regulations or other parties if deemed necessary; b). obliging parties suspected of committing or being involved in violations of this law and or its implementing regulations to carry out or not carry out certain activities; c). examine and or

⁶ Irsan Nasaruddin, dkk, *Aspek Hukum Pasar Modal Indonesia*, cet. 7, (Jakarta: Kencana Prenada Media Group, 2011), p. 117.

make copies of records, books, and or other documents, either belonging to a Party suspected of committing or being involved in a violation of this law and / or implementing regulations or other parties if deemed necessary; and or d). establish conditions and / or allow Parties suspected of committing or being involved in violations of this law and or its implementing regulations to take certain actions necessary in order to settle losses arising.⁷

2.3 Legal Protection for Investors According to Law Number 21 of 2011 concerning the Financial Services Authority

One of the duties of OJK is to enforce the protection of financial service consumers in Indonesia. Consumer protection in the capital market, hereinafter referred to as protection for capital market investors, because consumers in the capital market sector are investors or investors. Therefore, the aspect of protection for capital market investors falls under the authority of the OJK. Concerning consumer protection is contained in Article 28, Article 29, and Article 30 of the OJK Law, which are provisions that explicitly regulate consumer and public protection for the financial services industry. The form of legal protection that OJK provides for consumers is preventive or preventive and imposes sanctions or repressive measures, given that OJK's task is to carry out the regulatory and supervisory function of the financial services sector.

Article 28 of the OJK Law provides legal protection in the form of preventing losses to consumers and the public which is carried out by OJK, namely: 1). provide information and education to the public on the characteristics of the financial services sector, services and products; 2). ask the Financial Services Institution to stop its activities if these activities have the potential to harm the community; and 3). other actions deemed necessary in accordance with the provisions of laws and regulations in the financial services sector. Specifically for Article 29 of the OJK Law, it states that OJK provides consumer complaint services which include; a). prepare adequate tools for customer complaints services that have been harmed by actors in the Financial Services Institution; b). create a mechanism for complaints of Consumers who have been disadvantaged by actors in the Financial Services Institution; c). facilitate the settlement of complaints from consumers who have been harmed by actors in the Financial Services Institution in accordance with the laws and regulations in the financial services sector.

Another form of legal protection that is repressive is that in the event of a dispute between a consumer and a financial service industry company, the OJK has the authority to defend the law in the interests of consumers and society. The legal defense includes

⁷ Hans Kelsen, *Dasar-Dasar Hukum Normatif*, (Jakarta: Nusamedia, 2009), p. 343.

ordering financial services companies to resolve complaints made by consumers who feel they have been harmed by means of; a). order or take certain actions to the Financial Services Institution to resolve consumer complaints that have been disadvantaged by the Financial Services Institution; b). file a lawsuit to recover the assets of the party that caused the loss from the party causing the loss, both under the control of the party causing the loss or under the control of another party in bad faith; and / or to obtain compensation from parties that cause losses to consumers and / or Financial Services Institutions as a result of violations of laws and regulations in the financial services sector.

The philosophical basis that OJK institutions provide legal protection are the principles that underlie OJK in carrying out its duties and authorities, namely:

- a) the principle of legal certainty, namely the principle in a rule of law that prioritizes the basis of statutory regulations and justice in every policy of implementing the Financial Services Authority
- b) the principle of public interest, namely the principle of defending and protecting the interests of consumers and society and advancing the general welfare
- c) the principle of openness, namely the principle of opening oneself to the rights of the public to obtain true, honest, and non-discriminatory information regarding the administration of the Financial Services Authority, while still paying attention to the protection of individual and group human rights, as well as state secrets, including secrets as stipulated in legislation
- d) the principle of professionalism, namely the principle that prioritizes expertise in the implementation of duties and authorities of the Financial Services Authority, while remaining based on the code of ethics and the provisions of laws and regulations.
- e) the principle of integrity, namely the principle that adheres to moral values in every action and decision taken in the administration of the Financial Services Authority.
- f) the principle of accountability, which is the principle that determines that every activity and the final result of each activity in the implementation of the Financial Services Authority must be accountable to the public.⁸

Consumer protection in the financial services sector under the OJK regime covers the entire financial service sector, including bank financial institutions and non-bank financial institutions. The unification of the already dispersed financial services sector consumer

⁸ Jimly Asshiddiqie, "Perihal Undang-Undang", cet.II, (Jakarta: PT. Rajagrafindo Persada, 2011), p. 133-135.

protection arrangements is intended to improve the system and cover substantial deficiencies.

2.4 Legal Protection for Investors Experiencing Transaction System Disorders on the Indonesia Stock Exchange

The Exchange as facilitator of securities trading transaction activities is the party that provides the facilities and infrastructure for carrying out capital market activities. Based on the case of remote trading system disruption that occurred on the exchange, the authors identified a violation of consumer protection aspects. This problem also stems from the absence of a legal rule from the stock exchange authority that requires all exchange members to be registered or connected to the DRC, so that when a disturbance occurs, the exchange member cannot conduct transactions. The problem for exchange members who have registered in the back up system is the slow connection to the system. The IDX claims that the remote trading system used is the most modern system that meets the standards for exchange activities. However, there was still a system disturbance and the IDX did not provide any information regarding the clarity of the system disturbance. According to Budi Wibowo, analysis of e-Trading Securities, the disruption of the trading system also damages technical analysis by making some stocks illegible. Whereas in Article 4 of the Company Law, consumers of goods and services have the right to correct, clear, and honest information regarding the condition of the goods and / or services used. This means that the investor has the right to clarify the causes of the remote trading system disruption which hinders the sale and purchase of securities transactions. The real form of legal protection that is right for dealing with cases like the one above is by taking preventive and repressive legal protection measures.

This legal protection measure is also closely related to consumers' rights to utilize financial service institutions. Preventive measures that can be taken by the stock exchange authority to prevent system disruptions from recurring is to provide guidance and education for consumers. This is in accordance with Article 4 letter f of the UUPK. The Exchange provides education for exchange members as well as for consumers who have been registered as investors about securities transactions as well as simulations of action (mock trading) that must be carried out by exchange members as well as investors in the event of a force majeure on the instruments of transaction activity. In this case, the stock exchange will only simulate using the recovery system when the JATS trading session has closed. The author's opinion is not quite right, considering that the exchange should carry out a simulation when the software and hardware that has the DRC system has not been applied in the stock transaction system on the exchange. The timing error for the

simulation of the latest system, according to the author, is a form of negligence by the stock exchange authority.⁹

Repressive actions that can occur as a projection if system disruptions like this continue are the capital market supervisory authority, OJK, imposing administrative sanctions in accordance with Article 102 of the Capital Market Law for the Indonesia Stock Exchange which can be in the form of written warnings, fines, restrictions on business activities, freezing of business activities, revocation of business license, cancellation of approval and cancellation of registration as a securities broker. securities traders. According to the confessions of investors and some brokers, this kind of disturbance happened more than once. Of course, this causes the Indonesian capital market to get a bad image in the eyes of investors. In general, investors who will enter the capital market of a country will pay attention to aspects of security and legal certainty, so that the interests of investors can be well protected and protected by capital market regulations in the investment destination country. The two aspects above are also accommodated in the report by the International Organization of Securities Commission (IOSCO) regarding the obligations of the capital market authority, namely: "the three fundamental objectives of securities regulation are: (1) the protection of investors; (2) ensuring that securities markets are fair, efficient and transparent; (3) and the reduction of systemic risk."¹⁰ The legal protection route that can be taken by capital market investors if they experience a loss is through litigation or settlement through courts and non-litigation channels. In this case an investor complained about the system disruption and losses he experienced to YLKI. YLKI is a non-governmental organization engaged in consumer protection. The complaints received by YLKI by stock exchange investors are one of the duties of YLKI and are the rights of these investors as consumers of financial services institutions. This is in accordance with Article 44 of the UUPK which states that non-governmental consumer protection agencies are tasked with assisting consumers in fighting for their rights, including receiving complaints or complaints from consumers.

Apart from going through legal channels according to the UUPK, the injured investor can also seek legal protection under the UUPM regime and the OJK Law as the legal basis for the establishment of the capital market in Indonesia. These two things are not contradictory but, according to the author, the availability of legal options to resolve in

⁹ Jimly Asshiddiqie dan M. Ali Safa'at, *Teori Hans Kelsen Tentang Hukum*, (Jakarta: Sekretariat Jenderal dan Kepaniteraan MK RI, 2006), p. 12

¹⁰ IOSCO, *Securities Activity on the Internet: A report of the Technical Committee of the International Organization of Securities Commission (IOSCO)*, (September, 1998), p. 3.

the event of a dispute in the capital market. The legal protection provided by the UUPM and the OJK Law to capital market consumers or investors is a *lex specialis* of the legal protection provisions in the UUPK as *lex generalis*. The UUPK covers all business activities that utilize goods and services, while the UUPM and the OJK Law are the legal basis for the protection of those who utilize financial service institutions, especially the capital market. As a further projection, if the investor is harmed by the use of financial services, the investor has the right to complain about this to OJK's customer service. As the sole and integrated supervisory authority for financial services in Indonesia, OJK is obliged to tighten supervision of the remote trading system on the stock exchange. Based on the above case, if there is another complaint by the investor, the OJK is obliged to order or take certain actions to the financial services institution (in this case the Indonesia Stock Exchange) to resolve the complaints of consumers who feel they have been disadvantaged.¹¹

3. CONCLUSION

Investor legal protection it is imperative to apply the principle of full and fair disclosure or transparency. The principle of full disclosure is openness disclosure of company data complete and thorough concerning financial data, management and so on with the aim of making it widely known by the general public. This action needed as an attempt to provide information to the public to assess its securities published and sold by the company concerned. Capital market laws set the position and function Bapepam in multi formations, namely general settings, detailed settings, and sporadic arrangements. Other than that, Bapepam-LK also functions as Examining agencies and as Institute of Investigation. The principle of openness functions to maintain public trust against the market. Next is the principle openness serves to creating an efficient market mechanism and the principle of openness is important to prevent fraud.

The rights of investors as consumers of capital market financial services are not fulfilled in the form of right to correct information, clear information about the condition of remote financial services trading system and the right to receive guidance and education about the system securities transactions and the back up system, causing the protection aspect to be violated consumers for investors on exchanges. Legal protection for investors according to Law Number 8 of the Year 1995 Concerning Capital Market and Law Number 21 Year 2011 Concerning The Financial Services Authority is preventive and repressive in nature. Legal protection is prevention is shown from the provisions which require guidance, education and supervision of the stock exchange authority and supervisors, meanwhile

¹¹ Article 30 of Law Number 21 of 2011 concerning the Financial Services Authority.

legal protection is repressive in nature the application of sanctions in the form of sanctions administrative as ultimum remedium for parties who violate the rules law in capital market regulation. Authorized agency to do this is OJK. If there is a dispute between the consumer (investor) and the SRO authorities, then can be resolved through litigation or non-litigation by utilizing BPSK institutions and special capital market dispute resolution alternatives, namely BAPMI.

References

Book

Hadi, N. (2013). *Acuan Teoritis dan Prakts Investasi di Instrumen Keuangan Pasar Modal*. Yogyakarta: Graha Ilmu.

Asshiddiqie, Jimly dan M. Ali Safa'at. *Teori Hans Kelsen Tentang Hukum*. Jakarta: Sekretariat Jenderal dan Kepaniteraan MK RI. 2006.

Asshiddiqie, Jimly. *Perihal Undang-Undang, cet. II*. Jakarta: PT. Rajagrafindo Persada, 2011.

Nasaruddin, Irsan dan Indra Surya. *Aspek Hukum Pasar Modal Indonesia, cet.II*. Jakarta: Prenada Media, 2004.

Kelsen, Hans. *Dasar-Dasar Hukum Normatif*. Penerjemah Nurulita Yusron. Bandung: Nusa Media. 2008.

Balfas, Hamud M. *Hukum Pasar Modal Indonesia*. Jakarta: Tatanusa, 2012.

Garner, Bryan A, *Black's Law Dictionary, ninth edition*. St. Paul: West, 2009.

Law and Regulation

Article 30 of Law Number 21 of 2011 concerning the Financial Services Authority.

Law Number 8 of 1995 regarding the Capital Market.

Journal

Hakim, R. F. (2015). *Perlindungan Aset Nasabah Oleh Penyelenggara Dana Perlindungan Pemdal (Investor Protection Fund) Akibat Pailitnya Perusahaan Efek*. Jurnal Hukum Universitas Brawijaya.

Rafael, La Porta La Rafael. 1999. "Investor Protection and Corporate Governance", *Journal of Financial Economics*.

IOSCO, *Securities Activity on the Internet: A report of the Technical Committee of the International Organization of Securities Commission (IOSCO)*, (September, 1998).