

Legal Protection for Investors Buying and Selling Shares Online and in the Capital Market

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Abstract

This study aims to know and analyze legal protection for investors in terms of buying and selling shares online and to find out and analyze the factors inhibiting the implementation of factors that hinder legal protection for investors in terms of buying and selling shares online. The research method carried out in this study is normative legal research, in this case, using material collection techniques in the form of document and literature studies. The results of this study show the form of legal protection for investors as consumers in Law Number 8 of 1999 concerning Consumer Protection, namely the establishment of BPKN and BPSK. Law Number 8 of 1995 concerning the Capital Market has been regulated regarding the disclosure of information that must be provided to investors, and the regulation of Bapepam-LK as a supervisory body for every activity related to the capital market, which has been transferred to the OJK. Law Number 21 of 2011 concerning the Financial Services Authority aspects of legal protection provided by this law are prevention or preventive efforts and enforcement or repression carried out by the Financial Services Authority. The inhibiting factors faced in carrying out investor protection are still the large number of unlicensed/illegal online stock investments and the lack of knowledge of the investor community related to illegal investments. Research Recommendations It is expected that the government will be able to update Law Number 8 of 1999 concerning Consumer Protection to protect consumers optimally in this era of highly developed technological development. It is expected that in the future, the government will need to regulate online stock investment through a special law. It is expected that in the future, there will be coordination and cooperation between OJK and BPKN / BPSK in ensuring investor (consumer) protection. Investors are expected to be more careful in seeking information and choosing a clear securities company that has obtained permission for its activities. To find out the forms of violations/crimes in capital market transactions and to know the legal protection of investors in capital market transactions. The journal writing method uses normative research with an approach, namely the statutory approach, namely Law Number 8 of 1995 concerning the capital market, the fact approach to alluding to capital practices in Indonesia, and the concept analysis approach to legal analysis. Based on the results of the study, namely: Legal Protection to the Capital Market Supervisory Body Article 4 of Law No. 8 of 1995 concerning the capital market stated that "coaching, regulating, supervising by Bapepam to create orderly, fair, and efficient capital market activities and crimes and violations in the capital market sector will be involved in legal cases, in capital market violations, usually regarding BAPEPAM licensing and registration cases.

Keywords : Investors, Capital Market, Shares

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Introduction

Legal protection is one element that can improve aspects of law enforcement in a country (Putra et al., 2024). Of course, the state provides legal protection to its people to realize stability in any case, including in economic and legal terms (Afifah, 2020). According to legal protection terminology, the notion of legal protection can be separated into two words, namely protection and law (Tunggu, 2024).

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 (Kholik et al., 2022). In contrast, according to Black's Law Dictionary, protection is the act of protecting. In France, local government shares were first negotiated in 1522, and the forerunner of the Stock Exchange was established in Hanseatic towns in the 15th century. The stock exchange was formally established in 1724 with limited trading activities (Liu et al., 2024), considering that the French Government limited securities trading intermediaries to only 60 members so that alternative trading was carried out outside the capital market building (Thompson et al., 2018). Capital market law must ensure transparency and the principle of disclosure because information is vital in the capital market (Veil, 2024b), considering that information can influence investment decisions and stock exchange prices (Gultom, 2024). Therefore, the rule of capital market law must be a disclosure-based regime (Sarraf, 2006). Aimed at reducing uneven asymmetric information between issuers/capital market prices and investors' prospective buyers of the securities offered. Capital market law trading securities is carried out honestly and fairly so that crime and mistakes in the capital market can be prevented, such as market manipulation, fraud, and Insider trading (Mulenga, 2024). In addition, capital market law must be established to ensure investor confidence in the integrity of the capital market supported by rules regarding capital provisions and dispute resolution in case of capital market violations or crimes. The Capital Market was created with the aim that Capital market activities can work in an orderly, effective, or efficient manner (Veil, 2024a). Creating ideal capital market laws is necessary:

1. Between substantive legal rules In substance, capital market legal provisions must contain rules that are stable, clear, reliable, predictable, or certain and function properly (Macaulay, 2020).5. Legal rules for the substance of a good capital market can be made by exploring existing rules in the country based on local practices and culture or adopting provisions from other countries.
2. Dispute resolution system An effective, efficient, consistent, objective, and reliable dispute resolution system is needed to ensure that the rights and obligations established by the substantive rule of LawLaw by the substantive rule of LawLaw are enforceable in establishing dispute resolution by combining administrative sanctions, court decisions, and alternative dispute resolution institutions such as arbitration.
3. Enforcement of judgments The rules of capital market law and decisions from the settlement of capital market disputes issued by courts, administrative awards, or arbitrations must be enforceable.8 This needs to be done so that investors who weigh the impact of errors and crimes in the capital market get compensation in the form of compensation.9 Many issue debt securities for the capital market as needed.

Problem statement.

From the background of the existing problem, therefore the formulation to be discussed is:

1. What are the forms of violations and crimes in capital market transactions?
2. What is the legal protection for investors in capital market transactions?

Purpose of Writing

The purpose of writing this journal article is to investigate the forms of violations and crimes in capital market transactions and the legal protection of investors in capital market transactions.

Research Methods

This journal uses the normative law research method. Normative Legal Research Methods can be carried out using legal material sources related to this research. There are stages to analyzing data materials and sources in journal writing, consisting of the following: a. Primary data can be from the first source in the field or interview results in the form of informants and respondents.

Secondary data is material that can be collected indirectly from the subject or object of the research material. Then, the secondary data consists of the following:

- 1) Primary legal material is binding legal material consisting of regulations and statutory books related to the object of research in Law Number 21 of 2011 concerning the Financial Services Authority and Law Number 8 of 1995 concerning Capital Market.
- 2) Secondary legal materials are legal materials that convey information from legal objects such as books, journals, magazines, and others.
- 3) Tertiary legal materials are legal materials that provide Guidance and explanation to primary legal materials and secondary legal materials. The approach used in preparing this article is The statute approach, which is an approach taken to various legal rules relating to Law Number 8 of 1995 concerning the Capital Market. The concept analysis approach (Analytical & Conceptual Approach) is a Concept. In legal science as a point of departure or approach for legal analysis.

Results and Discussion

Forms of Violations/Crimes in Capital Market Transactions

The provisions of law No. 8 of 1995 concerning Capital Market (UUPM) have outlined the forms of criminal acts in the capital market, such as fraud and market manipulation. Except for fines and imprisonment/confinement, which are determined to vary between imprisonment with a period of 3 years or a fine of Rp. 200,000,000 (two million rupiah) imprisonment for 15 years with a fine of Rp. 15,000,000,- (fifty million rupiah).¹⁵ An act has a meaningful personal character with circumstances related to theft or burglary for the control of market conditions and their interests. The form of crime regulated in the Capital Market Law classifies several crimes of a group of people in the capital market as crimes that sue criminally, such as a. The part that does not have the truth is the correspondence on the recording of actions in the field of capital markets. b. capital managers or groups. A group that openly or does not take to others to violate the wrong provisions concerning the Law of Criminal Offences under Articles 103, 104, 105, 106, 107.

Violations in the capital market have individuality as opposed to the form of blame on other parts. Violation based on the provisions of the capital market law embodies events that are threatened to be created by a group intervening in the capital market. Capital market violations illustrate managerial misconduct. Consists of 3, namely norms of violation that are commonplace on an ongoing basis consisting of:

1. subjective Violations
2. Mistakes committed in groups
3. Mistakes made are open from the group.

The impact of errors or crimes on the stock exchange is significant. The number and quality will undermine the credibility of the capital market industry because investors do not want to undermine its credibility. Investors no longer want capitalization in stock exchanges that are allegedly unsafe and cannot be trusted. Regarding the forms of capital market violations and crimes, Chapter XI Articles 90-99 of the Law.

Legal Protection for Investors According to Law Number 8 Years 1995 on Capital Market

Article 4 of Law Number 8 of 1995 Capital Market states that "Bapepam carries out guidance, regulation, supervision as referred to in Article 3 to realize the creation of Market activities.

Orderly, reasonable, and efficient capital and protects the interests of investors and society."The regime of Law Number 8 of 1995 concerning Capital Market (hereinafter referred to as UUPM) determines and regulates that Bapepam-LK is the authority in charge of the capital market. This authority is under the Ministry of Finance and fosters, regulates, and supervises the capital market.

Bapepam-LK is under and responsible to the Minister of Finance in its activities. Bapepam-LK has the authority to protect preventive and repressive capital markets legally. In the UUPM regime, Bapepam-LK is the embodiment of the institution that restores public confidence in markets that have been depressed since the emergence of financial crises in several Asian countries. In the end, this financial crisis also became one of the factors that led to the formation of OJK as a financial services supervisory institution in Indonesia.

In carrying out its functions, Bapepam-LK has the authority in the form of: a). Grant business licenses to Stock Exchanges, Clearing and Guarantee Institutions, Depository and Settlement Institutions, Mutual Funds, Securities Companies, Investment Advisors, and Securities Administration Bureaus; grant permission to natural persons for Underwriter Representatives, Securities Trader Representatives, and Investment Manager Representatives; and give approval to the Custodian Bank; b) require registration of Capital Market Supporting Professions and Trustees; c) establish the terms and procedures for nomination and suspend commissioners and/or directors and appoint temporary management of the Stock Exchange, Clearing and Guarantee Institutions, and Depository and Settlement Institutions until new commissioners and/or directors are elected; d) establish the requirements and procedures for the Registration Statement and declare, postpone or cancel the effectiveness of the Registration Statement; e) conduct examinations and investigations against each Party in the event of an event that is suspected of being a violation of this LawLaw and/or its implementing regulations; f) require each Party to stop or correct advertisements or promotions related to activities in the Capital Market; or take the necessary steps to address the consequences arising from the advertisement or promotion in question; g) conduct an examination of each Issuer or Public Company that has or is required to submit a Registration Statement to Bapepam; or Parties required to have a business license, natural person license, approval, professional registration under this LawLaw; h) appoint other parties to conduct certain examinations in the context of exercising Bapepam's authority as referred to in letter g; i) announce the results of the examination; j) freeze or cancel the listing of Securities on the Stock Exchange or stop Exchange Transactions on certain Securities for a certain period to protect the interests of investors; k) stop Stock Exchange trading activities for a certain period in case of emergency; l). examine objections raised by Parties sanctioned by Stock Exchanges, Clearing and Guarantee Institutions, or Depository and Settlement Institutions and give the decision to cancel or strengthen the imposition of such sanctions; m) determine the cost of licensing, approval, registration, examination, and research as well as other costs in the framework of Capital Market activities; n) take necessary actions to prevent public losses due to violations of provisions in the field of Capital Market activities; o) provide further technical explanations of this LawLaw or its implementing regulations; p) establish other instruments as securities, other than those specified in Article 1 number 5; and q). do other things provided under the Law Law.

To protect investors, the issuer will sell securities in The Public Offering must allow investors to read the prospectus concerning the securities issued before the order or when the order is placed. In the end, after Bapepam-LK paid attention to the completeness and clarity of

the issuer's documents to conduct a Public Offering to meet the principle of capital market openness.

The next precaution Bapepam-LK takes is to regulate that the securities prospectus is prohibited from containing misleading content or incorrect information about the Material Facts® or presenting information about the advantages and disadvantages of the securities offered. In practice, Bapepam-LK makes standards for preparing prospectuses for offering securities. This protection action began when Bapepam-LK granted licenses to SROs, mutual funds, securities companies, and supporting professions to operate in the capital market.

In addition to preventive measures, Bapepam-LK is authorized to conduct examinations and investigations. This is a consequence of the supervisory function provided by the Law to Bapepam-LK. Inspection activities are carried out on all parties suspected of having, being, or attempting to commit, instruct, participate, induce, or assist in violating capital market laws and implementing regulations.²⁰ In carrying out the examination, Bapepam-LK has the authority²¹ to: a) request information and/or confirmation from parties suspected of committing or involved in violations of this law and/or its implementing regulations or other parties when deemed necessary; b) require parties suspected of committing or engaging in violations of this Law and/or its implementing regulations to carry out or not to carry out certain activities; c) examine and/or make copies of records, books and/or other documents, whether belonging to the Party suspected of committing or involved in violation of this Law and/or its implementing regulations or other parties as deemed necessary; and or d). establish conditions and/or allow Parties suspected of committing or engaging in violations of this law and/or its implementing regulations to take certain actions necessary to settle losses incurred.

If Bapepam-LK believes that violations of the capital market law and its implementing regulations result in losses in the capital market service industry and endanger the interests of investors' rights, then Bapepam-LK stipulates the commencement of an investigation. This investigation is conducted by certain Civil Service Officials within Bapepam-LK and is authorized to ²²

a) receive reports, notifications, or complaints from someone about a criminal act in the Capital Market; b) conduct research on the truth of reports or information regarding criminal acts in the Capital Market; c) conduct research on Parties suspected of committing or involved in criminal acts in the Capital Market; d) summon, examine, and request information and evidence from any Party suspected of committing, or as a witness in a criminal act in the field of capital markets; e) inspect books, records, and other documents related to criminal acts in the capital market; f) conduct checks in every certain place where it is suspected that there is any evidence of books, records, and other documents and confiscate goods that can be used as evidence in criminal cases in the Capital Market; g) block accounts at banks or other financial institutions from parties suspected of committing or involved in criminal acts in the field of the Market.

Legal Protection for Investors According to Law Number 21 Year 2011 About the Financial Services Authority

OJK has a duty, one of which is to enforce financial services consumer protection in Indonesia (Atikah, 2020). From now on, consumer protection in the capital market will be referred to as capital market investor protection because consumers in the capital market sector are investors or investors. Therefore, the aspect of protection for capital market investors is the authority of OJK. Consumer protection is contained in Articles 28, Article 29, and Article 30 of the OJK Law, which are provisions that explicitly regulate consumer and public protection in the financial services industry.

The form of legal protection carried out by OJK to consumers is preventive or preventive and sanctions or repressive, considering that OJK's task is to carry out regulatory and

supervisory functions in the financial services sector. Article 28 of the OJK Law provides legal protection in the form of consumer and public loss prevention carried out by OJK: 1) providing information and education to the public on the characteristics of the financial services sector, services, and products; 2). ask Financial Service Institutions to: Stop its activities if they can potentially harm the community; and 3). Other actions deemed necessary by the provisions of laws and regulations in the financial services sector.

Specifically, Article 29 of the OJK Law states that OJK performs services Consumer complaints include: a) preparing adequate tools for the service of complaints of consumers who actors in Financial Service Institutions harm; b) creating a complaint mechanism for consumers who are harmed by Financial Service Institutions; c). facilitate the resolution of complaints

Consumers who actors in Financial Service Institutions harm in accordance with laws and regulations in the financial services sector.

Another form of repressive legal protection is if there is a dispute between consumers and financial services industry companies, OJK is authorized to conduct legal defense for the benefit of consumers and the public. The legal defense includes ordering financial services companies to resolve complaints made by consumers who feel aggrieved through a) order or perform certain actions.

To the Financial Service Institution to resolve consumer complaints that the Financial Service Institution harms; b) file a lawsuit to recover the property of the injured Party from the Party who caused the loss, whether under the control of the Party who caused the loss or under the control of the other Party in bad faith; and/or to obtain compensation from parties that cause losses to consumers and/or Financial Service Institutions as a result of violations of laws and regulations in the financial services sector. The philosophical basis that the OJK institution provides legal protection are the principles that underlie OJK in carrying out its duties and authorities, namely: a) the principle of independence, namely independence in decision making and implementation of functions, duties, and authorities of OJK while still by applicable laws and regulations; b) the principle of legal certainty, namely the principle in a legal state that prioritizes the basis of laws and regulations and justice in every policy of the implementation of the Financial Services Authority; c). The principle of the principle of public interest, namely the principle that defends and protects consumers and society and promotes the general welfare; d). openness, namely the principle that opens up to the public's right to obtain true, honest, and non-discriminatory information in the implementation of the Financial Services Authority while taking into account the protection of personal and group human rights, as well as state secrets, including secrets as stipulated in laws and regulations; professionalism, namely the principle that prioritizes expertise in carrying out the duties and authorities of the Financial Services Authority, while still based on the code of ethics and the provisions of laws and regulations; f) the principle of integrity, namely the principle that adheres to moral values in every action and decision taken in the implementation of the Financial Services Authority; and g). The accountability principle determines every activity and the result of each.

Legal protection for investors in capital market transactions.

18 Widjojo, Rafel Sastro, Investor Protection Governance, *Journal of Financial Economics*, 5, No. 2(2002), 919 Kristiano, Alfiansyah Budi, Indonesian Capital Market, *Journal of Surya Hukum*, 1, No. 2,(2010), 1020 Prasetyo, Handoko, Capital Market Adequacy Analysis, *Mercatoria Journal*, 4, No. 1 (2011), 521 Axis Telly" *General Dictionary of Politics & Law*" *Journal of Legal Image*, 11, No. 25, (2010), 13

According to R. La Porta in the *Journal of Financial Economics*, the form of legal protection a state provides has two characteristics: prohibitive and sanction.⁴ The most obvious form of legal protection is the existence of law enforcement institutions such as courts, police, and other non-litigation dispute resolution institutions. This is in line with the understanding of LawLaw according to Soedjono Dirdjosisworo, who states that LawLaw has various

understandings in society, and one of the most obvious understandings of Law is the existence of law enforcement institutions. Legal protection is closely related to aspects of justice. In Soediman Kartohadiprodo's opinion, the essence of Law is to achieve justice. Therefore, legal protection is one of the mediums to uphold justice, one of which is the enforcement of justice in the economic sector, especially the capital market.

Legal protection is an activity that maintains or maintains the community to achieve justice. The legal protection is constructed, namely: a) The form of service, law enforcement officials and security forces provide this service; b) Protected subjects. Law Number 8 of 1995 concerning the Capital Market (hereinafter referred to as UUPM) determines and regulates that the authority in charge of the capital market is Bapepam-LK. This authority is under the Ministry of Finance to foster, regulate, and supervise capital markets. Bapepam-LK is under and responsible to the Minister of Finance in its activities. Bapepam-LK has the authority to implement legal protection for preventive and repressive capital markets.²² The existence of a system for preventive investors in the capital market through regulations

Provide opportunities for investors to know the prospects for implementing conventional agreements to implement the basis of capital market integrity (Sugianto & Malasyi, 2024). Regarding this, it significantly considers the prospectus in the capital market, namely access to sources or circumstances to learn to investors whether it is about determining, taking, and not in security (Burn, 2016). According to Young Patric, the capital market is also the base of capital. From a high identity, the glory of the community can create a prosperous Indonesian society according to Pancasila and the 1945 Constitution. ²³ Capital Market is a market where a trader and consumer meet or trade loan papers, mutual funds, and so on. Understanding the capital market is different from the money market. The difference is only in the timeframe and nature of the Market. The capital market is concrete. The money market is abstract.

Conclusions

Law Number 8 of 1995 concerning Capital Market and Law Number 21 of 2011 concerning OJK have provided legal protection for investors through the principle of information disclosure. OJK is responsible for regulation, supervision, inspection, and investigation to protect the interests of investors. The principle of information disclosure ensures that the information provided must be complete, true, clear, and timely, which can reduce violations and crimes in the capital market, and help investors reduce investment risks. The importance of regulatory updates to meet the needs of modern investors, especially related to online stock investment, as well as the need for coordination between OJK and BPN/BPSK to ensure investor protection. The government is expected to regulate online stock investment through special laws and update the Consumer Protection Law to be more optimal in the era of rapidly developing technology.

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