

**The Establishment of Indonesian Securities Investor Protection Fund Related To
The Supreme Court Decision No. 535.K/Pid/2013 About The Case of PT Sarijaya
Permana Securities**

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Abstract

Indonesia is one of the developing countries who are actively carried out their development. In the development of the national economy, a country requires financing either from the government or the community. Acceptance of the government to build a national economy gained through taxes and other admission. One of the sources government use are the community investment through bank, other financial institutions and capital markets. Capital Market in Indonesia is one of the essential elements and benchmarks of the country's economy. One of the characteristics in advanced industrial countries and new industries is the presence of capital markets growth and development. With the growth in the Capital Market, there are so many problems that occurred such as embezzlement, fraud, misuse of funds, and misuse from the irresponsible Market Intermediary. With the problems that occurred, the victim of these problem is the investor who investing their funds in Indonesian Capital Market. Lots of this problems that occurred because there is no institution directly concentrate in investor protection fund.

So, the government established Indonesian Securities Investor Protection Fund (ISIPF) for protecting, controlling, monitoring, and regulating the activities that occurred in Capital Market. With the establishment of Indonesia Securities Protection Fund (ISIPF), investor that invest their funds can claim their investment if the violation occurred. With their protection, capital market in indonesia will gain more trust from domestic and foreign investor in the future.

ABSTRAK

Indonesia adalah salah satu negara berkembang yang secara aktif dilakukan pembangunan mereka. Dalam perkembangan perekonomian nasional, negara membutuhkan pendanaan baik dari pemerintah maupun masyarakat. Penerimaan pemerintah untuk membangun perekonomian nasional yang diperoleh melalui pajak dan penerimaan lainnya. Salah satu penggunaan sumber-sumber pemerintah adalah investasi masyarakat melalui bank, lembaga keuangan lain dan pasar modal. Pasar Modal di Indonesia adalah salah satu elemen penting dan tolok ukur dari perekonomian negara. Salah satu karakteristik di negara-negara industri maju dan industri baru adalah adanya pertumbuhan dan perkembangan pasar modal. Dengan pertumbuhan di Pasar Modal, ada begitu banyak masalah yang terjadi seperti penggelapan, penipuan, penyalahgunaan dana, dan penyalahgunaan dari Perantara Pasar yang tidak bertanggung jawab. Dengan masalah-masalah yang terjadi, korban masalah ini adalah investor yang menginvestasikan dananya di Pasar Modal Indonesia. Banyak masalah ini yang terjadi karena tidak ada lembaga langsung berkonsentrasi di dana perlindungan investor.

Jadi, pemerintah mendirikan Investor Protection Fund Efek Indonesia (ISIPF) untuk melindungi, mengendalikan, monitoring, dan mengatur kegiatan yang terjadi di Pasar Modal. Dengan berdirinya Perlindungan Dana Securities Indonesia (ISIPF), investor yang menginvestasikan dananya dapat mengklaim investasi mereka jika pelanggaran itu terjadi. Dengan perlindungan mereka, pasar modal di Indonesia akan mendapatkan kepercayaan lebih dari investor dalam dan luar negeri di masa depan.

Key words : Investor Protection Fund (IPF), Capital Market, Criminal Offense,

1. Introduction

Indonesia is one of the developing countries who are actively carried out their development. In the development of the national economy, a country requires financing either from the government or the community. Acceptance of the government to build a national economy gained through taxes and other admission. One of the sources government use are the community investment through bank, other financial institutions and capital markets.

Capital Market in Indonesia is one of the essential elements and benchmarks of the country's economy. One of the characteristics in advanced industrial countries and new industries is the presence of capital markets grow and develop properly.

The capital market is a good alternative for government funding which the government can raise funds by issuing bonds or government securities then sell them to the public, and for private sector capital market can also be an alternative for companies that have the funds by issuing securities in the form of stock and then the company would sell bonds to the public.

Indonesian capital market as one of the institutions that mobilize public funds by providing a place to bring together sellers and buyers of long-term funds that is called securities. This time the capital market growth rapidly and dynamically in Indonesia. Capital market development seen by the increasing number of companies both national and foreign companies that involved in the capital markets and the flow of funds that occurred in the capital markets.

The definitions of capital market as the conventional market for a meeting place for sellers and buyers. As for the capital markets to distinguish the conventional market in general is the object of the trade. Market activity is an activity between buyers and sellers for a commodity or service. While the capital market is a market that brings the user and the owner of the funds for medium-term investment and long term investment, While the Law No. 8 of 1995 on the capital market (that is called UUPM) defines the capital market, as follows:

” The capital market is an activity of the public offering and trading of securities,

public companies relating to the issuance of securities, as well as institutions and professions related to the securities ”.

Securities traded in the capital market are securities such as stocks, bonds, certificates for shares or other securities from natural forms or securities which are derivatives in the form of shares or certificates of securities traded. Therefore, the capital market is an alternative investment fund that is the fulfillment of a long-term interest of the joint venture capital entities in accordance with their respective capabilities to the company by buying shares of the company.

As one of the financial institutions that are expected to drive the economy of capital market is one of the important pillars in the community to invest and also tools for companies to obtain capital from the public investment (investors). As one of the financial instruments, capital market development should be supported by strict regulations and policies, so it will increase the professionalism in the capital market. In addition to the capital markets should also be built based on the principles of fair, transparent and secure. The principle is intended to protect the interests of investors who can generate confidence in the market mechanism.

To protecting investors, capital markets also apply transparency principle. Transparency principle is very important terminology and fundamental principles in the capital markets. With the public disclosure can gain complete access to important information that is accurate and true about a company, beside that the investor will be able to measure or estimate the success rate at the same level of investment risk in investing. So, potential investor can estimate precisely what kinds of investment they take.

Basically, all investor have the same goal which is to make a profit in investing. In order to get an advantage in investing, investors should have sufficient considerations. Consideration of funding is not enough to make an investment, but it is also needed experience and business senses to analyze securities or bonds that traded in the capital market.

In the capital market, capital market participants must understand and master the

legal system. In the rule of law, that the terms of its content, then there is a command, which would have to be executed and obeyed, with restrictions and permission. Enforce and binding the parties. The Regulations in the capital market refers to the rule of law itself. Sources of law which form the basis and scope in the life of the capital market are:

- a. Law No. 8 of 1995 on Capital Markets.
- b. Law No. 21 Year 2011 on the Financial Services Authority.
- c. Government Regulation No. 45 Year 1995 concerning the Capital Market Activities.
- d. Government Regulation Number 46 of 1995 on Procedures for Examination in the Capital Market.

In capital market investor will face with some risks such as embezzlement or fraud funds of investor by irresponsible parties. In order to reduce the risk of customer, Government has planning to execute the Investor Protection Fund (IPF) programs to ensure investor funds that being misused. Investors Protection Fund is an institution for investor protection to withdraw funds from other parties related to the exchange-traded that will be used to protect minority investors from the actions of other parties who are not responsible for such misappropriation or embezzlement of funds (fraud) from the company securities. So with the Investor Protection Fund (IPF) will guarantee customer funds that have been misused.

Related to the problems that have been submitted, investors as a fund provider should have full protection for funds that have been invested. Invested funds should be used properly, not just abused by securities companies that have been trusted by investors to invest their money. Furthermore, if it turns out that the funds invested by the investor company misused, these securities companies are appropriately punished and the funds from the investors must be protected with a refund by the securities company.

Related to the problem, in this study have some problem identification such as:

- a. How the interpretation of Supreme Court related to the case of PT Sarijaya Permana

Securities in the decision of Supreme Court No. 535.K/Pid/2013?

- b. How the implementation and operation of establishment in Investor Protection Fund Institutions related with legal protection to investors after the decision of PT Sarijaya Permana Securities case?

2. The Establishment of Indonesian Securities Investor Protection Fund Related on The Case of PT Sarijaya Permana Securities

There is some institution related to the capital market, First, Financial Service Authority or OJK has function, task, and authority in regulations and supervising financial service activities in capital market sector and non-bank financial service such as insurance, pension fund, financial institutions and other financial institutions. Second, Self Regulatory Organization is an authorized institution by law to create and establish rules about membership and how to trade conducted surveillance of its members. Through rule making, the (SRO) should establish standards to prevent fraud and market manipulation, as well as impose sanctions against members of the exchange who violate federal securities laws. Third, Securities Company are parties conduct their business as an underwriter, broker, and/or investment manager.

Self Regulatory Organization has member in capital market indonesia that is The stock exchange is a party that implementation and provides the system and offers to bring together buying and selling securities with other parties for the purpose of trading in securities of them.

Second, Indonesian Securities Clearing Guarantor (KPEI) is a party conducting clearing and settlement of transactions in order to guarantee in exchanges. Clearing is the process of determining the rights and obligations arising from exchange transactions. Exchange Transaction is a contract made by a member of the stock exchange in accordance with the requirements prescribed by the Stock Exchange on the buying and selling of securities.

Third, Indonesian Central Securities Depository (KSEI) is party conducting custodial activities for custodian banks,

securities companies, and other parties. "Custodian" is party of providing custodian services and other assets related to securities and other services. KSEI provide to receive dividends, interest, and other rights, completing securities transactions, and representing clients who are account holders

In addition to the institution that related to the capital market indonesia, there are some criminal offense that occurred in capital market. Criminal offense in the capital market is a crime committed by capital market participants in capital market activities. The Indonesian government through Bapepam - LK (which changes as the Financial Services Authority) are working hard to resolve and prevent crime in the capital market with a variety of ways, including regulate and monitoring capital market as a preventative measure, and resolve crime in the capital market as an act of repressive.

In law enforcement in the capital markets is an important part in order to create the capital market that is efficient, transparent and reliable for all parties to invest in it. In enforcing the law there are three sanctions applied: 1) Administrative Sanctions (regulated by Government Regulation No. 12 of 2004), Civil Sanctions (governed by the Civil Code), and the Criminal Sanction (regulated by the Capital Markets Law Section 103 - Section 110).

Criminal offenses in the field of capital market has its own characteristics, that is goods which become the object of information, other than that criminals do not rely on physical ability, but the ability to understand and read the market situation for its own sake. Proof of criminal offenses in the stock market is very difficult, as for the types of crime that often occur, as follows:

Fraud is cheating or deceives others in any way, and making untrue statements. Fraud is an act to benefit themselves or others illegally, and Market manipulation is a goal of creating a false or misleading picture regarding trading activity, market conditions, or prices of securities on a securities exchange. Insider trading is a person in the issuer or the public company that has information about the company is prohibited to purchase or sale of securities of issuers.

With several criminal offense in capital market, investor as a parties that related to activity in capital market will face some risks of investment. Investor is an individual or legal entity that uses its funds for investment action. In investing, investors are faced with a variety of options for investing. That is, to invest in fixed assets, direct investment (self-employed), or invest in financial instruments (capital markets).

Investor in investing in the stock market requires protection and legal certainty; Investors are parties who have a high risk in investing in the capital market, so they need more legal protection to give confidence to invest in capital market in Indonesia.

Legal certainty and the rule of law is one of the important factors that affect to invest besides to the economy aspects. With the certainty and the rule of law then it is not impossible that the number of investors who are interested to invest their funds in the capital market will grow because of the confidence in the Indonesian capital market.

Related to protection and legal certainty that needed to investor, the government has to execute Investor Protection Fund (IPF) is an effort in order to provide protection to investors in order to feel more secure to distribute the funds in the capital market. Investors are parties who have a high risk in investing in the stock market, ranging from the risk of fluctuation of investment, operational risk until the risk that errors or fraud occurs because other parties.

The main benefit of Investor Protection Fund (IPF) is to protect investors by providing insurance against client assets that have been abused by a market intermediary, to increase confidence among investors in the capital market, and increase protection to investors from the risks of actual investment that is not including investment risk. With the Investor Protection Fund (IPF) in Indonesia will be able to increase the sense of security and comfort to investors in the investment.

Investor Protection Funds is essential in Indonesia, due to its many investors who lost their assets as a result of the actions from other parties who are not responsible. With the Investor Protection Fund, investors expected the missing assets can be replaced, so investors

don't need to fear their assets will be lost due to irresponsible action.

In Indonesia, the Investor Protection Fund (IPF) will be called with the protection of investors fund and Investor Protection Fund Institution will be referred to as the Indonesian Securities Investor Protection Fund (ISIPF). It is contained in the draft of legislation about capital markets, that is:

"In order to protect the public investors who invest in the Indonesian capital market, investor protection fund may be established."

Based on Article 147, paragraph 1, the draft of legislation about capital market, which is the Investor Protection Fund (IPF) is intended to fund the protection of the Indonesian capital market investors derived from the capital market in Indonesia and managed by a designated party or special agency established for these. From this description it can be seen that the Investor Protection Fund (IPF) will be additional protection that intended to protect investors in the future.

With the case that happens in the past from PT. Sarijaya Permana Securities accordance to the decision of Supreme Court No. 535K/Pid/2013. This is the case that happens because the commissioner and the director of PT SPS conducted mutation and transfer of shares / securities customers to gain an advantage in addressing the company's liquidity. Mutation and transfer of shares / securities is conducted by commissioner Herman Ramli as the largest shareholder of PT SPS by Borrowing customer portfolio to be sold in order to obtain liquidity for the company and returns back to normal loan portfolio and then the other way is loan and Conduct pledge of shares (repo) by using Portfolio customers in order to obtain liquidity and after that PT SPS will returns back to normal Portfolio borrowed. However, these companies action do not have the permit and knowledge of customers that have their securities/stock in PT Sarijaya Permana Securities. When customers conduct Stock Opname or Stock Verification with their securities, PT SPS can not restore the stock and securities belonging to customers because the entire of activity PT SPS suspended/freeze by Bapepam and cause a loss of the customers for the loss of their securities owned. Thus, the

Supreme Court made the decision to punish the defendant with punishment in accordance with the Criminal law regarding fraud and embezzlement that is article 372 KUHP and 378 KUHP

Related to misused or fraud that conducted by PT Sarijaya Permana Securities, the government has plan to establish Indonesian Securities Investor Protection Fund, So with ISIPF can reduce the misuse or fraud in activity of capital market. ISIPF is a scheme that builds to provide protection to the investor fund, if their fund is misused by irresponsible parties in this case is Securities Company. With the Indonesia Securities Investor Protection Fund (ISIPF) existed, investor will get a confidence to invest in Indonesian capital market because the investor doesn't need to fear of their fund that being misused by securities company. The main benefits in establishment of Indonesia Securities Investor Protection Fund (ISIPF) is to protect investor with kinds of guarantee against their asset that misused by securities company. Besides that, other benefits are it can increase investor trust to invest their funds in capital market industry, attract investor to invest in capital market, and to increase more protection to the investor from investment risk that is should not be the investment risk. So, with the establishment of Indonesia Securities Investor Protection Fund (ISIPF) will guarantee the return of securities or funds of investors misused by Securities Company. Finally, it will result in increase of certainty and legal protection of investor and increase economic development in Indonesia for the future.

3. Conclusion

Indonesia Securities Investor Protection Fund (ISIPF) will guarantee the return of securities or funds of investors misused by Securities Company for certainty and legal protection of investor and increase economic development in Indonesia for the future.

4. Reference

Abdul Manan, H, *Aspek Hukum Dalam Penyelenggaraan Investasi di Pasar Modal Syariah*, Kencana, Jakarta, 2009,
Adrian sutedi, *Segi-Segi Hukum Pasar Modal*, Ghala Indonesia, Bogor, 2009.

- Agus Kretarto, *Investor Relation, Pemasaran dan Komunikasi Keuangan Berbasis Kepatuhan*, Grafiti Pers, Jakarta, 2001,
- Budi untung, H, *Hukum Investasi*, Sinar Grafika, Jakarta, 2010,
- C.S.T. KANSIL, *Pengantar ilmu hukum dan tata hukum indonesia* ,Balai Pustaka, Jakarta, 1989, Cet-8,
- Dominic, H, *Berinvestasi di Bursa Saham*, PT Elex Media Komputindo, Jakarta, 2008, cet:2.
- Fatma Lubis, A, *Pasar Modal*, Lembaga Penerbit Universitas Indonesia, Jakarta, 2009.
- Hamud M.B, *Hukum Pasar Modal Indonesia edisi Revisi*, PT Tatanusa, Jakarta, 2012.
- Hariyani, I dan Serfianto, R, *Buku Pintar Hukum Bisnis Pasar Modal*, Visi Media, Jember, 2010,
- M. Irsan Nasarudin dan Indra Surya.(2004) "Aspek Hukum Pasar Modal Indonesia", Jakarta:Prenada Media.,
- Mahmud marzuki, P, *Penelitian hukum revisi ke 4*, Kencana prenada media group, Jakarta, 2005.
- Mertokusumo, S , *Mengenal hukum*, Liberty yogyakarta, Yogyakarta, 2007, Cet-3,
- Pandji, A dan Piji, P, *Pengantar Pasar Modal*, Rineka Cipta , Jakarta, 2006,
- Raharjo,Satjipto, *Ilmu Hukum*, PT. Citra Aditya Bakti Bandung, 2006, cet-6,
- S.Soekanto, *Faktor-Faktor yang mempengaruhi Penegakan Hukum*, PT Raja Grafindo, Jakarta, 2004,
- Sjahputra, Imam , *Pengantar hukum pasar modal*, PT.Harvarindo, Jakarta, 2012,
- Soerjono Soekanto, *Pengantar Penelitian Hukum*, Penerbit Universitas Indonesia, Jakarta, 2006, Cet. 3,
- Suprpto. J, *Statistik Pasar Modal Keuangan dan Perbankan*, Rineka Cipta, Jakarta, 2004,
- Tavinayati dan Qamariyanti, Y, *Hukum pasar modal di indonesia*, SinarGrafika, Jakarta, 2009.

REGULATIONS :

- Law No 8 of 1995 about the capital market
- Law No. 21 of 2011 about the Financial Services Authority
- Bapepam-LK Regulations No VI.A.5 tentang Penyelenggara Program Dana Perlindungan Pemodal
- The International Organization of Securities commissions (IOSCO), Obejctive and Principles of Securities Regulation, June 2003, Principle 32.*
- The Supreme Court Decision No.535.K/Pid/2013 about case of PT Sarijaya Permana Securities

JOURNAL

- Kamus besar bahasa indonesia
www.kamusbesarbahasaindonesia.org
access 11 Jan 2014 13:50 PM
- Tim Studi Bapepam-LK tentang Pembentukan Dana Proteksi Pemodal tahun 2007

INTERNET

- <http://statushukum.com/perlindungan-hukum.html> access 13 June 2013 , 10:15: PM
- The guidance of invesment in capital market ”
www.bapepam.go.id access 20 Oct 2013 12:30 PM
- Site of KSEI about ” kartu AKSes”
www.KSEI.co.id access 20 sept 2013 19:24 PM
- Site of KPEI “www.kpei.co.id”. access 30 sept 2013 21.32 PM
- Site of Indonesian Stock Exchange “www.idx.co.id” access on 12 january 2014 13:32 PM
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