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Civil Violation in the Capital Market Field and Its Completion Based On Law of the Republic Of Indonesia

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***Abstract*: -** *The purpose of writing to be achieved through this research are as follows: 1) Knowing the settlement of disputes related to civil violations in the capital market and the application of sanctions in Law Number 8 of 1995 on Capital Markets and OJK Regulation Number 1/POJK.07/2014 on Alternative Institutions for Dispute Resolution in the Financial Services Sector; 2) Knowing the most effective dispute resolution to deal with civil violations in the capital market. The methods for this research use a normative juridical approach method, namely by examining and reviewing secondary data in the form of positive law related to the subject matter under study. The results of this study relate to dispute resolution related to civil violations in the capital market and the application of sanctions in the Capital Market Law and POJK No. 1/POJK.07/2014, namely the authority to carry out examinations, and investigations of parties deemed to have committed violations in the Capital Market field have become OJK's authority since enactment. Regarding which dispute resolution is the most effective way to deal with civil violations in the capital market, many capital markets cases have arisen such as lost stock cases, short selling cases, false report cases, IPO cases and right issues, and insider trading. These cases are detrimental to the interests of investors who should be protected. Dispute resolution outside the court or through non-litigation was chosen because it was considered that the judicial process in Indonesia was considered inefficient and ineffective. Dispute resolution mechanisms through the judiciary body have many shortcomings, namely foreign partners have not given confidence in the effectiveness of the law in Indonesia, the judicial process takes a long time, complicated, requires high costs, the decision is win-lose, can damage the good relations of the parties, the results of the ruling are challenging to execute, tend to favour the prominent businessmen, the fertility of the judicial mafia, open opportunities to submit legal remedies for judges' decisions, through appeals, cassation and civil review, and others. Along with the rapid development of the capital market in Indonesia, a variety of alternatives have emerged in terms of how to resolve disputes in the capital market in Indonesia. The capital market has unique and dynamic mechanisms and characters in terms of dispute resolution and problems that occur in transactions in the capital market so that special handling is needed quickly and efficiently. The procedure for resolving disputes outside the court is felt to be the most suitable for the needs of capital market players.*

***Keywords*: -** *Civil Violations, Capital Market, Dispute Resolution, Financial Services Authority*

INTRODUCTION

One of the foundations of the national economy is as mandated in Law of the Republic of Indonesia Article 33 paragraph (4) of the 1945 amendment IV (hereinafter referred to as the 1945 Constitution or UUD 1945), which states that: "The National Economy is based on economic democracy with the Principles of togetherness, fair efficiency, sustainable, environmentally friendly, independent, and by maintaining a balance of progress and national economic unity".

Article 33 UUD 1945 (amendment IV) above indicates that economic development is built based

on independence to achieve the desired goals, including independence related to sources of development financing. Furthermore, this independence is reaffirmed in Law Number 25 of 2004 on the National Development Planning System, the translation of which is followed up with Presidential Regulation No. 7 of 2005 on the National Medium-Term Development Plan (Rencana Pembangunan Jangka Menengah Nasional or "RPJMN"). Concerning development funding, the Presidential Regulation indicates that development funds, especially investment funds, are funded primarily from domestic savings, both government and community. Apart from direct investment, these public funds are also channeled through, among others, banks, capital markets or other financial institutions such as insurance and pension funds. Investment as one of the economic facilities referred to in the RPJMN includes indirect investment in the form of a portfolio, which is carried out through the capital market. Concretely, the capital market aims to support the implementation of national development in order to improve the distribution, growth and stability of the national economy towards improving people's welfare. [1]

According to Article 1 point 13 of Law Number 8 of 1995 on Capital Market (hereinafter referred to as Capital Market Law or "UUPM"), defining the Capital Market is an activity concerned with public offering and trading of securities, public companies related to securities issued, and institutions and professions related to securities. Securities trading are conducted on a stock exchange, the stock exchange itself is "the party that organizes and provides a system and/ or means to bring together the sale and purchase offers of other parties with the aim of trading securities between themselves". The core of capital market activities are transactions conducted on the primary market through an Initial Public Offering or conducted on a stock exchange. The legal aspects related to transactions in the capital market relate to 2 things, namely: (1) the type of agreement or transaction; and (2) the object being transacted, that is, the effect.

The form and type of transactions in the capital market are developing rapidly along with the development of information technology and the increasing variety of instruments being transacted. The development of this transaction is possible because the legal system of the agreement adheres to the principle of freedom of contract as regulated in Article 1338 of the Civil Code (hereinafter referred to as the Civil Code) that "All treaties made legally apply as a law to those who make them". The principle of freedom of contract allows the parties to make any agreement, both regarding the content, form and type of the agreement, as long as it does not conflict with the law, order and morality. [2]

Today, there are a lot of criminal cases. In this modern economic world, crime has spread rapidly. One of them is in the field of capital markets. There is a difference between crimes that are often committed by people in the capital market with a crime in general. The procedure for resolving these cases is also different from what is usually done in ordinary crimes.

Every regulation always contains things that can and cannot be done to bring order to the people. Nevertheless, sometimes people see the prohibition as something that is very beneficial to themselves without thinking about the risks that will occur in the future. Only positive things are seen for personal or group benefit. Capital market players, both stock analysis or investment advisors, brokers and investors, especially potential investors or rational investors, can be carried away by psychological and emotional factors that affect stock prices. These psychological factors will enable investors to violate the Capital Market Law by violating the provisions in force in the law.

[1] Lastuti Abubakar (2009). *Transaksi Derivatif di Indonesia*, Bandung: Book Terrace & Library, hlm. 1-3.

[2] Munir Fuady (2001). *Pasar Modal Modern (Tinjauan Hukum) Buku Kesatu*, Bandung: PT. Citra Aditya Bakti, hlm. 222-23.

Considering the role of the capital market that is very essential in economic life, especially in Indonesia, such as the practice of insider trading, market manipulation, etc. which is detrimental to not only investors, but the wider community is also affected, especially shareholders, and the settlement of all the cases that occurred, in fact, were delegated to Bapepam LK which is an institution that functions as a regulator, in fact, Bapepam is only authorized to impose administrative sanctions. At present, the authority of Bapepam to handle disputes in the Capital Market has been transferred to the Otoritas Jasa Keuangan, which has its procedures for resolving disputes in the Capital Market.

METHODS

This study uses a normative juridical approach method, namely by examining and reviewing secondary data in the form of positive law related to the subject matter under study**.** This research is analytical descriptive because this research describes the situation or event being studied and analyzes it based on facts in the form of primary data obtained from interviews with the informants concerned, while secondary data is obtained from primary legal materials, secondary legal materials and tertiary legal materials.

DISCUSSION

Settlement of Disputes Related to Civil Violations in the Capital Market and Application of Sanctions.

1. Settlement of disputes related to civil violations in the capital market and application of sanctions in the UUPM and POJK No. 1/POJK.07/2014

a. Settlement of Disputes in the Capital Market Law (UUPM)

Sanctions in the Capital Market based on Article 102 of the Capital Market Law, can be in the form of administrative sanctions which can include:

1) Written warning;
2) Fines, namely the obligation to pay a certain amount of money;
3) Restrictions on business activities;
4) Suspension of business;
5) Revocation of business license;
6) Cancellation of approval; and
7) Cancellation of registration.

In the explanation of Article 102 of the Capital Market Law, in the case of the application of administrative sanctions as referred to in this paragraph, Bapepam needs to pay attention to aspects of coaching towards the said Party. The parties referred to in this paragraph are the Issuer, Public Company, Stock Exchange, Clearing and Guarantee Institution, Depository and Settlement Institution, Mutual Funds, Securities Companies, Investment Advisors, Representatives of Underwriters, Representatives of Brokers, Representatives of Investment Managers, Administrative Bureaus Securities, Custodians, Trustees, Capital Market Supporting Professionals, and other Parties that have obtained permits, approvals, or registrations from Bapepam. The provisions in this paragraph shall also apply to directors, commissioners, and any Person who owns at least 5% (five percent) of the shares of the Issuer or Public Company as referred to in Article 87 of this Law.

Furthermore, based on Article 111 of the Capital Market Law, it is stated that each party suffering a loss as a result of a violation of this Law and/or its implementing regulations may demand compensation, both individually and jointly with other Parties that have similar claims, against the Party or Parties responsible for the violation.

b. The Role of the Capital Market Supervisory Agency (Bapepam) in Capital Market Law Enforcement

Bapepam has the authority to enforce laws in the Capital Market field, based on Article 2, 3 and 4 of the UUPM, which confirms that the Minister establishes general policies in the Capital Market field, Development, regulation and daily supervision of Capital Market activities carried out by Bapepam, Bapepam is under and accountable to the Minister, and Guidance, regulation and supervision in the Capital Market sector is carried out by Bapepam

with the aim of realizing the creation of regular, fair and efficient Capital Market activities and protecting the interests of investors and the public.

Authority of Bapepam related to law enforcement in the Capital Market sector is more specifically mentioned in Article 5 letter e which states that in implementing the provisions referred to in Article 3 and Article 4 of the UUPM, Bapepam has the authority to conduct an examination and investigation of each Party in the event of an alleged violation of this Law and/or its implementing regulations. Then in Article 5 letter n it is also stated that Bapepam is authorized to take the necessary actions to prevent community losses as a result of violations of the provisions in the Capital Market sector.

1) Bapepam's Task Details based on the Capital Market Law (UUPM)[3]

The Capital Market Law formulates Bapepam's position and functions in a multi-formation manner, namely:

a) General regulations,

In general, the UUPM regulates Bapepam's authority and duties as a guiding body, regulatory agency, and supervisory agency. These three authorities must be exercised by Bapepam with the aim of creating an orderly, fair, efficient, and protecting the capital market and protecting the interests of investors and the public. The exercise of Bapepam's authority as a supervisory institution can be carried out in a preventive and repressive manner. Preventive namely in the form of rules, guidelines, guidance and direction. Whereas repressively namely in the form of examination, investigation and application of sanctions.

b) Detailed Regulations

Detailed regulations regarding Bapepam's authority can be found in Article 5 of the Capital Market Law, which is as follows:

(1) Give a business license to:
   (a) Stock Exchanges, Clearing and Securities Institutions, Depository and Settlement Institutions, Mutual Funds, Securities Companies, Investment Advisors, and Securities Administration Agencies;
   (b) Individual permission for the Underwriter Representative, Representative Broker and Investment Manager Representative; and
   (c) Approval for the Custodian Bank.

(2) Require registration of Capital Market Supporting Professionals and Trustees;

(3) Determine the requirements and procedures for nominating and temporarily terminating commissioners and/ or directors and appointing temporary management of the Stock Exchange, Clearing and Security Institution, and Depository and Settlement Institution until the new commissioners and directors are elected;

(4) Establish requirements and procedures for Registration Statements and declare, suspend or cancel the effectiveness of Registration Statements;

(5) Conduct examination and investigation of each Party in the event of an event that is allegedly a violation of this Law and/ or its implementing regulations;

(6) Require each Party to:
   (a) Stop or correct advertisements or promotions related to activities in the Capital Market; or
   (b) Take the necessary step to overcome the consequences arising from the advertisements or promotions referred to.

(7) Examining:
   (a) Every Issuer or Public Company that has or is required to submit a Registration Statement to Bapepam; or
   (b) The party required to have a business permit, individual permit, approval, or professional registration under this Law;

(8) Appoint other Parties to conduct certain examinations in the context of exercising the authority of Bapepam as referred to in point 7 above;

(9) Announce the results of the inspection;

[3] hlm. 116-120.

(10) For the interests of investors, freezing or cancelling the recording of a Securities on the Stock Exchange or stopping Exchange Transactions on certain Securities for a certain period of time to protect the interests of investors;

(11) Stop trading activities of the Stock Exchange for a certain period in the event of an emergency;

(12) Checking objections submitted by Parties subject to sanctions by the Stock Exchange, Clearing and Securities Institution, or Depository and Settlement Institution and providing decisions to cancel or strengthen the imposition of sanctions referred to;

(13) Determined the licensing fees, approval, registration, examination, and research and other costs in the context of capital market activities;

(14) Take the necessary actions to prevent community losses as a result of violations of the provisions in the Capital Market field;

(15) Provide a further explanation of a technical of this Law or the implementing regulations;

(16) Establish other instruments as Securities other than debt instruments, commercial securities, shares, bonds, debt proof, units for collective investment contracts, futures contracts for securities, and any derivatives of securities;

(17) Perform other things that are given based on this Law.

a. The Authority of Bapepam as an Examiner Institution[4]

One form of concretization of Bapepam's role as an examiner institution is the authority of Bapepam to conduct audits. Namely checking every party who requests or participates in opposing the laws in the capital market, this is in accordance with Article 100 UUPM. What is intended by inspection is the activity of finding, collecting, and processing data and/ or other information carried out by the examiner to prove whether there is a violation of the law.

In the context of carrying out its duties as the examiner institution, Bapepam can do the following:

1) Request information and/ or confirmation from a Party suspected of having committed or been involved in a violation of this Law and/ or its implementing regulations or other Parties if deemed necessary;

2) Require Parties that are suspected of committing or being involved in violations of the Law and/ or subordinate legislation to do or not do certain activities;

3) Check and or make copies of records, books and/ or other documents, either owned by a Party that are suspected of committing or being involved in a violation of this Law and/or its subordinated legislation, as well as those of other Parties if deemed necessary; and or

4) Determine the conditions and/ or allow the Party that are suspected of committing or being involved in violations of the Law and/ or subordinated legislation to take specific actions that are needed in the context of resolving losses incurred.

An examination by Bapepam can only be done if:

1) There are reports, notices or complaints from certain parties with violations of the laws and regulations in the capital market sector;

2) Non-fulfilment of obligations that must be carried out by parties who obtain permits, approvals or registrations from Bapepam or other parties required to submit reports to Bapepam, or

3) There are instructions regarding the occurrence of violations of legislation in the capital market sector.

4) Bapepam's Authority as an Investigation Institution[5]

[4] *Ibid*., hlm 121-122.

[5] *Ibid*., hlm. 126-127.

The authority to carry out investigations is a manifestation of Bapepam's role as a supervisory institution. The authority of this investigation can be used by Bapepam if in its opinion there has been a violation of legislation in the capital market that has caused losses to the interests of the capital market or the interests of the community.

So in this case, according to the provisions in the Code of Criminal (KUHAP), by the UUPM it is given the special authority as an investigator of certain civil servants in Bapepam. These are what in practice is often referred to as Special Police (Polisi Khusus or "Polsus"), which are indeed made possible by the Code of Criminal Procedure, Article 6 paragraph (1) letter b of the Code of Criminal Procedure stipulates that certain civil servant officials can be given special authority to become investigators.

Those positions and authority as an investigating institution is not a continuation of its position as an examining institution, but rather an independent authority. Therefore, Bapepam can directly use the authority of the investigation (if there is a reason for that) without having to previously take actions that fall into the authority of the examination.

5) Bapepam's Authority in Imposing Administrative Sanctions in the Capital Market

Bapepam has the authority to impose administrative sanctions for violating the law in the capital market because by UUPM *vide* Article 102 the authority has been given. Article 102 of the Capital Market Law states that:

a) Bapepam imposes administrative sanctions for violations of this Law and/or its subordinate legislation which are carried out by each Party that obtains permission, approval or registration from Bapepam.
b) Administrative sanctions as referred to in paragraph (1) may be in the form of:
   (1) written warning;
   (2) fines, the obligation to pay a certain amount of money;
   (3) restrictions on business activities;
   (4) suspension of business;
   (5) revocation of business license;
   (6) cancellation of approval; and
   (7) Cancellation of registration.
c) Further provisions regarding administrative sanctions as referred to in paragraph (1) and paragraph (2) shall be determined by Government Regulation."

Furthermore, Article 63 *juncto* Article 64 PP Number 45 of 1995, which specifies administrative penalties, which consists of four categories as follows:

a) Penalty of Rp.500,000 (five hundred thousand rupiahs) per day with a maximum of Rp.500,000,000 (five hundred million rupiah);
b) Penalty of Rp.100,000, - (one hundred thousand rupiah) per day with a maximum of Rp.100,000,000 (one hundred million rupiah);
c) A maximum fine of Rp.500,000,000 (five hundred million rupiah);
d) A maximum fine of 100,000,000 (one hundred million rupiah).

Regarding each of the criminal sanctions, civil sanctions, and administrative sanctions, applicable legal principles that are generally practiced, namely the three types of sanctions may (but not necessarily) apply cumulatively at the same time. Meanwhile, those who can be imposed with administrative sanctions are: (1) Parties that obtain licenses from Bapepam; (2) Parties that obtain approval from Bapepam; and (3) The registering parties at Bapepam. Furthermore, the three parties can be more concrete in detail into 25 groups as explained in the literature review.

2. Transfer of Capital Market Dispute Resolution Authority from Bapepam to OJK

To create a national economy that is able to grow sustainably and stably, activities in the financial service sector are needed that are organized regularly, somewhat, transparently and accountably, and are able to create a financial system that grows sustainably and stably, and is able to protect the

interests of consumers and society. Based on this, Otoritas Jasa Keuangan is needed, that has the functions, duties and authority to regulate and supervise activities in the financial services sector in an integrated, independent and accountable manner.

Based on Law Number 21 of 2011 on Otoritas Jasa Keuangan, the Definition of the Otoritas Jasa Keuangan, is an institution that is independent and free from interference from other parties, which has functions, duties, and regulatory, supervisory, examination and investigation as referred to in the OJK Law.

According to Article 5 of the OJK Law it is emphasized that OJK functions to organize an integrated regulation and supervision system for all activities in the financial services sector. Moreover, Article 6 of the OJK Law explains that OJK carries out the regulatory and supervisory duties of: a. Financial service activities in the Banking sector; b. Financial service activities in the Capital Market sector; and c. Financial service activities in the Insurance sector, Pension Funds, Financing Institutions, and other Financial Services Institutions. From the provisions of Article 5 and Article 6 of the OJK Law, the authority of Bapepam in conducting supervision in the Non-Bank Financial sector including the Capital Market has been transferred to all of the OJK since the enactment of the OJK Law since January 1, 2014.

However, the transfer of authority to examine and investigate Investigation of Capital Market Violations which was originally by Bapepam LK became the authority of the OJK, does not make the Capital Market Law no longer valid, on the contrary, based on Article 70 paragraph (4) of the OJK Law, the Capital Market Law, and its implementing regulations are declared to remain applies as long as it does not conflict and has not been replaced based on this Law.

Based on the description above, it can be concluded that the authority to carry out inspections and investigations of parties deemed to have committed violations in the Capital Market field has become the authority of the OJK since 1 January 2014, and which is the basis for the arrangement for OJK in carrying out its inspections and investigations. As long as the Capital Market Law is not contrary to the OJK Law, and as long as the OJK has not replaced the provisions.

3. Settlement of disputes related to capital and application of sanctions in the OJK Regulation No. 1/POJK.07/2014 concerning Alternative Institutions for Dispute Resolution in the Financial Services Sector (POJK No. 1/POJK.07/2014)

Based on Article 9 of the OJK Law, to carry out supervisory duties in the Capital Market, OJK has the authority:

a. Establish operational oversight policies on financial service activities;

b. Oversee the implementation of supervisory tasks carried out by the Chief Executive;

c. Carrying out supervision, examination, investigation, Consumer protection, and other actions towards Financial Services Institutions, actors, and/or supporting financial service activities as referred to in the legislation in the financial services sector;

d. Give written instructions to Financial Services Institutions and/or certain parties;

e. Appoint the statutory manager;

f. Determine the use of the statutory manager;

g. Establish administrative sanctions against those who violate the laws and regulations in the financial services sector; and

h. Give and/or revoke:

   1) Business license;
   2) Licenses of individuals;
   3) The effectiveness of the registration statement;
   4) Registered certificate;
   5) Approval for conducting business activities;
   6) Ratification;
   7) Approval or stipulation of dissolution; and

8) Other stipulations, as referred to in legislation in the financial services sector.

Based on the 2014 Indonesia Capital Market Press Conference by the OJK related to Law Enforcement and Imposition of Sanctions in the Capital Market from the beginning of 2014 until the end of 2014, namely as follows:

a. Capital Market Examination

One of OJK's tasks is to oversee activities in the Capital Market, both through preventive and repressive efforts in the form of law enforcement. The effectiveness of law enforcement will greatly affect the OJK's credibility. From the industry side, effective law enforcement is a crucial factor in shaping the level of trust and legal certainty in financial markets. Along with the increasing complexity and quality of violations in the Capital Market, more aggressive and comprehensive law enforcement processes are needed. Therefore, increasing the quality and quantity of law enforcement in the Capital Market is absolutely necessary. At present, the improvement of the quality of law enforcement is carried out on an ongoing basis through a series of training and education both at home and abroad. As of December 29, 2014, the number of Capital Market audits handled by the OJK was 77 (seventy-seven) audits consisting of:

1) 33 (thirty three) examinations related to Issuers, Public Companies and or Capital Market Supporting Professionals with alleged violations, among others: alleged violation of the provisions on the presentation of Financial Statements, provisions on material transactions and changes in business activities, provisions on information disclosure which must be made public immediately, provisions on reports on the use of proceeds from the Public Offering, provisions on the conflict of interest of certain transactions, provisions on share buyback issued by Issuers or Public Companies, provisions on the plan and implementation of the GMS, the provisions of the Company's Articles of Association conducting Equity Securities and Public Company Public Offerings as well as alleged violations of the provisions for registration of legal consultants conducting activities in the Capital Market;

2) 34 (thirty-four) examinations related to Transactions and Securities Institutions with alleged violations of the provisions of the internal control of Securities Companies and the indication of unusual stock price movements on the Stock Exchange; and

3) 10 (ten) examinations related to Investment Management with alleged violations of the provisions regarding Mutual Fund management guidelines in the form of Collective Investment Contracts, provisions on the principle of getting to know customers by financial service providers in the Capital Market field, provisions on guidelines for implementing Investment Manager functions, and provisions on Investment Manager monthly activity reports.

4. Imposition of Sanctions

a. The imposition of Administrative Sanctions

As of December 29, 2014, the OJK has set as many as 777 (seven hundred seventy-seven) Administrative Sanctions to Capital Market industry players, namely 60 (sixty) Administrative Sanctions in the form of Written Warnings, 713 (seven hundred and thirteen) Administrative Sanctions in the form of Fines, 2 (two) Administrative Sanctions in the form of License Revocation, and 2 (two) Administrative Sanctions in the form of License suspension.

A total of 30 (thirty) Administrative Sanctions in the form of Written Warnings were stipulated due to the delay in announcing financial statements, and 30 (thirty) Administrative Sanctions in the form of Written Warnings due to violations related to cases in the Capital Market field other than late reporting.

Furthermore, 713 (seven hundred and thirteen) Administrative Sanctions in the form of fines have been imposed on actors in the Capital Market industry due to late submission of periodic reports

and incidental reports, as well as cases of violations of provisions in the Capital Market sector other than late reporting with a total value of Rp7,953,060. 000.00 (seven billion nine hundred fifty-three million sixty thousand rupiahs) with the following details:

1) A total of 665 (six hundred sixty-five) Administrative Sanctions in the form of Fines due to late submission of periodic reports and incidental reports with a total value of Rp6,549,960,000.00 (six billion five hundred forty-nine million nine hundred sixty thousand rupiah);
2) A total of 48 (forty-eight) Administrative Sanctions in the form of Fines due to cases of violation of provisions in the Capital Market in addition to late reporting with a total value of Rp1,403,100,000.00 (one billion four hundred three million one hundred thousand rupiah).

OJK has stipulated 2 (two) Administrative Sanctions in the form of Revocation of Business Licenses and Revocation of Individual Licenses, in which 1 (one) Administrative Sanction in the form of Revocation of Business Licenses as Investment Advisor (Individual) due to the delay in submission of periodic reports and 1 (one) Administrative Sanction in the form of Revocation License of Broker-Dealer Representative due to a violation case in the Capital Market sector.

Besides that, OJK has set 2 (two) Administrative Sanctions in the form of Suspension of Individual Licenses and Registered Certificates (Surat Tanda Terdaftar or "STTD"), namely Administrative Sanctions in the form of Suspension of Securities Company Representative Licenses and Administrative Sanctions in the form of Suspension of STTD as Public Accountants.

In addition to the aforementioned Administrative Sanctions, OJK has also given Written Orders to Parties that do not obtain permission from OJK to stop activities carried out in the Capital Market.

As a follow-up to the determination of Administrative Sanctions in the form of 2013 Fines, the billing of which was conducted in 2014 and Administrative Sanctions in the form of Fines set in 2014, the FSA has set 273 (two hundred seventy-three) First Reprimand and 156 (one hundred fifty six) Second Letter of Reprimand due to late payment of Administrative Sanctions in the form of Fines. Furthermore, OJK is still processing the imposition of Administrative Sanctions due to the delay in submission of reports by 28 (twenty-eight) and 9 (nine) due to cases of violations of provisions in the Capital Market sector.

The Most Effective Dispute Resolution for Handling Civil Violations in the Capital Market Sector

Settlement of disputes in the capital market can be done through the court (litigation) and can be done outside the court (non-litigation). The use of non-litigation can be done with alternative dispute resolution (Alternatif Penyelesaian Sengketa or "APS") or alternative dispute resolution (ADR).[6] In the latest developments, the APS is growing not only because conceptually has advantages compared to the court, not only because in practice it has proven to be an acceptable solution, and not only because courts and justice are increasingly difficult to reach. The development of APS is also encouraged by increasing attention to issues of democratization, legal reform, weak / small society, public interests, justice, legal certainty, public accountability, community participation, and corporate responsibility.

One institution that provides Alternative Dispute Resolution (APS) is the Indonesian Capital Market Arbitration Board (Badan Arbitrase Pasar Modal Indonesia or "BAPMI") which specializes in civil disputes in the Capital Market field. BAPMI offers three types of out-of-court dispute resolution services that can be selected by the parties to the dispute, namely binding opinions, mediation, or

[6] Iswi Hariyanti (2010). *Prosedur Mengurus HAKI yang Benar*, Cetakan ke-1, Yogyakarta: Penerbit Pustaka Yustisia, hlm. 26.

arbitration.[7] However, not many people know the role and authority of BAPMI in resolving disputes in the capital market.

The community believes that the court's decision must have legal force, and its enforcement can be imposed on those who do not enforce it voluntarily. However, the community is sanctioned whether the APS also has the same power as a court ruling, whether the Arbitral Award is as strong as a court ruling. The following is an explanation of the legal certainty of the APS and its results:

1. Legal Certainty of Negotiation and Mediation

The form of an APS whose roots are basically negotiations and the results are in the form of agreements, such as Negotiations and Mediation, its effectiveness will undoubtedly depend on the good faith of the parties obeying the results of the negotiations/agreements. In theory, there should not be a peace agreement that is not obeyed and carried out by one party because to reach a peace agreement is already a willingness of the parties to a win-win solution; moreover, there is not the slightest coercion from third parties in determining the final outcome of the negotiation process. Every action of one party that is contrary to the outcome of the negotiations is an act of breach of contract (wanprestasi).

The law governing the basics of mediation in Indonesia is Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution (hereinafter referred to as the Arbitration Law and APS), in Chapter II Article 6 of the Arbitration Law and the APS clearly states that Mediation is highly dependent on the goodwill of the parties, and the outcome is highly dependent on the wishes of the parties. There is no threat if one of the parties does not carry out a Mediation agreement other than the threat of default from the interested parties.

However, specifically for mediation, the implementation of which is recommended by regulators through regulations made by the relevant regulators, there are few exceptions, namely the existence of an element of coercion from the regulator to the company, especially in the form of obligations to carry out and the threat of sanctions (administration) if not implemented. An example is Bank Indonesia Regulation No.8 / 5 / PBI / 2006, January 20, 2006, Article 13 *juncto* Article 16. The existence of Mediation in Indonesia is increasingly confirmed with the issuance of Perma No. 2 of 2003 in which all civil cases submitted to the court of the first instance must first be resolved through Mediation.

Other forms of "coercion" are as regulated in BAPMI Rules and Procedures. Article 18 of the regulation states that if one party does not carry out a Mediation agreement, the interested party can submit a complaint to the management of the association/organization of which he is a member, and subsequently to the Capital Market Supervisory Agency and the association / organization to which the party is not willing to carry out become a member. This action is more a social sanction.

2. Legal Certainty of Arbitration

The fundamental doubt regarding the Arbitral Award is whether the verdict that is said to be final and binding can actually be directly carried out, can be executed, including also the foreign Arbitral Award whether it is truly recognized by the country where the decision will be implemented. Does the legal system of a country recognize the Arbitral Award. The doubts of this community are affected not only because of the limited understanding of Arbitration, but also because of the many reports regarding arbitral awards are left without being obeyed or are just redundant in nature - bad news is good news, even though more Arbitration decisions are smoothly implemented. The doubt is certainly very disturbing, especially considering that the users of Arbitration are predominantly business actors who frequently conduct international business transactions.

[7] Rachmadi Usman (2013). *Pilihan Penyelesaian Sengketa Di Luar Pengadilan*, Bandung: PT. Citra Aditya Bakti, hlm. 339.

Recognition of Arbitration and other APS in Indonesia can be seen in Indonesia's ratification of the New York Convention through Presidential Decree Number 34 of 1981, Article 3 paragraph (1) of Law Number 4 of 2004 on Judicial Power, part of the explanation that this law does not rule out the possibility of settlement of cases carried out outside the state court through peace or arbitration, and the enactment of special laws namely the Arbitration Law and the APS since 1999. The Arbitration and APS Laws, as well as other countries and APS institutions, have common principles in common. This is not surprising considering that Arbitration was originally intended for business people who do not know national boundaries, who conduct business under the common practice generally accepted in international transactions. In addition to the laws and regulations, the courts in Indonesia and the Supreme Court actually also provide much support for domestic and foreign Arbitration, both strengthening/recognition of the Arbitration Agreement, an affirmation of the absolute competence of the Arbitration, and also the implementation of the Arbitral Award.

Arbitration and its decision have obtained legal certainty by statutory regulations and courts in Indonesia, and that the provisions regarding Arbitration in the Arbitration Law and the APS, BAPMI Procedures, BANI and National Arbitration institutions in Indonesia are in accordance with the prevalence of generally accepted practices in international transactions, so there's no need to be concern anymore. Indonesian Capital Market Arbitration Board (Badan Arbitrase Pasar Modal Indonesia or "BAPMI") is a private and non-profit organization. In conducting examinations and making decisions on disputes, BAPMI is an independent, neutral institution, free from any intervention from any party. BAPMI's binding opinion is the opinion given by BAPMI on the parties' request regarding the interpretation of an unclear provision in the agreement so that between the parties there will be no difference in interpretation which could open up further disputes.[8]

The development of law enforcement, which becomes an essential portion in maintaining investor confidence, is strongly influenced by various internal and external factors. Internal factors include the policies taken by the government regarding capital markets, as well as other internal factors such as economic, political power, quality and quantity of market participants, the existence of market operational mechanisms and systems, institutional effectiveness and the existence of legal regulations that contain law enforcement and legal certainty. Capital markets everywhere will remain and always take into account political factors as determining factors.

Based on the description above, dispute resolution through non-litigation, namely through arbitration and other alternative dispute resolution (APS) is the most effective dispute resolution in the capital market, because the dispute resolution period is faster and cheaper than through litigation/court. Furthermore, the decision is final and binding or binding, the non-litigation dispute settlement path is also in accordance with the purpose of establishing a Securities Exchange contained in Article 7 paragraph (1) of Law Number 8 of 1995 on Capital Market which states that a Securities Exchange is established with the aim of conducting regular, fair and efficient Securities trading. In the Elucidation of Article 7 paragraph (1), efficient Securities trading is reflected in the fast settlement of transactions at a relatively low cost

Conclusion

The authority to carry out examinations and investigations of parties deemed to have committed violations in the Capital Market has become the authority of the OJK since January 1, 2014, and which is the basis for regulating the OJK in carrying out its investigations and investigations to remain based on the Capital Market Law as long as the Capital Market Law is not in conflict with the FSA

[8] *Ibid*, hlm.340

Law, and as long as the OJK has not replaced the provisions.

Many capital market cases have emerged, such as missing stock cases, short selling cases, fake reporting cases, IPO cases and right issues, and insider trading. These cases are detrimental to the interests of investors who should be protected. Dispute resolution outside the court or through non-litigation was chosen because it was considered that the judicial process in Indonesia was considered inefficient and ineffective. Dispute resolution mechanisms through the judiciary body have many shortcomings, namely foreign partners have not given confidence in the effectiveness of the law in Indonesia, the judicial process takes a long time, complicated, requires high costs, the decision is win-lose, can damage the good relations of the parties, the results of the ruling are challenging to execute, tend to favour the prominent businessmen, the fertility of the judicial mafia, open opportunities to submit legal remedies for judges' decisions, through appeals, cassation and reconsideration, and others. So with the rapid development of the capital market in Indonesia, a variety of alternatives have emerged in terms of how to resolve disputes in the capital market in Indonesia. The capital market has special and dynamic mechanisms and characters in terms of dispute resolution and problems that occur in transactions in the capital market so that special handling is needed quickly and efficiently. The procedure for resolving disputes outside the court is considered to be the most suitable for the needs of capital market players.

Suggestion

1. Along with the increasing complexity and quality of violations in the Capital Market, more dynamic and comprehensive law enforcement processes are needed. Therefore, increasing the quality and quantity of law enforcement in the Capital Market is necessary. It is better to increase the quality of law enforcement continuously through a series of training and education both at home and abroad.
2. The Indonesian capital market could suffer a setback if cases in the capital market are not resolved immediately. Investors will move their portfolio outside the capital market and choose other investment instruments that are more profitable. The growing discourse led to the statement that Law No. 8 of 1995 concerning the Capital Market was considered to be less relevant to the times, so it needed to be revised. Currently, the Indonesian Capital Market requires a Capital Market Law that can be used as a reference, and there must be efforts to ensure the effectiveness of its implementation. The goal is that there is a guarantee of legal protection for the rights of investors in the capital market contained in a comprehensive law. Therefore, the revision of the Capital Market Law is significant to prevent the repetition of things that are detrimental to investors that have been happening all this time.

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