

## **Analysis of Accountability of Securities to Investors in the Event of Embezzlement of Investment Funds by Securities**

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### **Abstract**

Indonesian capital market laws are regulated in Law Number. 8 of 1995 explains the notion of the capital market is an activity related to securities trading and public offerings between actors and issuers. Securities are financial instruments with a certain value that reflect the ownership of a person or business entity in an asset. An alternative term for securities is securities. Ownership of securities or securities is required to generate a return for the owner, according to the percentage of ownership of the asset. The Financial Services Authority (OJK) released risk management rules for implementing risk management in securities companies that are members of the stock exchange (AB). If they do not comply with this risk management policy, the securities company will be subject to sanctions ranging from a warning to revocation of its business license by the OJK. These rules are contained in POJK Number 6/POJK.04/2021 Concerning the Implementation of Risk Management for Securities Companies Conducting Business Activities as Underwriters and Broker-Dealers of Securities who are Members of the Stock Exchange. Accountability in the event of embezzlement of securities to investors in the event of embezzlement of investment funds by securities based on Regulation NUMBER 6 /POJK.04/2021 will be subject to administrative sanctions and the Financial Services Authority can take certain actions against any party who violates the provisions of the Financial Services Authority Regulation This.

**Keywords:** Capital Market, Securities, Financial Services Authority



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### **INTRODUCTION**

Indonesian capital market laws are regulated in Law Number. 8 of 1995 explains the notion of the capital market is an activity related to securities trading and public offerings between actors and issuers. So in general, the notion of the capital market is the activity of buying and selling securities or securities between investors and issuers as well as other capital market players. Meanwhile, the place used as a capital market is the Indonesia Stock Exchange (IDX). The history of capital markets in the world began with the French State in the 12th century. Then in Bruges, Flemish, Belgium also started commodity trading in the 13th century. The development of buying and selling securities, both commodities and securities, continues to increase in various European countries, including the Netherlands. The history of the Indonesian capital market begins with the Dutch VOC colonial occupation. On December 14, 1912 in Batavia, the capital market in Indonesia was officially established under the name Vereniging voor de Effectenhandel (securities trading association).

In 1918 the Indonesian capital market had to be closed due to economic turmoil as a result of World War I and II. The Indonesian capital market was reopened in 1977 by President Soeharto under the name Jakarta Stock Exchange. Finally, the capital market in Indonesia continues to develop and renew policies and its name becomes the Indonesian Stock Exchange. There are two types of capital market functions, namely economic and financial functions. The explanation of each will be discussed below:

1. **Economic Function.** Basically, the function of the capital market is to bring together two interested parties, namely investors and issuer companies. Investors want to invest for profit, while issuer companies need additional capital from investors. Not only that, the function of the capital market is to open opportunities for entrepreneurs to obtain capital so as to create stable liquidity within the company through the sale of securities or debt securities at IPOs/Bonds. The existence of additional capital can encourage companies to develop their business, so as to create jobs and affect the economy of a country.
2. **Finance Function.** Meanwhile, from a financial point of view, the function of the capital market is to provide a means of equal distribution of income from both investors and issuers. Investors have the potential to get returns from the selected instrument.

On the other hand, issuer companies get capital injections so that business productivity increases. Widespread business expansion will open up job opportunities, so that people's finances will run more smoothly. The existence of the capital market has a big impact for many people. The benefits of the capital market are as follows:

1. **Increasing Capital Funding for Entrepreneurs.** Money invested in the capital market by investors is able to help entrepreneurs to get additional capital funding so that their business grows and generates large profits. Therefore, the benefit of the capital market is as a space for entrepreneurs to obtain venture capital.
2. **Increasing Business Production Capacity.** The capital market is able to influence the increase in business production. Companies that get capital injections from investors make their business productivity increase. So that the benefits of the capital market for business continuity are enormous.
3. **Supporting Symbiosis of Mutualism Between Investors and Issuers.** One of the benefits of the capital market is that it creates a symbiotic mutualism between investors and issuers. Because both parties who need each other are brought together in a container called the capital market to meet their respective needs. Investors as owners of capital invest their funds, while issuers seeking funds obtain capital assistance from investors.
4. **Equalize Community Income.** Capital market activities make many people feel benefited because of the flow of income for each party. Investors get passive income from profit sharing, issuers are able to increase their business profits with capital injections, and other people can get jobs so they can earn income. Therefore, the benefit of the capital market is to equalize people's income.
5. **Encouraging the Creation of More Workers.** Capital obtained by entrepreneurs can increase productivity and increase business expansion. When a business grows rapidly, it certainly requires more human resources. So that the workforce can be absorbed properly and reduce the unemployment rate.
6. **Helps Increase Tax Revenue.** Not only the public and entrepreneurs benefit from the capital market, but the government also benefits. Because the increase in people's income and the results of business productivity causes tax revenues to increase.
7. **Contribute in Advancing the Country's Economy.** Finally, the benefit of the capital market is that it contributes to the economic progress of a country. Many parties are involved and have influence over the impact of this capital market. So that this makes people who contribute to the capital market participate in improving the economy of a country.

Capital market players and the parties involved:

1. **Financial Services Authority (OJK).** OJK is an institution that carries out guidance, regulation and day-to-day supervision of capital market activities. Their presence aims to create

regular, fair and efficient activities as well as protect the interests of investors and the public. OJK has the authority to grant business licenses to stock exchanges, clearing houses and guarantors, depository and settlement institutions, mutual funds, securities companies, investment advisors and securities administration bureaus. In addition, OJK also has the authority to grant individual business licenses to underwriter representatives, broker-dealer representatives, investment manager representatives, and give approval to custodian banks.

2. Stock exchange. A stock exchange is a party that organizes and provides a system and facilities to reconcile securities buying and selling offers. Own securities are debt acknowledgment securities, commercial papers, stocks, bonds, proof of debt, units of collective investment contract participation, futures contracts on securities and any derivative of securities. The stock exchange in Indonesia is called IDX.
3. Clearing and guarantee institutions (LKP). LKP is a party that provides clearing and guarantee services for the settlement of transactions on the stock exchange. LKP of course has a business license from the OJK, and the majority of LKP shares are owned by the stock exchange with members of the shareholders including securities companies, securities administration bureaus, custodian banks, and other parties with the approval of Bapepam. LKP's task is to stipulate regulations regarding clearing activities and guarantees for exchange transaction settlement. This includes the cost of using the service. In Indonesia this institution is called the Indonesian Clearing and Guarantee Agency (KPEI).
4. Depository and Settlement Institution (LPP). LPP is a party that organizes central custodial activities for custodian banks, securities companies and other parties. LPP is required to stipulate regulations regarding central depository services and securities transaction settlement services. In Indonesia, the name of this institution is the Indonesian Central Securities Depository (KSEI). KSEI shares are held by stock exchanges, securities companies, securities administration bureaus, custodian banks, or other parties with OJK approval.
5. Securities companies. This company is a party that carries out business activities as an underwriter, securities broker, and or investment manager who has received a permit from the OJK.
6. Securities underwriters. This party is the party that enters into a contract with the issuer to conduct a public offering. They also sometimes could just buy the remaining unsold securities. In essence, their job is to assist the issuer in preparing a registration statement and its supporting documents, providing consultancy in the financial sector, evaluating the condition of the company including finance, marketing and production and its prospects and determining the share price with the issuer.
7. Intermediary traders (brokers). This party carries out business activities of buying and selling securities for. own or other party's interests. Brokers will provide data and information for the benefit of investors, and provide trading recommendations for customers.
8. Investment manager. This party is tasked with managing securities portfolios for customers or managing collective investment portfolios for a group of customers, except for insurance companies, pension funds and banks. Investment managers must also enter into contracts with custodian banks for the production of mutual fund products.
9. Investment advisor. This party will provide advice to other parties regarding the sale or purchase of securities in exchange for services. However, of course all of them have received business licenses from the OJK.
10. Capital market supporting institutions. In addition to the institutions above, there are also other parties that are supporting institutions.

- a. Custodian. This party is the one who provides safekeeping services for securities and other assets related to securities. They will also be entrusted with dividends, interest and other rights obtained by investors. Custodians also act on behalf of account holders who are their customers. Custodians are depository, settlement institutions, securities companies, or commercial banks that have obtained OJK permits.
- b. Securities administration Bureau. This party carries out the recording of securities ownership based on a contract with the issuer. Companies that act as securities administration bureaus must also have a permit from the OJK.
- c. Trustee. This party represents the interests of debt securities holders, both inside and outside the court. Trustee activities can be carried out by commercial banks and other parties stipulated by government regulations and registered with the OJK.
- d. Securities rating. The securities rating agency in Indonesia is Pefindo. Their main task is to provide an objective, independent and accountable credit risk rating. Pefindo also publishes and publishes credit information related to the securities trading market. The publication can be in the form of a credit opinion on the bond issuer company and the reference asset sector.
- e. Support profession. Supporting professions can be accountants, legal consultants, appraisers, notaries, and other professions stipulated by government regulations. However, all of these professions must first be registered with the OJK, before they can carry out their activities on the capital market.
- f. Issuers and public companies. Issuer is a party that conducts a public offering (offers and sells its securities to the public). Issuers can be individuals, companies, joint ventures, associations, or organized groups.

In addition to securities in the form of debt acknowledgment securities, commercial papers, stocks, bonds, proof of debt, units of collective investment contracts, futures contracts on securities and any derivatives of securities, they can also offer sukuk. Sukuk are sharia securities where the contract and issuance must comply with sharia principles in the capital market.

### **Capital Market Instruments**

Talking about capital market instruments, in the previous point we have already mentioned "effect." So this effect will later become an investment instrument. Broadly speaking, there are five capital market instruments:

1. Stocks. Shares are securities that serve as proof of ownership of a company. This capital market product is considered very popular among investors in the capital market sector. One way that a company does to get funds is by selling shares. These shares are sold on the stock exchange which can then be purchased by the public or agencies in the form of investment. Basically, you are free to choose stocks from any company, but of course it is advisable to prioritize those that are trusted and provide complete information disclosure to investors. To buy shares, the first step you have to do is open a securities account at a securities company.
2. Bonds. Bonds are proof of debt securities issued by companies or the state. Usually, bonds are purchased by the public or investors who want to make a profit because there is a difference between the principal value of the debt and the interest coupon. The principal amount of the debt is the value of the bond itself. While interest coupons are the advantages or advantages obtained by bond buyers. Examples of bonds include: Corporate bonds, usually issued by BUMN, BUMD, private companies; sharia bonds; Sukuk (sharia); State

Securities (SBN); Government Bonds (SUN); Asset Backed Securities (EBA). The issuance of bonds by companies or countries aims to alleviate financial problems. For a company, they usually want to expand their business. Meanwhile, for the state to finance the state budget deficit, reduce the amount of debt, and cover short-term cash shortfalls. Bond purchases must be represented by a securities company. The broker in the securities company will analyze the bonds with the intention of anticipating all risks of loss that could occur at any time due to the failure of the bond issuer to pay the principal amount of the debt and interest coupons.

3. Mutual funds. Mutual funds are one of the most recommended investments for beginners. Because only with a capital of IDR 10,000, you can already buy this product. There are four types of mutual funds that are quite popular in Indonesia, namely money market mutual funds, fixed mutual funds, stock mutual funds and mixed mutual funds. In addition, there are sharia mutual funds where the system is based on Islamic principles and provisions so that profits from usury interest are avoided. Stock exchanges provide special mutual fund products for investors who don't want to take big risks, such as losses. Moreover, the investment funds issued are smaller when compared to stock products. In practice, mutual fund products are designed by investment managers. Meanwhile, the purchase can be made at a mutual fund selling agent or through the investment manager directly.
4. Exchange Traded Funds (ETFs). ETFs or Exchange Traded Funds are a type of investment that is almost the same as mutual funds, the difference is that ETF products are traded mostly in company shares on the stock exchange. ETF product purchases must pass through several securities firms. Meanwhile, the transaction process can use the trading application that they provide. ETF product provider securities include; Securities Materials; Mandiri Sekuritas; Phillip Sekuritas Indonesia; Sinarmas Securities; Indopremier Securities.
5. Derivatives. The next type of investment is derivative securities. Derivatives are derivative products, and their form is a trading contract, not a real financial asset. There are three types of derivatives that you need to know about, namely options, futures contracts, and swaps. However, specifically on the IDX, the available derivatives are financial derivatives, where the instruments can be in the form of stocks, bonds, stock indexes, bond indices, currency (currency), interest rates and other financial instruments, and the form is a futures contract.

Derivative products tend to be intended for senior investors who have already invested in the stock sector or other high-risk instruments. Investment in this product is closely related to speculation, therefore the risk is quite high. Of these five capital market products, some of them are also presented in Islamic capital market instruments, but with a different profit sharing system. The definition of securities is financial instruments with a certain value that reflects the ownership of a person or business entity over an asset. An alternative term for securities is securities. Ownership of securities or securities is required to generate a return for the owner, according to the percentage of ownership of the asset.

Just like assets, securities are objects that can be easily transferred through buying and selling transactions. The difference is that securities can only be traded through the market or securities companies. In general, there are 2 main activities carried out by securities companies, including:

1. Broker Dealer (Broker Dealer) The first activity of a securities company is as an intermediary for buying and selling securities, both for their own interests and for other people. In this case, the company has the right to carry out buying and selling activities directly or intermediary transactions with supervision from the stock exchange.

2. Underwriter (Underwriter). The next role of a securities company is to ensure the smooth running of its issuer clients when conducting an initial public offering (IPO). Some of the activities included in underwriting for example completing administration, issuing stock release dates to the public, and so on.

### **Types of Securities**

1. Obligasi/Surat Utang. Jenis sekuritas yang pertama adalah obligasi atau surat utang, yaitu suatu sertifikat berharga yang dijual entitas guna mendapatkan pinjaman dari investor, dengan imbalan bunga tertentu. Contoh sekuritas jenis ini misalnya Surat Utang Negara (SUN), Saving Bond Ritel (SBR), sekuritas syariah berupa sukuk, dan sebagainya.
2. Ekuitas/Saham. Jenis berikutnya sekuritas adalah ekuitas, atau lebih populer dengan istilah saham. Seperti yang mungkin sudah Anda pahami, saham adalah persentase kepemilikan seseorang atas sebuah badan usaha, dengan presentasi berbentuk lot atau lembar saham. Beberapa contoh sekuritas saham misalnya dividen, reksadana, dana investasi real estate (DIRE), dan sebagainya.

**Problem Statement:** The legal basis governing investment in Indonesia. What is the accountability of securities to investors in the event of embezzlement of investment funds by securities based on Regulation NUMBER 6 /POJK.04/2021. **Research Objectives:** To find out the legal basis for investing in Indonesia and to find out the forms of accountability that securities can provide to investors who experience losses as a result of embezzlement of funds by securities parties

### **RESEARCH METHODS**

**Type of Research:** Normative legal research. **Nature of research:** descriptive research. **Research Approach:** Legislative Approach. **Types of Data and Data Sources:** Secondary data with primary legal materials. **Data collection techniques:** Literature study. **Data Processing Techniques:** Classification of data. **Data analysis techniques:** Descriptive qualitative.

### **RESEARCH RESULTS AND DISCUSSION**

**The Financial Services Authority (OJK) released risk management rules for implementing risk management in securities companies that are members of the stock exchange (AB).**

If they do not comply with this risk management policy, the securities company will be subject to sanctions ranging from a warning to revocation of its business license by the OJK. These rules are contained in POJK Number 6/POJK.04/2021 Concerning the Implementation of Risk Management for Securities Companies Conducting Business Activities as Underwriters and Broker-Dealers of Securities who are Members of the Stock Exchange. Securities companies are required to implement Risk Management effectively.

1. Active supervision of the Board of Directors and Board of Commissioners of the Securities Company
2. Adequacy of Risk Management policies and procedures and setting of Risk limits
3. Adequacy of risk identification, measurement, monitoring and control processes as well as risk management information systems
4. Comprehensive internal control system. There are several risks that must be managed by securities companies, namely as explained in article 5 paragraph 1 of the regulation, including: Operational risk; credit risk; market risk; Liquidity risk; Compliance risk; Legal Risk; reputation risk; Strategic risk.

It is stated in article 9 that the risk management policy must at least be comprehensive in terms of strategy by applying the precautionary principle. The availability of company capital also needs to be considered and must be in accordance with statutory regulations. In addition, securities companies must also prepare an early detection system and carry out risk identification and diversification. So that later risks that may occur can be monitored, measured and can be mitigated. As a form of oversight, OJK will ask securities companies to provide risk management assessment reports until December 31 each year. The report must be submitted to OJK no later than February 28 of the following year, as stated in Article 19 paragraphs 1 and 2. In the event that a securities company does not comply with these provisions, Article 21 stipulates that OJK can impose administrative sanctions on securities companies. The sanctions can be in the form of: Written warning; Fines in the form of an obligation to pay a certain amount of money; Restrictions on business activities; Suspension of business; Revocation of business license; Cancellation of approval; Cancellation of registration.

**Article 1 In this Financial Services Authority Regulation what is meant by:**

1. Securities Company is a party conducting business activities as underwriter, securities broker, and/or investment manager.
2. An Underwriter is a party that enters into a contract with an issuer to conduct a public offering for the benefit of the issuer with or without the obligation to purchase the remaining unsold securities.
3. Broker-Dealer is a party that carries out business activities of buying and selling securities for its own or other party's interests.
4. A Stock Exchange Member is a Broker-Dealer who has obtained a business license from the Financial Services Authority and has the right to use the stock exchange system and/or facilities in accordance with stock exchange regulations.
5. Risk is the potential loss due to the occurrence of a certain event.
6. Operational Risk is Risk caused by inadequate or malfunctioning internal processes, human errors, system failures, and/or external events that affect the operations of Securities Companies.
7. Credit Risk is the risk caused by the failure of the customer and/or other parties to fulfill their obligations to the Securities Company.
8. Market Risk is Risk caused by movements in market variables from the portfolio owned by Securities Companies.
9. Liquidity Risk is the Risk resulting from the inability of the Securities Company to fulfill its obligations originating from the debts of securities transactions made by clients or the Securities Companies themselves, and/or other debts.
10. Compliance Risk is the Risk caused by a Securities Company not complying with and/or not implementing the laws and regulations that apply to Securities Companies.
11. Legal Risk is Risk caused by lawsuits, weaknesses in juridical aspects in agreements made by Securities Companies, and/or activities and products that have not been regulated in laws and regulations.
12. Reputation Risk is a Risk caused by a decrease in the level of stakeholder trust resulting from customer complaints and/or negative news about Securities Companies.
13. Strategic Risk is Risk caused by Securities Company's inaccuracy in making and/or implementing a strategic decision and failure in anticipating changes in the business environment
14. Risk Management is a series of methodologies and procedures used to identify, measure, monitor, and control risks arising from all business activities of a Securities Company.

15. The Board of Directors is an organ of a Securities Company that is fully authorized and responsible for managing the Securities Company for the benefit of the Securities Company, in accordance with the purposes and objectives of the Securities Company and for representing the Securities Company, both inside and outside the court in accordance with the provisions of the articles of association.
16. Board of Commissioners is an organ of a Securities Company whose job is to carry out general and/or special supervision in accordance with the articles of association and provide advice to the Board of Directors.

### **Article 3**

- (1) Securities Companies as referred to in Article 2 must apply Risk Management effectively.
- (2) Application of Risk Management as referred to in paragraph (1) at least includes: a. active supervision of the Board of Directors and Board of Commissioners of the Securities Company; b. adequacy of Risk Management policies and procedures as well as setting Risk limits; c. adequacy of the processes of identification, measurement, monitoring, and risk control as well as risk management information systems; and D. comprehensive internal control system.

### **Article 18**

- (1) A Securities Company must have a written Risk Management policy to manage the Risks inherent in other activities of the Securities Company.
- (2) The Risk Management Policy as referred to in paragraph (1) is in accordance with the provisions of laws and regulations regarding other activities for Securities Companies conducting business as Underwriters and Broker-Dealers.

### **Article 21**

- (1) Any party who violates the provisions referred to in Article 3 paragraph (1), Article 4, Article 5 paragraph (2), Article 6, Article 10 paragraph (1), paragraph (3), paragraph (4), Article 11 , Article 12, Article 13 paragraph (2), Article 15 paragraph (1), Article 16 paragraph (3), Article 18 paragraph (1), Article 19 paragraph (1), paragraph (2) and Article 20 paragraph (2) subject to administrative sanctions.
- (2) The sanction as referred to in paragraph (1) is also imposed on the party causing the violation as referred to in paragraph (1).
- (3) The sanctions as referred to in paragraph (1) and paragraph (2) are imposed by the Financial Services Authority.
- (4) The administrative sanctions as referred to in paragraph (1) are in the form of: a. written warning; b. a fine in the form of an obligation to pay a certain amount of money; c. restrictions on business activities; d. Suspension of business; e. revocation of business license; f. cancellation of approval; and/or g. cancellation of registration.
- (5) Administrative sanctions as referred to in paragraph (4) letter b, letter c, letter d, letter e, letter f, or letter g may be imposed with or without prior imposition of administrative sanctions in the form of a written warning as referred to in paragraph (4) letter a.
- (6) The administrative sanction in the form of a fine as referred to in paragraph (4) letter b may be imposed individually or jointly with the imposition of administrative sanctions as referred to in paragraph (4) letter c, letter d, letter e, letter f, or letter g.
- (7) The procedures for imposing sanctions as referred to in paragraph (3) are carried out in accordance with the provisions of the laws and regulations.



### **Article 22**

In addition to the administrative sanctions referred to in Article 21 paragraph (4), the Financial Services Authority can take certain actions against any party who violates the provisions of this Financial Services Authority Regulation.

### **Article 23**

The Financial Services Authority can announce the imposition of administrative sanctions as referred to in Article 21 paragraph (4) and certain actions as referred to in Article 22 to the public.

### **CONCLUSION**

The legal basis that regulates investment in Indonesia is POJK Number 6/POJK.04/2021 concerning the Implementation of Risk Management for Securities Companies Conducting Business Activities as Underwriters and Securities Broker-Dealers who are Members of the Stock Exchange. Accountability in the event of embezzlement of securities to investors in the event of embezzlement of investment funds by securities based on Regulation NUMBER 6 /POJK.04/2021 will be subject to administrative sanctions and the Financial Services Authority can take certain actions against any party who violates the provisions of the Financial Services Authority Regulation This.

Suggestion: The parties involved in investment activities must have a better understanding of existing rules and sanctions in order to minimize the threat of unlawful acts in investing. Especially for investors to be able to know and understand whether the securities chosen to invest are in accordance with applicable regulations or not so as not to cause problems in the future.

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