

# Financial Services Authority Policy in Increasing Investment Indonesian Capital Market in the Disruption Era

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**Abstract:** Based on the Article 55 paragraph (1) of Law Number 21 of 2011 concerning the Financial Services Authority, the duties and functions of the Capital Market Supervisory Agency have been taken over by the Financial Services Authority. The assignment and function of the capital market watchdog are aimed at increasing the effectiveness and efficiency of capital market watchdog. This is evident that the growth of the capital market has increased both in terms of the number of issuers, number of investors, market capitalization, transaction volume, average transaction value, but can only contribute less than 3%, from the target of 3.3% of the total investment needs of Indonesia. Legal policies are needed which must be carried out by the Financial Services authority so that investments in the capital market can increase and meet the government's targets. Normative legal writing with a normative juridical approach aims to analyze the legal policies of what should be done by the authorities and the Self Regulatory Organization (SRO) so that investments in the capital market can increase significantly and can meet Indonesia's investment needs. In this disruption era, each Organizational Self Regulatory (SRO) has made a new policy, by applying the latest generation of each main system. Through the coordination of the Institutional Self Regulatory Institution (SRO) and the Financial Services Authority (OJK) legal policy, the Indonesian capital market is expected to be more efficient in terms of securities trading support systems and can increase investment in Indonesia

## 1 INTRODUCTION

The Capital Market aims to support the implementation of national development in order to increase equity, growth and national economic stability towards improving people's welfare. In order to achieve this goal, the Capital Market has a strategic role as one of the sources of financing for the business world, including medium and small businesses for business development, while on the other hand the Capital Market is also an investment vehicle for the community, including small and medium-sized investors. Fundraising through the capital market is indeed very large, which can be used to contribute to investment needs.

According to the records of the Financial Services Authority, throughout 2018, the collection of funds amounting to Rp 166 trillion from the capital market through a total of 168 public offers, while raising funds in the capital market until May 2019 had reached Rp 54.71 trillion from 52 public offerings. (Grace Olivia, 2019) According to data on the Indonesia Stock Exchange the stock trading recapitula-

tion as of July 6, 2019 is as follows: (Rina Anggraeni, 2019)

Table 1: Stock trades on the indonesia stock exchange.

No	Jumlah	2018	Juli 2019
1	Investor	1.610.000	1.676.606
2	Emiten	609	627
3	market capitalization	6.986,67	7.268,404
4	Indek HSG	6.163,60	6.373,477.
5	Transaction volume	14,39	18,278
6	Average daily transaction	380,54	484,227
7	Average daily transaction volume	10,13 triliun	8,060 triliun
8	fund raising	166 trilun of 168 initial public offering	54,71 trilun of 52 initial public offering

Initially foreign investors were limited to only

49%, and based on the Republic of Indonesia Minister of Finance Decree number 455 / KMK.01 / 1997 foreign investors were finally given freedom without restrictions.

In accordance with the principle of nondiscrimination in investment, freedom for foreign investors is a strategic policy in the capital market in order to obtain foreign funds through the capital market. The development of the capital market at the end of this decade experienced a significant increase, both seen from the various aspects, for example: aspects of the number of investors, number of issuers, market capitalization, funds raised, and so on. But compared to the total investment needs, the contribution of funds from capital market investments has only reached 3%.

The Financial Services Authority, target in raising funds through the capital market in 2020 is IDR 192 trillion, which is estimated to only contribute 3.3% of the total investment needs. What is the legal policy that must be done by the Financial Services Authority so that investment can increase. This problem will be analyzed and assessed by a normative juridical approach, by describing the capital market regulations as secondary data, and supported by primary data through field research by observation and interviews with officials in the financial services authority in Jakarta.

According to the Financial Services Authority, the opportunities and challenges in driving capital investment are increasing Human Resource in the capital market, capital market instruments, new technology, transparency of securities prices, global macroeconomic conditions, political conditions, literacy and financial inclusion.

## 2 METHODOLOGY

This writing is the result of normative legal research, through legislation and conceptual approaches. As the material is secondary data, in the form of: 1) primary legal materials; which consists of various capital market law literature, scientific journals and other articles or writings related to capital market law. 2) secondary legal materials consisting of capital market regulations and tertiary legal materials consisting of various legal dictionaries and capital market dictionaries, and various news related to capital markets. The data is taken from libraries, websites by means of study documents, and analyzed concretely by providing exposure to the Financial Services Authority's legal policies in increasing investment in the capital market.

## 3 RESULTS AND DISCUSSION

### 3.1 Capital Market System

#### 3.1.1 Primary Market

The activities on the primary market will begin with public offering activities by the issuer. Requirements for initial public offering, the issuer must submit an application statement to The Financial Services Authority. According to the law, those who can make initial public offering are only Issuers who have submitted a Registration Statement to The Financial Services Authority to offer or sell Securities to the public and the Registration Statement has been effective. (Indonesia, 1995) To be able to make purchases on the primary market or initial public offerings, the prospective buyer in addition to filling out a securities purchase order form and entering into an account opening contract and funding consignment on the underwriter or sales agent, it must be ensured that a buyer has read the prospectus. The law confirms that no Party can sell Securities in a Initial Public Offering, unless the buyer or buyer states in the Securities order form that the buyer or buyer has received or has the opportunity to read the Prospectus regarding the Securities before or when the order is made.

Public offering activities are carried out within 3 days and delivered within 60 days of the registration statement being declared effective, with the submission of securities and or the remaining consignment funds by the securities underwriter to the ordering party. The purpose of the issuer is to provide a public offer, of course so that the securities (shares) can be listed on the Exchange. Listing activities on the Exchange are carried out after the completion of the public offering with the listing on the Exchange, the issuer's securities (shares) can be traded on the trading floor (Secondary Market).

#### 3.1.2 Secondary Market

Securities trading activities or often referred to as exchange transactions, are carried out entirely by members of the exchange, namely the intermediaries of securities traders (Brokers), which are located on the Stock Exchange. Prospective investors who will invest their funds in the secondary market must contract with securities companies that are licensed as securities brokers. The contract includes an account opening contract, a debit authorization contract, a securities deposit / fund contract, and a Single Investor Identification (SID). The position of investors in relation to securities brokers is as customers. After having

an SID, investors through their brokers can then make exchange transactions according to their ability.

### 3.2 The Role of the Financial Services Authority in Capital Market Activities

Based on article 55 paragraph (1) Law Number 21 of 2011 concerning the Financial Services Authority, the duties and authority of the Capital Market Supervisory Agency were taken over by the Financial Services Authority, and effectively took effect since January 2013. What is the duty and authority of the Capital Market Supervisory Agency is regulated in Law Number 8 of 1995 concerning Capital market.

According to Article 3 of Law Number 8 of 1995 concerning the Capital Market, the task of the Capital Market Supervisory Agency is to provide guidance, regulation and daily supervision of capital market activities. While the authority of the Capital Market Supervisory Agency is regulated in Article 5 of the Capital Market Law. Like Supervisory in America, Capital Market Supervision has three functions, namely;

1. Quasi Legislative Power: is the authority to make regulations in capital market activities.
  - a Give licenses to each party that will conduct activities in the capital market and give approval to the Custodian Bank;
  - b Require registration of capital market supporting professionals and trustees;
  - c Establish requirements and procedures for nominating and temporarily dismissing commissioners and or directors and appointing temporary management of the Securities Exchange, Clearing and Guarantee Institution, and the Depository and Settlement Institution until new commissioners and directors are elected;
  - d Establish requirements and procedures for the statement of registration and declare, delay, or cancel the effectiveness of the registration statement;
  - e Establish fees for licensing, approval, registration, inspection and research as well as other costs in the context of capital market activities;
  - f Provide further technical explanations for the Capital Market Law or its implementing regulations;
  - g Determine other instruments as Securities other than those prescribed by the Capital Market Law.

2. Quasi Investigation Power: the authority to conduct investigations and investigations into alleged violations in the capital market.
  - a Conducting checks and investigations on each party in the event of an event that is suspected to be a violation of the Law and / or its implementing regulations;
  - b Require each party to:
    - i. Stop or correct advertisements or promotions related to activities in the capital market; or
    - ii. Take the steps needed to overcome the consequences arising from the intended advertisement or promotion;
  - c Examine:
    - i. Every issuer or public company that has or is required to submit a registration statement to Capital Market Supervision; or
    - ii. The party that is required to have a business license, permission for individuals, approval, or professional registration under the law.
  - d Appoint other parties to carry out inspections in the framework of implementing the authority of Financial Services Authority;
  - e Inspect objections submitted by parties sanctioned by the Stock Exchange, the Clearing Guarantee Institution, or the Depository and Settlement Institution and provide a decision to cancel or strengthen the sanction.
3. Quasi judicial Power: is the authority to take action on violations in the capital market, such as the authority of a judicial body.
  - a Announce the results of the examination;
  - b Freeze or cancel the recording of a Securities on the Stock Exchange or stop the Exchange Transaction for certain securities for a certain period of time in order to protect the interests of investors;
  - c Stop the Stock Exchange's trading activities for a certain period of time in the event of an emergency;
  - d Doing other things given by law.

### 3.3 Financial Services Authority Legal Policies in the Capital Market

Development of capital markets that were re-established from the start of the early 1990s in CEE countries is driven by numerous forces. The most important determinants are: (1) Legal and institutional framework (2) Political and macroeconomic stability (3) Broadening the investors' base. (Olgić Draženović

and Kusanović, 2016) From the regulatory aspect Financial Services Authority has issued many Regulations for regulate capital market activities. Some policies that need to be carried out, in an effort to increase investment in Indonesian, namely:

a Maintain investor confidence.

Investors are the backbone of investment activities in the capital market, without investors there will be no capital market activities. Judging from the nationality of capital market investors or often called public investors (minority shareholders) can be classified as foreign investors and domestic investors in terms of the number of investors can be qualified as individual investors and institutional investors. In terms of objectives, investors are divided into pure investors and speculative investors. One aspect to encourage investor interest in the capital market is investor confidence. Some of the things that form the basis of investor confidence in capital markets include:

- (a) legal certainty, the existence of laws and regulations governing investment activities;
- (b) Investor legal protection; one of the weaknesses in investment activities is the problem of investor legal protection. Juridically, the government only guarantees the Full Disclosure principle, (Nasution, 2001) where investors are guaranteed to obtain material information related to the capital market. This guarantee is only carried out in a formal form through research on document sufficiency, clarity of information and completeness of documents. The government does not substantially conduct due diligent and / or legal review of documents in the capital market. (Fuady, 1996)
- (c) Ensuring benefits for investors. This policy is intended to make every investor get the maximum benefit from securities ownership in the capital market. The ones who get the most attention are stock investors, and therefore what benefits are obtained by investors in the share ownership. Many views that dividends are the main benefit for stock investors. Therefore, the Financial Services Authority must have the courage to make regulations that require issuers to pay dividends to investors. According to La Porta, mandatory dividend laws are a remedial measure designed to compensate minority shareholders in the event that their aforementioned rights are weak or non-existent. (Cyrus et al., 2006) That is, compulsory dividend law is a remedial step designed to provide compensation to minority shareholders if their rights at

the general meeting of shareholders, the anti-directors' rights are weak or nonexistent.

- b Providing diverse instruments, the aim can be used to support government needs in various priority sectors.

The object of trading in capital markets or often called the capital market instrument is in the form of securities. According to Securities law, securities are debt securities, commercial securities, shares, bonds, debt proofs, Participation Units of collective investment contracts, futures contracts for Securities, and any derivatives of Securities. The capital market instrument which has been widely traded is shares and every derivative of shares such as proof of right, warrant, option.

- c Encourage regional bonds, green bonds and perpetual bonds. Local governments need to be encouraged to issue bonds, in order to get funds for development.

Local governments need to be encouraged to issue bonds, in order to get funding for development. According to the Financial Services Authority, the proceeds from debt securities will be used to finance investment activities and infrastructure to generate revenues for the Regional Revenue and Expenditure Budget. Not only that for investors, the issuance of regional bonds also became the instrument of the new investment portfolio. (Kontan, 2019) The issuance of municipal bonds is certainly not an easy matter, because it must require an assessment from the Ministry of Finance and there must be approval from the Regional Representative Council concerned. At present three provinces are said to have the potential to issue these bonds, including West Java, East Java and South Kalimantan. In fact, South Kalimantan said that it needed funds to reach Rp 10 trillion-Rp 20 trillion for infrastructure development, which could be covered by bonds other than the Regional Budget. (Monica Wareza, 2019)

- d Issue Financial Services Authority Regulation

- (a) Regulations concerning issuers' offerings with small and medium scale assets.

Small and Medium Enterprises and Micro Business Units need to be encouraged to be able to enter the capital market in order to obtain funds to develop their businesses. Therefore there is a need to regulate the problem. In the Financial Services Authority Regulation related to the public offering procedure for Small and Medium Enterprises and Micro, Issuers

with Small Scale Assets are companies with a maximum total assets of Rp 50 billion, while Issuers with Middle Scale Assets are companies with total assets of Rp 50 billion to Rp 250 billion. Financial Services Authority needs to develop an information technology system-based infrastructure used in the implementation of the initial public offering of equity securities, as well as debt and or sukuk securities, which include initial bidding activities (book building), securities offering (offering), until the allocation, allotment and distribution of securities. Through the development of these various systems, it is hoped that not only will the accountability and transparency of the public offering process in the capital market increase, but also inclusion in the Indonesian capital market.

- (b) Regulations regarding Downhil Funds services through information technology-based stock offerings or equity crowd funding.

Financial Services Authority Regulation Number 37 / POJK.04 / 2018 dated 31 December 2018 concerning Funding Services. Regulates the equity crowdfunding organizers, parties that make public offerings, and investors who will invest in the company. This share offering with the Funding Service mechanism is organized by the organizer of the equity crowdfunding, in the form of a limited liability company or cooperative with minimum capital and paid-up capital of at least Rp 2.5 billion. These organizers will later be able to act as securities underwriters, securities brokers and investment managers. Companies that will offer shares with this scheme may only have a maximum paid up capital of Rp 30 billion with a minimum amount of assets of Rp 10 billion.

## 4 CONCLUSIONS

Based on the analysis and discussion as outlined above, it can be concluded that the Financial Services Authority's legal policy in increasing investment in the capital market during the disruption era was to maintain investor confidence through legal certainty, legal protection and expediency in investment. Providing diverse instruments, issuing regulations on issuers' offers with small and medium-scale assets and regulations regarding fund services through information technologybased stock offerings or equity crowd funding. As a suggestion to the Financial Services Authority is that the legal policy must be able to be

implemented and implemented and developed more slowly so that investment in the capital market is increasing, by immediately issuing regulations: 1) Regarding the bidding mechanism by the local government; 2) About the issuance of shares by micro, small and medium businesses.

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