



## Legal protection of investors on window dressing practices in the capital market

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### Abstract

The capital market is a means of national economic development and social welfare. The capital market sector in Indonesia is regulated in Law Number 8 of 1995 concerning Capital Markets, in the law describes the capital market regulations that must be obeyed by capital market actors, namely investors and companies. Activities in the capital market certainly have positive and negative impacts. The amount of profit that will be obtained by the issuer can cause the issuer to be prone to committing illegal acts to obtain greater profits. One form of unlawful act in the capital market is the practice of window dressing. The purpose of this paper is to find out the legal consequences, forms of legal protection, and the issuer's responsibility to investors due to window dressing practices. The approach used is a statutory approach with a conceptual approach. The results obtained from this research are the legal consequences of the occurrence of window dressing practices have been regulated in Article 102 of the UUPM. Internal legal protection is obtained from the agreement, but the agreement is not always individualized between investors and emiten. External protection is regulated by OJK and UUPM. And the issuer is responsible for investors for losses arising from the practice of window dressing which is regulated in article 80 of the UUPM.

**Keywords:** Capital market, legal protection, window dressing

### Introduction

The development of a country's economy in its implementation requires a fairly complex and detailed design in order to improve the welfare of the Indonesian people. The implementation of the country's economic development in its own implementation is the responsibility of all parties contained in the country <sup>[22]</sup> The economic development of a country can actually be done by utilizing various sectors, both from tax revenue to the utilization of other sectors such as the banking sector and or other sectors such as the capital market. Among these various sectors, one sector that promises considerable benefits and can be utilized by citizens is the capital market sector. The profits that can arise in trading in the capital market are the result of the existence of securities trading activities that do occur only in the capital market <sup>[10]</sup>. Capital market activities as described above have actually been regulated in Law Number 8 of 1995 concerning Capital Markets (hereinafter referred to as UUPM). The existence of these regulations is intended to protect the interests of investors because it is investors who invest funds by purchasing instruments available in the capital market.

Capital investment activities carried out by investors are carried out in order to obtain profits. Profits that may be obtained by investors themselves can be generated by profits generated from dividends and also profits generated from the difference in purchase prices and selling prices (capital gains) <sup>[8]</sup> The existence of capital gains is an attraction possessed by the capital market. In connection with the existence of capital gains, investors can actually analyze market conditions with various techniques to gain profits and minimize losses <sup>[15]</sup>.

Analysis of capital market conditions through prospectuses is something that must be done by investors to maximize profits. The implementation of the analysis itself certainly requires accuracy and also the truth of the data. The need

itself arises because decision making by investors is closely related to the opportunities for profits and losses that can be suffered by investors later. In fact, all the information needed by investors as described above is available and investors only have to utilize this information to get profits <sup>[27]</sup>. Nonetheless, investors still often experience losses when conducting trading activities.

The loss itself can occur either due to the investor's own negligence or it can also occur due to the blurring of information contained in the capital market as a result of the actions of certain parties. One of the actions that can result in blurred information in the capital market itself is the occurrence of window dressing practices. Window dressing itself is an action taken by the company in which the action is carried out by manipulating the company's performance report so that it seems that the company's performance is going well and generally the practice of windows dressing itself is carried out at the end of the year. The practice of windows dressing itself can be detrimental to investors because with the occurrence of windows dressing, the information received by investors is incorrect and does not match the state of the company as it should be <sup>[25]</sup>

The implementation of windows dressing in stock trading in the Indonesian capital market has occurred, with PT Tiga Pilar Sejahtera Tbk (AISA) as one of the perpetrators, where in that case, PT AISA manipulated financial statements. Financial statements were falsified with the aim that investors would likely assume the company had good performance. With the assumptions arising from this practice, investors then carry out their investment activities. The implementation of windows dressing itself is very detrimental, especially for investors, in which in this case the losses experienced by investors occur along with the decline in PT AISA's share price, which should occur considering that the company's performance is not good but is engineered to be good <sup>[9]</sup>

The windows dressing practice can actually cause significant losses to investors who invest funds and also with the occurrence of windows dressing practices can also cause losses in the form of damage to the image of the capital market among investors. In connection with the emergence of losses caused by the occurrence of window dressing, of course, a legal protection is needed for investors so that later investors can avoid losses that can arise due to window dressing.

### Research Method

Research methods are based on the theory or perspective behind a study and indirectly have implications for research methods. In this research, the author uses a normative juridical research type, namely research guided by positive legal regulations in accordance with the laws and regulations that apply in society. The author, in resolving a legal issue, uses two approaches, namely the Statute Approach which is carried out by examining all laws and regulations relating to the legal issues to be studied, and the Conceptual Approach which interprets the principles, laws, and legal concepts according to the legal issues being studied. The legal materials used are primary legal materials and secondary legal materials using the method of collecting legal materials for literature studies (Library Research) with research analysis using the deductive method.

### Result and discussion

#### The Legal Consequences of Window Dressing

The role of the capital market in the Indonesian economy is very significant. Financial markets have two main roles, namely economic role and financial role. The economic role of financial markets is to provide a means to enable a meeting between two groups, namely a group with excess financial resources (investors) and a group in need of funding (EMITEN). In connection with this financial market, investors can allocate their funds through various forms of investment to obtain returns, while EMITEN can utilize these funds for future investment purposes without having to rely on funding from company operations<sup>[20]</sup>. The existence of a capital market in which there are shares with various other investment instruments can certainly provide benefits for investors. The existence of these benefits itself is simply divided into two types, namely capital gains and dividends<sup>[18]</sup>. The capital market provides benefits to investors with the existence of capital gains. The existence of the capital market also provides other benefits, which in this case the benefits are felt by the issuer. The benefits of the capital market for the issuer itself include the issuer getting a large enough amount of funds to raise, the company and with the additional funds can result in the issuer being able to improve both in terms of management and company operations<sup>[2]</sup>.

The benefits that can be received by the issuer itself in addition to having a positive impact as described above in its implementation can also have a negative impact. The negative impact in question is that the benefits received by the issuer with the investment of funds by investors often result in the issuer becoming eager to get the benefits of investing these funds on a larger scale. This desire itself in its implementation in the capital market is often realized by carrying out various actions that can harm investors, namely unlawful acts. Unlawful act itself is an act that violates the rights of others because it does not carry out its obligations

that have been determined by law or does things that are contrary to the norms that apply in society so that it will cause harm to others. As regulated in Article 1365 of the Civil Code where the article explains about unlawful acts which with this rule, every unlawful act can give rise to an obligation for those who commit unlawful acts to make compensation<sup>[23]</sup>

An example of unlawful acts that can occur in the capital market is the practice of window dressing. Window dressing practice itself is a practice of falsifying financial statements carried out by EMITEN in capital market activities to trick investors into investing their shares in the company. Financial statements are polished and given to investors to look better than the reality. The purpose of the window dressing practice is to create a positive impression to investors by covering up the company's weakness<sup>[3]</sup>. Regulations regarding window dressing in Indonesia are not explicitly regulated, but in fact the regulation of window dressing when viewed from the definition and elements can also include regulations regarding information disclosure in the Financial Services Authority Regulation (hereinafter referred to as POJK). The principle of transparency or openness itself has been regulated in Article 1 number 25 of the Capital Market Law, which is a general provision that requires EMITEN, public companies, and other parties bound by the Capital Market Law to immediately disclose to the public all information related to securities that may affect investors' decisions on the price of these securities. Investors require this information disclosure as it will form the basis of consideration in their decision to buy, sell or retain their shares. This will allow investors to make decisions in line with the potential gains or losses they may experience.

Substantial information can be accessed by investors through the IDX website as well as securities trading software owned by securities companies. Financial reports are one of the results of public financial disclosure. This means that the financial statements prepared must also comply with disclosure criteria<sup>[4]</sup>. Information disclosure has three important dimensions, namely that it must be complete, correct, clear, and timely. Therefore, the information submitted in the information disclosure document must be information that is complete, correct, clear and timely, in a form that can be accessed by capital market participants<sup>[11]</sup>. The purpose of information disclosure is to facilitate the formation of fair prices and provide information to market participants and relevant authorities. Providing the latest data on market conditions for market participants, disclosure will help market participants know the value of securities so that investors can make investment decisions based on available information. There are several relevant regulations to regulate the practices and obligations of capital market participants, which have implications for efforts to prevent window dressing, these regulations are POJK Number 8/POJK.04/2015 concerning the website of EMITEN or public companies: This regulation regulates the responsibilities of EMITEN or public companies in providing actual and up-to-date information to investors and the public.

This includes the obligation to submit financial reports in a timely manner and contain information that is not misleading as well as POJK Number 31/POJK.04/2015 regarding disclosure of information or material facts by

EMITEN or Public Companies. This regulation explains that public companies must send reports of information or important facts to the Financial Services Authority (hereinafter referred to as OJK) and announce the information to the public. This aims to prevent window dressing practices that can mislead stakeholders.

An example of window dressing practice itself can be seen from the legal case of PT Tiga Pilar Sejahtera Tbk (AISA) where the company beautified its financial statements to attract investors to invest their capital in the company. The end result of window dressing as happened in the company itself is the decline in the share price of PT Tiga Pilar Sejahtera Tbk because the actual performance of the company is not good but engineered as if it were good. The result of the price decline as explained is the emergence of losses for investors who invest in PT Tiga Pilar Sejahtera Tbk.

The occurrence of window dressing practices can have a major impact in terms of investor confidence and market integrity. Window dressing can lead to a lack of transparency and accuracy in financial reporting, which can erode investor confidence in the market. In capital markets, civil law applies in several ways, such as in legal protection for investors. Legal protection for investors can work when investors feel legally disadvantaged and want to file a civil lawsuit <sup>[24]</sup>

Investors can file a civil lawsuit to protect and obtain their rights related to ownership, contracts, and responsibilities in capital market transactions. If there is fraud that is a breach of contract, it will fall under civil law, but if the context is deception, it will fall into the realm of criminal law <sup>[7]</sup>. Therefore, to avoid any breach of contract, in capital market activities, it is required that there are contracts, responsibilities, and obligations that must be carried out by each interested party in the capital market <sup>[21]</sup>

Window dressing practices has contradicted the purpose of the capital market itself, which is to provide opportunities for investors to benefit from their investments. Based on the regulations that have been described previously, investors can sue EMITEN who practice window dressing in the capital market. The legal basis of financial statements is regulated in Article 81 paragraph (1) of the Capital Market Law which basically explains that those who sell securities are obliged to inform those who want to invest either through prospectuses or other written means must contain true material facts and if what is conveyed is not true then if it later causes losses then the party must compensate for these losses.

Based on this, any individual referred to not only refers to the investment company, but also includes other individuals who are aware of the inaccuracy of material information in a financial report can be held accountable. Therefore, to enforce the responsibility of individuals who violate the provisions in Article 81 paragraph (1), legal sanctions will be imposed. These legal sanctions are regulated in Article 102 of the UUPM which regulates administrative sanctions. This article regulates various administrative actions that can be applied to individuals who have obtained licenses, approvals, or registrations from Bapepam, such as written warnings, fines, restrictions on business activities, suspension of business activities, revocation of business licenses, cancellation of approvals, and cancellation of registrations. Indemnification in civil law refers to the obligation of the party who commits a violation or

negligence to compensate for the losses that have been suffered by other parties for such actions. Referring to the practice of window dressing, the company has processed the financial statements to make them prettier than before, therefore investors who feel harmed can file a lawsuit for compensation against the company.

The occurrence of window dressing by EMITEN is the responsibility of the parties involved in the window dressing practice. The parties involved in window dressing practices include the Company, Company management, auditors, regulators, and investors <sup>[17]</sup>. In addition to these, investors also have the responsibility to conduct a careful analysis before deciding to invest. Law enforcement is necessary for the sustainability of a healthy capital market in society. Law enforcement that applies to window dressing practices as described above can include compensation sanctions, administrative sanctions, and criminal sanctions. Good law enforcement will ensure legal protection for actors in the capital market. The government must start by tightening regulations related to window dressing. OJK as a regulator needs to ensure that there are rules governing financial reports and company disclosure so that investors can avoid window dressing practices. Adequate legal protection for investors who are victims of window dressing practices is important to maintain the integrity of the capital market and investor confidence. With strong legal protection, investors can feel more secure and protected in carrying out investment activities in the capital market.

### **Forms of Legal Protection for Investors from Window Dressing Practices**

Legal protection is an important aspect in improving law enforcement in a country. The state provides comprehensive legal protection to each of its citizens to realize state stability. In the capital market, the law has two main functions, namely to protect share buyers or investors and develop the capital market by encouraging companies to be able to offer their shares to the general public. Moch. Isnaeni argues that legal protection based on its source is divided into 2, namely external and internal <sup>[12]</sup>. Internal legal protection is generated by the will of the parties which is generally contained in the agreement. While external legal protection itself is legal protection made by the authorities through regulations for the benefit of weak parties, and in accordance with the nature of the law that should not take sides, and provide as balanced protection as possible to other parties. In stock trading in the capital market, EMITEN and investors are bound by agreements, but these agreements are not always individualized between investors and EMITEN. therefore, the relationship between EMITEN and investors is generally regulated in capital market regulations <sup>[26]</sup>. Law enforcement in the form of legal protection that exists in business economic activities, especially in the capital market, is closely related to aspects of corporate law, especially related to corporate legal entities. This is because legal protection in the capital market involves various parties that play a role in the capital market, especially EMITEN, investors, and institutions that support capital market activities, where the majority of them are legal entities in the form of limited liability companies. Therefore, external legal protection for window dressing practices is regulated in the Capital Market Law and OJK. Regulations concerning window dressing in the Capital Market Law are not explicitly regulated. However, the

occurrence of window dressing practices in the capital market, even though it is not explicitly regulated, can still be considered a violation. This is because the implementation of window dressing has conceptually violated the provisions of Article 1 Number 25 of the Capital Market Law, which in this provision explains the principle of openness. The space for investors to claim compensation can be seen in the provisions of Article 111 of the UUPM, which in this article actually explains that actually parties who feel harmed as a result of a violation of the UUPM can request responsibility in the form of compensation to those responsible for causing the loss.

OJK protection is given to all aspects of finance because it refers to Article 28 to Article 30 of the OJK Law <sup>[14]</sup>. Enforcement of legal protection for investors is carried out by OJK by carrying out its regulatory and supervisory functions. OJK has various proactive methods in protecting the rights of investors. One approach that can be taken by OJK is to implement rules that aim to protect investors. OJK is also active in providing information and education regarding the protections that have been regulated in the applicable law. In addition, OJK closely monitors activities that have the potential to harm investors, and is authorized to take the necessary preventive measures. In addition, OJK also provides guidance through services and settlement of complaints from investors, with considerations related to risk management. OJK also tries to improve the economic knowledge of the public through socialization campaigns disseminated through circulars. Finally, OJK issues warnings to companies deemed to have violated ethics in financial services, in the hope of reducing losses that may arise from such unethical actions. With this legal protection, the government will take careful actions in making decisions regarding registration statements in going public. The registration is carried out by the issuer as a form of implementation of its obligations in accordance with the regulations in UUPM <sup>[1]</sup>

OJK also has related regulations to protect investors. The regulation is POJK Number 31/POJK.04/2015 concerning Disclosure of Material Information or Facts by EMITEN or Public Companies. Material information is important information or facts regarding events, occurrences, or facts that may affect the price of securities on the stock exchange or the decisions of investors or other parties with an interest in such information. EMITEN or public companies are required to submit reports on material information or facts to OJK and notify the public of the material information or facts. and Article 10 of PJOK Number 65 / POJK.04 / 2020 concerning Return of Unauthorized Profits and Compensation Funds in the Capital Market Sector explained about investor loss compensation funds. The investor loss compensation fund is established for each case of violation of laws and regulations in the field of capital markets subject to the return of unauthorized profits.

Instruments that have been available in order to provide legal protection for investors are actually quite adequate, but even so, in the author's opinion, the legal protection provided is too general and not in accordance with stock trading which has been very rapidly developing at this time. The inadequacy of the legal protection that has been provided to investors can be proven by the fact that various actions against actions that violate laws and regulations in the capital market are rarely found. In addition, the lack of protection given to investors is characterized by the

difficulty of prosecuting parties who commit violations in the capital market, in this case, parties who carry out window dressing practices so that window dressing practices are still often found in the capital market. Based on this, according to the author, an update of laws and regulations is needed, especially regulations that discuss activities contained in the capital market so that later trading activities that occur in the capital market are more effective and efficient and full of honesty.

### **Emiten Responsibility to Investors Due to Window Dressing**

Responsibility is an obligation for a person to do what has become his responsibility. Liability in civil law refers to a person's obligation to unlawful acts <sup>[13]</sup>. The statutory provisions of the unlawful act itself have the aim of protecting and providing compensation to the party who feels harmed. Emiten responsibility to investors is to be able to submit a Registration Statement in order to conduct a Public Offering and Public Companies are required to submit a Registration Statement as a Public Company <sup>[6]</sup>

Based on this statement, OJK also conveyed an accurate effective statement by showing the completeness or fulfillment of all procedures and requirements for the Registration Statement required in the applicable laws and regulations. EMITEN aim to open opportunities for companies or investors to increase the amount of capital, so as to improve their financial aspects in making investments. The capital received by the issuer from investors can be used for business expansion and market expansion. This is a form of the issuer's responsibility to investors which aims to expand the business field, so that production capacity can increase and be fulfilled. In addition, some of the responsibilities given by EMITEN to investors can be in the form of improving the capital structure of investors, namely by developing and balancing their own capital with foreign capital or from outside as well as transferring shareholders from old to new shareholders. The transfer is of course in accordance with the approval of both parties to the company and from the authorized agency in accordance with applicable law.

The window dressing phenomenon is characterized by an increase in stock prices at the end of the year, which is usually the period awaited by investors to invest in their shares. The set stock price will move according to the law of supply and demand <sup>[19]</sup>. Window dressing is one of the strategies carried out by the issuer's management in manipulating financial statements to attract the attention of investors. By law, there is a situation that the issuer is responsible for implementing the disclosure of information submitted relating to the company. The information submitted is of course related to the company. The issuer's obligation in carrying out the principle of information disclosure is to minimize the behavior of public companies originating from family companies that tend to be defensive in terms of maintaining information and not being informative about existing material facts <sup>[10]</sup>.

Emiten need to re-coordinate and carefully consider the company regarding what matters can be published in the delivery of this information. Because with this information disclosure can create a phenomenon of competition between companies. Therefore, the issuer is expected to always maintain the disclosure of information by not forgetting to

pay attention to company secrets that naturally need to be maintained.

The issuer's responsibility has been regulated in the UUPM, the regulation is contained in article 80 of the UUPM which states that every party that provides untrue information regarding material facts in accordance with the provisions of this law shall be liable in accordance with the provisions of the applicable laws and regulations. In this window dressing practice, the issuer has provided misleading information by providing a financial report that has been beautified. Article 91 of UUPM also states that every party is prohibited from taking action, either directly or indirectly, with the aim of creating a false or misleading picture of trading activities, market conditions, or securities prices on the stock exchange. If it is related to the practice of window dressing, the issuer is prohibited from creating misleading information because it will cause losses to investors.

The form of responsibility given by the issuer to investors related to the occurrence of window dressing is to provide compensation to investors as a responsibility related to the losses that have been incurred. Claims for compensation can also be made to the issuer to be resolved using the litigation system, namely by filing a civil lawsuit to the District Court with the filing of Unlawful Acts related to violations of provisions in the Capital Market sector. Liability carried out by the issuer against investors certainly requires an examination before sanctions are imposed. The examination is carried out to prove if there is a violation of the legislation in the field of capital markets. In accordance with Article 2 POJK Number 36/POJK.04/2018 concerning Procedures for Examination in the Capital Market Sector <sup>[28]</sup>. The examination can be carried out if there is a report, notification, or complaint from a party regarding a violation of the laws and regulations in the capital market sector as well as the fulfillment of obligations that must be carried out by the party obtaining licensing, approval, or registration from OJK or other parties required to submit reports to OJK. To protect investors' rights, the government and regulators need to ensure strict regulation and effective law enforcement against fraudulent practices and market capital management. This will help maintain the integrity of the capital market and increase investor confidence in Indonesia's capital market.

### Conclusion

1. The legal consequences of the occurrence of window dressing practices carried out by EMITEN are administrative sanctions given by OJK to companies or parties involved in violating capital market regulations in accordance with Article 102 of the Capital Market Law (UUPM). This is because the issuer does not carry out its obligation to provide facts regarding material information in its company as stipulated in Article 81 paragraph (1) of the UUPM so as to cause losses to investors.
2. The form of legal protection for investors on the incidence of losses due to window dressing practices carried out by emiten is divided into two, namely internal legal protection and external legal protection. In stock trading in the capital market, EMITEN and investors are bound by an agreement, but the agreement is not always individualized between investors and EMITEN. therefore, the relationship between emiten and investors is generally regulated in the UUPM and

OJK. However, the legal protection provided is still not optimal so that a legal reform is needed that regulates violations that occur in the capital market, and reaffirms the principle of transparency that must be carried out by EMITEN in order to realize legal protection for investors.

3. Emiten are responsible to investors for losses arising from window dressing practices, which is regulated in Article 80 of the UUPM. Emiten have the responsibility to provide legal protection, provide information that is not misleading to investors and are responsible for violations of the principle of information disclosure.

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