

## LEGAL CERTAINTY AND INVESTOR CONFIDENCE: AN ANALYSIS OF INDONESIA'S CAPITAL MARKET REGULATIONS

**Dian Eka Tiwana Nur Azizah\***

UIN Sunan Ampel, Surabaya, East Java, Indonesia

Email: dianekatiwana@gmail.com

**Ainna Amalia**

STAI Miftahul Ula, Nganjuk, East Java, Indonesia

Email: ainnamalia78@gmail.com

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### Abstract

This study aims to assess the effectiveness of Indonesian legal tools in protecting investors within the capital market context and to examine the legal implications of issuer bankruptcy on investor rights. Legal issues have arisen as a result of the recent growth in alternative capital market funding methods, such as safeguarding investors in the event of issuer firm bankruptcy. The degree of investor and systemic risk is increased by legal flaws or gaps and improperly aligned regulatory system flaws. This study employs literature-based analysis and normative legal research approaches. It examines relevant legislation, legal doctrines, and regulatory procedures in place in Indonesia, particularly in relation to investor protection and capital market governance, including the bankruptcy of public companies. The analysis reveals that, although the Indonesian capital market regulation, specifically Chapter II, Article I of Regulation No. 8 of 1995, provides investors with some protection, there is a glaring lack of enforcement of this legislation. Delisting, asset bankruptcy, and asset lockup following the issuer company's bankruptcy declaration cause investors to suffer significant losses. The litigation-based legal supervision offered by the Otoritas Jasa Keuangan (OJK) and Badan Pengawas Pasar Modal dan Lembaga Keuangan (Bapepam-LK) is insufficient to ensure long-term and efficient compensation for impacted shareholders. According to the research, investors can take steps to efficiently resolve investor claims, such as requiring faster legal case hearings, expanded legal disclosure timelines, and preventative actions.

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\* Corresponding Author.

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## Introduction

The capital market has grown rapidly as one of the sources of contemporary national development, it is an alternative financing method for national development. Capital market estimates collect funds from the Indonesian people to fulfill the domestic funding process is necessary to maintain economic growth obtained from domestic and foreign communities (N. Saputra et al., 2023). Indonesia's economy was destroyed by the 1997 economic disaster (McCawley, 2013). Increasing the amount of investment in Indonesia is one of the steps taken by the government to overcome the crisis. Investments based on equity, such as capital investment, are the most preferred. Foreign investment is in the form of direct investment from other countries and investing in the form of securities investment through the capital market (Lastuti, 2009).

The development of capital markets in growing economies has situated them as essential elements in the country's economic growth. These markets not only act as supplementary channels for company financing, but they also provide opportunities for investment by local and international players (Fernandez et al., 2020). In Indonesia, the capital market underwent substantial progress after the country's economic liberalization and regulatory reforms in 1998. Institutions such as the Bursa Efek Indonesia and the Financial Services Authority Otoritas Jasa Keuangan (OJK) have been extremely useful in enhancing investor confidence and stabilizing the market (Sumaryana et al., 2024).

Despite these developments, there are still significant institutional governance and legislative deficiencies in Indonesia's capital market that affect investor protection, particularly when the issuer files for bankruptcy. In addition to endangering an investor's securities holdings, bankruptcy raises serious concerns about the enforceability of rights, the available legal remedies, and the protections that are meant to go along with them. Although Law No. 8 of 1995 on Capital Markets and Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations both contain provisions addressing these issues, their lack of coordination tends to produce unpredictable procedural bottlenecks in the recovery process for individual investors.

In addition to protecting investors' rights so they can make safe investments and obtain accurate information about publicly traded companies, this law aims to preserve a healthy, fair, and orderly capital market. Law Number 24 of 2014's change about, the OJK has transferred the oversight and supervision responsibilities that were formerly carried out by the Capital Market and Financial Institutions Supervisory Board (Bapepam-LK) to the OJK. The OJK has been given the responsibility of overseeing and regulating the capital market, as well as market support organizations, publicly traded corporations, and other associated sectors of the capital market. One financing tool that connects investors with funds and those who send out invitations to tender is the capital market. Securities are financial instruments that are exchanged on the capital market. According to the broad definitions provided by Article 1, Number 5 of Indonesia's Law Number 8 Year 1996 Concerning the Capital Market, securities include all derivatives of securities, collective investment contracts, stocks, bonds, debt securities, commercial securities, and futures contracts of securities.

The basic regulatory framework for investor protection in Indonesia has been the subject of several earlier studies. When implementing foreign investment, Januari Nasya Ayu Taduri looks at the legal clarity and protection for international investors. Regarding foreign investment, the Indonesian government is still implementing legal reforms. It is impossible to divorce the reform from the goal of giving foreign investors legal protection and assurance so they can keep making investments in the territory of the Unitary State of the Republic of

Indonesia (Ayu Taduri, 2021). Emir Adzan Syazali et al. criticised the Indonesian capital market's legal safeguards against insider trading, emphasizing the need to fortify the Financial Services Authority (OJK) to guarantee investors' legal rights. Due to legislative gaps in the Capital Market Law that have not fully addressed several issues, particularly those of the second tippee, insider trading protection in the Indonesian capital market is still insufficient. Thus, it is essential to update the Capital Market Law, implement the law consistently and firmly, bolster the OJK's capabilities, and collaborate with other stakeholders, including international organizations and law enforcement authorities (Syazali et al., 2024). According to Eni Dasuki Suhardini's analysis, the COVID-19 epidemic has had a downturn in the Indonesian capital market, but it has also had a beneficial effect, such as the community's digital transformation. Three OJK Regulations have been released by the government to ease the stimulus for industry participants. These regulations forbid short sales and permit buybacks without GMS, while also making it easier to obtain a license and submit reporting documents using SPRINT (Suhardini, 2021). Hernawati RAS and Joko Trio Suroso investigated and evaluated Indonesia's legal certainty of foreign investment. Promoting investment, particularly foreign investment, is a strategic duty of the government. Issues that frequently arise in Indonesian investment activities include unclear laws regarding foreign investment, regulations that overlap between the national and local governments, and challenges with licensing bureaucracy (Ras & Suroso, 2020).

## Research Method

By methodically analyzing the legal protections provided to investors in the Indonesian capital market if issuers are declared bankrupt, this study aims to close the aforementioned gap. The study's specific objectives are to: (1) examine investors' legal positions in insolvency proceedings involving issuers; (2) evaluate how well the current bankruptcy and capital market laws protect investor rights; and (3) suggest regulatory changes to enhance investor protection and legal certain in global best practices. This study uses a normative juridical approach in the formulation of this law (Amiruddin & Asikin, 2004), which involves reviewing legal provisions, court rulings, and other legal materials in addition to consulting literature or secondary materials, such as books and legal norms found in laws, regulations, legal principles, and legal systems. To put it another way, this study will make use of what is known as literature research. By elucidating relevant legal theories and laws and regulations of the implementation of positive legal practice, this study offers a thorough, methodical, and comprehensive examination of everything associated with this issue. Thus, this study can describe, explain, and explain matters related to these problems, to provide a detailed, thorough, and systematic explanation of legal protection for investors in capital market securities buying and selling transactions.

## Results and Discussions

### Capital Market Regulations Related to Legal Protection to Investors

As a national plant to get funds for further financing of national development. Considering that maintaining the rate of economic growth requires large domestic funds, the existence of the capital market is expected to help the Indonesian people in raising funds from within and outside the country. The capital market industry is growing rapidly and has succeeded in occupying an important role in the growth of the business world and the country's economy. The capital market is now considered a profitable place for short-term as well as long-term investments. Investors are a group of people who act on trading in the capital markets. Investment requires the best legal protection and security. Law Number 18 of 1995 concerning

the Capital Market now regulates investors. The law protects investors from various violations such as false information under Article 93 (Arifardhani, 2020).

Investors who buy shares have many rights related to their ownership. Contrary to partnership law, where the business owner is also the main director of the business, the business owner generally does not control the business. Corporate shareholders are protected from personal liability for the company's debts and liabilities. However, shareholders can lose their investment if the company goes bankrupt. The rights of shareholders mainly depend on the provisions of the company's articles of association and laws and regulations. This is the first document that shareholders must refer to when determining their rights in the company. (Hidayat, 2019)

Shareholders have several rights related to their shares, including: Right to voluntary (dividend) - If the company has a profit, shareholders can get a share of the profits in the form of a voluntary one; The right to elect commissioners (directors) and shareholders can answer questions and vote at public meetings and general meetings: Right to keep shares – Shareholders have the right to keep their shares for the time specified in the company's documents; Right to sell shares - Shareholders have the right to sell their shares freely on the stock market; Right to information - Shareholders have the right to receive information about the company, such as financial statements, agendas and minutes of company meetings, and other information necessary to determine what will happen within the company; and Right to fight the company – Shareholders have the right to fight the company if they see that there has been any misconduct or wrongdoing committed by the company or its directors (Hogan, 2017).

There are two main financing methods that companies can use, namely: Debt Financing and Equity Financing (Fianto et al., 2018). Owning shares in a successful company has the potential to make a profit. But if a company fails to succeed, ordinary shareholders are sometimes the last party to receive the distribution of the company's assets when the company's assets are liquidated. State laws often differ regarding the standard rights of common stockholders. Companies may also issue several classes of common stock, such as common stock without voting rights and special dividend common stock.

The Company holds a general meeting of shareholders every year or periodically following the provisions of laws and regulations. Although the main purpose of a shareholder meeting is for shareholders to elect the company's directors, shareholders can also be involved in many other things. Authorized persons may also speak at special meetings on matters requiring immediate attention, but only matters listed in the notice of the special meeting will be put to a vote. Shareholders have the right to view the voting list at any time. If the shareholders agree unanimously, the transaction can be carried out without holding a shareholder meeting. This kind of behavior is more common in private companies, where shareholder actions are often carried out in unison. This kind of step is more practical to do in large public companies, especially since the shareholders' decisions affect many people (Bach et al., 2019).

The owner of one class of shares may eventually want to convert those shares to another class of shares in the same company rather than selling all of his shares at once. For example, a preferred shareholder without voting rights is likely to want to own common stock with his or her voting rights. Preferred shares can be converted into ordinary shares if the shareholders have conversion rights. These rights can, and often do, are restricted by the Company. A shareholder is an individual or a legal entity that owns one or more shares of a company. Shareholders are the owners of the company. Public companies are trying to raise their share prices. The philosophy that shareholders are only responsible for the ownership of the company and are obliged to serve the needs of shareholders is involved (Arifardhani, 2020). Based on the

method of transfer, the shares can be divided into two parts: Stocks on Show and Registered stock (Irsan Nasarudin, 2014). Article 52 paragraph (1) of Law No. 40 of 2007 concerning Limited Liability Companies gives shareholders the right.

Standards and Codes also help companies ensure customer satisfaction, obtain efficient operational controls, improve performance, and improve the quality of products and services. They also ensure that the company implements ethical and moral principles that are in line with laws and social norms. In Indonesia, Standards and Codes are usually used in the Indonesian National Standard (SNI) and the Indonesian Accountability Code (KAI). SNI is a technical standard that has been set by the National Standardization Agency (BSN) for various aspects of daily life, including company management. KAI is an accountability standard that has been set by the Financial Services Authority (OJK) to carry out financial statements with transparency and accountability. The Corporate Governance Report on Standards and Codes aims to ensure that the company implements sustainable management principles following the laws and social norms in Indonesia (S. T. Saputra, 2020).

Legal proceedings still take a long time and often do not give shareholders the option to protect their needs or seek compensation, hold on to Article 80 of Law Number 8 of 1995. This is a problem because the legal process in this case still looks traditional and visible or long, which can incur very high costs for shareholders. Shareholders often have no choice but to wait for legal proceedings through complaints or conversations with the company, which can pose risks and concerns. To fix this situation, several solutions can be taken: Legal system reform; Mediation development; Increased transparency; Increased skills; and Increased implementation (Hidayat, 2019)

Information disclosure also ensures that companies implement ethical and moral principles in handling sensitive or commercial information. The Company shall guarantee that the sensitive or commercial information will not be used to defraud or gain benefits for itself or others. Information disclosure in the capital market is very important because investors need it to make high-risk investment decisions. Companies that implement information disclosure can attract more investors and ensure that they implement sustainable management principles following laws and social norms in Indonesia (Lastuti, 2009). Then, various types of information disclosure in the field of capital market, namely: Full Disclosure; Limited Disclosure; Selective Disclosure; and Disclosure.

These provisions must be available in the company and visible to the public and may be reproduced in Bapepam (Sri Handini & Erwin Dyah Astawinetu, 2020). Bapepam LK Number 1 regulates information disclosure when lawyers or issuers request business disclosure. At the end of the second working day, the issuer or public company experiences failure or knows that it cannot avoid failure. The report contains detailed information about the loan, including the amount and interest rate, loan term, borrower's name, loan purpose, the reason for whether or not the loan is made, and other obligations. The allocation of revenue obtained from public announcements is presented in the report and the income statement obtained from the public announcement details of various expenses incurred at the time of the announcement are expressed in percentage (%) and/or credit services. Management services, sales services, capital market support services, numerical value (meaning profit), which includes the costs of various services, such as capital market support institutions and financial services. If the report or its contents are not to the information disclosed in the investment report regarding this report, a separate explanation must be given as to the reason for the discrepancy in the information. To maintain the security of the company's assets and provide legal protection for shareholders, the deed of incorporation regulates: Don't invest too much money in a product because if the price of the product is exaggerated, the company will be at a disadvantage; and Ensure that the

transfer of shares, including outstanding shares, is not sent to shareholders who are unable to pay their shares in full.

To provide legal protection to business owners while avoiding losses, the parties involved need to really understand the ins and outs of the capital market, especially the products that are replaced by the business (Ramadhan et al., 2021). Stock Price Trading in the stock market always has its ups and downs. As with commodities in general, price changes depend on the strength of supply and demand. If the demand for a product is high, then the price will increase. On the other hand, if the supply is too high, the stock will decrease. Therefore, the rules of supply and demand apply to products on the stock market. However, the product is different from other products. Stock prices can be so stressful that even the most experienced investors can do this. A stock can go up 30% in one minute or down 70% in a few hours. Sharp price increases or decreases are caused by researchers looking for short-term profits (Pakpahan et al., 2019).

If we talk about the law in the labor market, then the concept of law enforcement referred to in this article is the law in the Police Department. Joseph Goldstein divided the office into three types: The first is the state of law, which is the principle of the state of law contained in the main law. The first is impossible because the authorities are prohibited by the Criminal Code. In addition, he can make important laws. This limit is called the failure zone. The second is Full Law, which becomes Full Law after cutting off non-police areas in the hope that the police can enforce the law as much as possible, but it is difficult to achieve due to limitations (actually not expected). Law, humans, and financial instruments can lead to intelligence. Third, only if there is enough evidence that it can be used. This means that there must be an act, perpetrator, witness, or other evidence, and something is done (Atmasasmita, 2016).

### **Legal Protection for Investors in the Capital Market in the Event of an Issuer Declared Bankrupt**

If the issuer or listed company fails or cannot avoid failure in fulfilling its obligations to creditors who do not have a special relationship, then the issuer or listed company is obliged to report the problem to Bapepam and the products used as collateral by the supplier or company. When a supplier or company of record experiences an error or realizes that a mistake is unavoidable, the supplier or company of record must order a second job as soon as possible and at the latest by the end of the day. The report should contain detailed information about the loan, such as the principal amount and interest rate of the loan, the maturity of the loan, the name of the borrower, the purpose of the loan, and whether it can fail (Ramadhanti, 2022).

If the issuing company or listed company submits a complaint to the court, the issuing company or listed company is obliged to submit a report on the matter to Bapepam, and is addressed to the company that receives a guarantee from the supplier or listed company. Registration must be completed as soon as possible and no later than the second business day after the issuer or listed company receives the notice of filing for bankruptcy). The name of the creditor requesting bankruptcy, information about the bankruptcy application, and other debt amounts must also be included in the report (Sujatmiko & Suryanti, 2017).

According to article 85 of the law, by the decision of the Capital Market Law Number 8 of 1995, the party who submits a complaint to the court against the issuer or listed company is obliged to notify Bapepam and the securities of the supplier or listed company. The company's direct location is recorded. The company must be registered as soon as possible and no later than the end of the second business day after filing for bankruptcy (Sari & Sudiyana, 2022).

Mutual fund issuers, in particular, experienced a decline in liabilities (asset value) below 50% of their initial value due to a decline in performance. Developers or registered companies

submit the documents required for commercial posting to the Chairman of Bapepam and LK through the secretariat of Bapepam and LK. The Chairman of Bapepam and LK received the information and sent it to the Director of the PKP Bureau of the Ministry of Real Estate. The Director of the PKP Office of the Real Estate Department and the department manager are responsible for receiving and processing documents. The manager of the administrative department is responsible for receiving and processing this information from the manager of the relevant department. The department manager receives the information and sends it to the manager to be checked for completeness, content, and especially materials related to advertising.

The executor reviews the completeness, substance, and context as well as the transparency of the document and prepares the Director's Instruction to be submitted to the President and the President's Letter of Permit/Company Registration or the Letter of the Director of Bapepam and LK on behalf of the President. Then it is submitted to the Chairman of the Inspection and Inspection Agency, and the minutes of the inspection are reported to the Head of the PKPSR Bureau. After receiving the draft service description and letter from the Chairman of Bapepam and the LK of the Issuer/Public Company (Chandra, 2015).

The Chairman of the Bureau will take the following actions: Conduct a critical examination and review of the draft service description and letters received; Assess whether the draft service description and letter meet the requirements set by Bapepam and LK Issuer/Public Company; Decide whether the draft service description and letter will be approved or not. If approved, the Chairman of the Bureau will sign it with his signature and contact the Chairman of Bapepam and the LK of the Issuer/Public Company to inform him. If it is not approved, then the Chairman of the Bureau will contact the Chairman of Bapepam and the LK of the Issuer/Public Company to inform the reason and provide suggestions for improvement; and Keep the draft service description and letter in the file determined by Bapepam and the LK of the Issuer/Public Company to be studied, reviewed, and decided further if necessary (Sari & Sudiyana, 2022).

Bapepam Regulation on the responsibility of non-debt investors is regulated through the Decree of the Governor of Commercial Banks (No. Kep-46/PM/1998) concerning the disclosure of information regarding Trade Disclosure requests by Business Actors or Registered Companies. The provisions regarding whether or not the supplier or issuer is fulfilling its obligations to creditors are not affected by this situation, and therefore the issuer or issuer is obliged to submit a report on the matter to Bapepam and related products. This security feature is available. Developers or issuers are required to register their investments as soon as possible and no later than the end of the second working day after the incident (Sujatmiko & Suryanti, 2017).

At least Bapepam regulations provide flexible security for investors. But more importantly, this should be incorporated into rules or regulations, such as government laws or regulations to provide more legal protection and protection to investors. Therefore, it can be said that the Prime Minister's Business Administration Decree No. Kep-46/PM/1998 "Disclosure of Information Regarding Consultants or Inactive Companies" does not provide legal and legal protection to investors if the business owner advertises a product (Yitawati & Sumanto, 2020).

If a company goes bankrupt, one of the things that must be done is to liquidate the company's assets. The company's creditors must first be repaid from their income. Shareholders are also paid before members. After the debt is paid off, the rest of the money is paid to the member. Goods must be paid for before delivery. Some preferred stocks include preferred shares, which can increase the price per share of those preferred shares. If the preferred stock falls among these options, the preferred stock must be paid for the company to be able to pay

for the stock. Ordinary shareholders do not have special liquidation rights and can only receive assets after paying the most significant compensation in liquidation (Yuliyanto Waisapi, 2023).

With the increasing number of organizational development activities carried out in the world that require very large capital, companies are increasingly looking for places that can provide greater capital, so that the perspective of company owners becomes inward-looking. Investment in the workplace states and other countries. This has led to an increase in business activities in almost all developed or developing countries and facilitated the flow of business from one country to another. Companies in one country sell their capital in the capital markets in another country to make more money. This means that investors in one country can invest and own capital in companies established in other countries (Hogan, 2017).

Simply put, the capital market can be said to be the same as other markets, as the name implies, namely the place where buying and selling occur. The difference between the investment business and other businesses lies in the business products. The meaning of this capital market called the Stock Exchange or Stock Market in English, is "the business of the exchange (Exchange) of a business or commodity in question", namely the marketing business of a business.

The first public success must be carefully planned. Ideally, this plan is made two to three years before the company goes public; This means that everything needs to be prepared in advance if the owner and management of the company plan to conduct an IPO by selling some of its shares. Success shows that the planning work that needs to be done in the company is more than expected, this work is time-consuming and is a difficult job that needs to be done at all levels of the company (Yitawati & Sumanto, 2020).

If the preparation time is prolonged, the results obtained will not be satisfactory. Most problems arise during the planning period, which lasts less than six months. A longer planning period will help companies reduce costs and reduce existing problems, but will also shorten the time needed in the IPO process and reduce the impact on the company's business during IPO preparation. Because even if a company wants to go public, its commercial activities will not be affected (Wiguna et al., 2022).

They should also ensure that they fully understand each section of the list and all the assumptions and foundations associated with the section. It is important to remember that the consultants used are business consultants; they will be a group within the company that helps control decisions, they do not do anything for or on behalf of the company. Once a company accepts responsibility for any product defects, regardless of its integrity and due diligence, participating entities (such as insurance companies and accountants) will conduct due diligence to protect themselves from liability in the event of a lawsuit or claim (Davies, 2020).

## Conclusion

Although technically sound, the current legislative framework for investor protection in Indonesia's capital market is insufficient in practice, especially when it comes to issuer insolvency, according to the study's findings. The main problems include inadequate compensation plans, protracted legal proceedings, and a lack of proactive oversight. It is essential to strengthen the legal system by implementing faster dispute resolution procedures, including mediation, strengthening transparency standards, and reforming regulations. Establishing investor-focused safeguards must be a top priority for future changes to boost confidence, lower financial losses, and preserve the integrity and competitiveness of the capital market on a national and worldwide scale.

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