

Premature Lawsuit in Capital Market Dispute against Losses in Shares of The Sejahtera Bersama Savings and Loans Cooperative (Study Decision No. 160/PDT/2021/PT DKI)

Iswi Hariyani¹, Edi Wahjuni², Rhama Wisnu Wardhana³, Soraya Ulfa Latifani⁴

^{1, 2, 3, 4}Faculty of Law, University of Jember, Indonesia

ABSTRACT: The capital market is a gathering place for companies and investors to carry out securities transactions such as shares, bonds and other securities. The capital market sector is very important for a country because it is the driver of a country's economy. Indonesia has a capital market sector which is regulated in Law Number 8 of 1995 concerning Capital Markets, this law explains the capital market regulations that must be obeyed by capital market players, namely investors and companies. The Indonesian government is aware of the potential for fraud, which is defined as violations or unlawful acts that are detrimental to the state and society. Regulations regarding capital markets seek to provide legal clarity and law enforcement in the capital markets sector, so that they remain important components for the development of the capital markets industry. Violations that occur in the capital market are often caused by an act carried out by an individual, in a group, directly, or by orders or influence from another party which causes losses to certain parties. These losses can be in the form of material losses and immaterial losses. As is the case with the capital market dispute in Decision no. 160/PDT/2021/PT DKI which strengthens Decision no. 745/Pdt.G/2019/PN JKT SEL. In Decision No.745/Pdt.G/2019/PN JKT SEL, the Panel of Judges stated that the lawsuit submitted by the Plaintiff could not be accepted based on several Judges' considerations, including because there was a premature lawsuit, namely a capital market dispute without first going through an examination by the Financial Services Authority. The plaintiff resubmitted the capital market dispute lawsuit by filing an appeal against Decision No. 160/PDT/2021/PT DKI and the Panel of Judges stated that they accepted the appeal by affirming the previous decision.

KEYWORDS: capital markets, premature lawsuits, disputes.

I. INTRODUCTION

The capital market allows companies and investors to raise funds through trading securities from issuers to investors. In accordance with the conventional definition, the capital market is part of the securities trading industry, including shares, bonds and securities in general. According to the economic law dictionary, the capital market is a place for the exchange of long-term assets such as shares and bonds by consumers and traders.¹ Capital market instruments consist of all securities or securities exchanged on the stock exchange.² Various types of financial instruments traded in the capital market include long-term instruments such as shares, bonds, mutual funds and various other instruments.³ The existence of a country's capital market is fundamental for economic development. Not only does it function as a means of collecting funds and allocating public funds, the capital market as an economic institution plays an important role in the development of the country's economy.⁴

The capital market as a means of bringing together sellers and buyers of securities and in transactions does not rule out the possibility that fraud will occur. The Indonesian government is aware of the potential for fraud, which is defined as violations or unlawful acts that are detrimental to the state and society.⁵ Regulations regarding capital markets seek to provide legal clarity and law enforcement in the capital markets sector, so that they remain important components for the development of the capital markets industry.

¹Tavinayati, dan Yulia Qamariyanti, *Hukum Pasar Modal Di Indonesia* (Jakarta: Sinar Grafika, 2009), h. 2.

²Eduardus Tandelin, *Analisis Investasi dan Manajemen Portofolio* (Yogyakarta: BPFE Yogyakarta, 2007), h. 13.

³Sherly Ayuna Putri, Ema Rahmawati, dan Nun Harrieti, *Penyelesaian Sengketa Hukum Pasar Modal Pada Pengadilan Negeri*, Paper Ilmiah Hukum, Vol. 4, No. 1, 2019, h. 152.

⁴Asril Sitompul, Zulkarnain Sitompul, dan Bismar Nasution, *Insider Trading, Kejahatan Di PasarModal* (Jakarta: Books Terrace & Library, 2007), h. 1.

⁵Lintang Cahyani Andira & Iswi Hariyani, *Keabsahan Kontrak Elektronik Dalam Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi*, Jurnal Ilmu Kenotariatan, Vol. 1, No. 2, (2020), p. 38.

Premature Lawsuit in Capital Market Dispute against Losses in Shares of The Sejahtera Bersama Savings and Loans Cooperative (Study Decision No. 160/PDT/2021/PT DKI)

Violations that occur in the capital market are often caused by an act carried out by an individual, in a group, directly, or by orders or influence from another party which causes losses for certain parties. These losses can be in the form of material losses and immaterial losses. As is the case with the capital market dispute in Decision no. 160/PDT/2021/PT DKI which strengthens Decision no. 745/Pdt.G/2019/PN JKT SEL.

In Decision No.745/Pdt.G/2019/PN JKT SEL, the Panel of Judges stated that the lawsuit submitted by the Plaintiff could not be accepted based on several of the Judge's legal considerations, including because there was a premature lawsuit, namely a capital market dispute without first going through an examination by the Financial Services Authority. The plaintiff resubmitted the capital market dispute lawsuit by filing an appeal against Decision No. 160/PDT/2021/PT DKI and the Panel of Judges stated that they accepted the appeal by affirming the previous decision. Based on the legal issues and legal facts that have been outlined in the court decision, the author focuses on two problems, namely: 1) Does the District Court have the authority to adjudicate capital market disputes without undergoing examination by the Financial Services Authority? And 2). What are the Judge's legal considerations in Decision no. 160/PDT/2021/PT DKI which strengthens Decision no. 745/Pdt.G/2019/PN JKT SEL?

II. METHODOLOGY

Research methods are based on theories or perspectives that underlie research and indirectly have implications for research methods. The type of research used is a normative juridical method, namely research guided by positive legal regulations in accordance with the laws and regulations that apply in society. In resolving a legal issue, the author uses two approaches, namely the Statutory Approach which is carried out by examining all statutory regulations related to the legal issue to be studied, and the Conceptual Approach which carries out the interpretation. principles, laws and legal concepts according to the legal issue being studied. The legal materials used are primary legal materials and secondary legal materials using the library research method of collecting legal materials with research analysis using deductive methods.

III. DISCUSSION

1. Authority of the District Court to Adjudicate Capital Market Disputes without Going Through Audit from the Financial Services Authority.

Dispute resolution can generally be resolved in two ways, namely through non-litigation or out-of-court dispute resolution agreed to by both parties and through litigation or court. The litigation process in court can carry out justice in the dispute resolution process as contained in Article 1 paragraph (1) of the 1945 Constitution of the Republic of Indonesia confirms that:

“Judicial power is an independent power to administer justice to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the sake of implementing the State of Law of the Republic of Indonesia”.

Justice and law have a close relationship, some people even believe that justice and law must be combined to truly imply law, because the purpose of law is to create a sense of justice in society. Every rule that is enforced demands justice, so that laws without justice will be useless and lose their value in the eyes of society. The law is objective and applies to everyone, but getting justice is not always easy. Although difficult, this must be done for the sake of the authority of the state and the judiciary because fundamental legal rights are recognized by the courts.⁶

Judicial power is one of the elements in running a country's government system. In running a government system, there is a major theory that has been adopted by many countries throughout the world, namely the trias politica theory. The trias politica theory was coined by Montesquieu. This theory assumes the existence of a balanced government system, namely the division of power between the executive, legislative and judicial powers.

Article 24 of the constitution explains that: *Judicial power is independent power to administer justice to uphold law and justice.* Meanwhile, Law Number 48 of 2009 concerning Judicial Power explains that:

“Judicial Power is the power of an independent state to administer justice to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the sake of implementing the State of Law of the Republic of Indonesia.”

Judicial power is exercised by the Supreme Court as the highest state court, overseeing four subordinate courts, namely the General Court covering criminal and civil cases, the Religious Court covering cases between Indonesian citizens who are Muslim, the Military Court covering military criminal cases, and the Administrative Court The state includes state administrative disputes. Article 25 Number 2 Law no. 48 of 2009 concerning Judicial Power states:

“The general court as intended in paragraph (1) has the authority to examine, try and decide criminal and civil cases in accordance with the provisions of statutory regulations”.

Cases that are classified as civil cases are cases that involve the interests of individuals or legal entities without involving the public interest, one of which concerns losses from one of the parties resulting in a dispute.

⁶Firman Floranta Adonara, *Prinsip Kebebasan Hakim dalam Memutus Perkara Sebagai Amanat Konstitusi*, Jurnal Konstitusi, Vol. 12, No. 2, Juni 2015, h. 227.

Premature Lawsuit in Capital Market Dispute against Losses in Shares of The Sejahtera Bersama Savings and Loans Cooperative (Study Decision No. 160/PDT/2021/PT DKI)

Capital is the main issue in PT because the form of this company is essentially a capital partnership as stated in Article 1 point 1 of the Limited Liability Company Law.⁷ The founders of the Company were capital owners who deliberately invested large amounts of money with the aim of making a profit. The Company acts as a "vehicle" to run the business in search of maximum profits. Therefore, every company is always profit oriented.⁸ The capital market is a source of financing that is really needed by business actors who need additional capital, as well as an alternative financing for the investing community.

Andrew M. Chisholm provides that definition "*capital markets are places where those who require additional funds seek out other who who invest their excess*". The same definition was also put forward by Alan N. Rechtschaffen that the capital market is a meeting place for parties who have excess capital capacity (investors) with parties who need additional capital, both short-term and long-term capital. The capital market is a place or system to meet the funding needs for capital that a company needs and is a market where people buy and sell securities. According to the Indonesian Dictionary, the capital market is all activities that bring together the supply and demand for long-term funds.⁹

The meaning of the capital market, like conventional markets in general, is a place where sellers and buyers meet. A market is a means that brings together the activities of buyers and sellers for a commodity or service.¹⁰ The capital market itself is a market for various long-term financial instruments that can be bought and sold, including debt securities (bonds), equities (shares), mutual funds, derivative instruments and other instruments. The capital market is a means of funding for companies and other institutions (for example government, private sector, etc.) as well as a means for investment activities. Thus, the capital market facilitates various facilities and infrastructure for buying and selling activities and other related activities. Financial instruments traded on the capital market are long-term instruments (terms of more than 1 year) such as shares, bonds, warrants, rights, mutual funds, and various derivative instruments such as options, futures, etc.¹¹

One of the policies pursued by the government is to activate and encourage capital market activities in Indonesia so that it continues to develop as a pillar indicator of economic success alongside banking and other direct investment.¹² Meanwhile, the Black Law Dictionary provides a narrower definition for the capital market as "securities market in which stocks and bonds with long-term maturities are traded".¹³ It is said to be narrower because even though the capital market has a broader meaning, the capital market is defined only as a securities market where shares and bonds (with long maturities) are traded.¹⁴

The capital market as a forum for carrying out securities buying and selling transactions does not rule out the possibility of violations in capital market transaction activities that cause losses. Losses in the capital market can be experienced by investors and companies in the form of material or immaterial losses which can affect profits for investors and the performance of a company.¹⁵ This can cause disputes in the capital market. Capital market disputes can be categorized as civil disputes when there are parties who feel they have been disadvantaged or their rights and interests have been legally violated in carrying out capital market activities. Regulations regarding capital markets function to provide legal clarity and law enforcement in the capital markets sector so that they can play a significant role in the growth of the capital markets industry.

The capital market law regulates various types of capital market violations as stated in Article 111 of Law no. 8 of 1995 concerning Capital Markets states "*that parties who experience a loss as a result of a violation of this Law and its implementing regulations can claim compensation from the party who violated it and the party responsible for the loss either individually or jointly with other parties who have claims that are The same*". Article 111 Law no. 8 of 1995 concerning Capital Markets imposes responsibility on parties who violate capital market regulations to compensate the injured party for their actions in violating capital market regulations. There are various criticisms of dispute resolution in the capital market, which are generally based on the argument that no case in the capital market has been resolved until the court process, the resolution of cases is quite long and protracted for reasons including that the Indonesian capital market is still relatively new.¹⁶ In this case, the court plays a role in examining, adjudicating and deciding

⁷ Dhifa Nadhira Syadzwin & Esti Setyowati, *Peran Notaris, Restrukturisasi, Perusahaan Non Badan Hukum*, Jurnal Ilmu Kenotariatan, Vol. 1, No. 2, (2020), h. 8..

⁸ Gatot Supramono, *Transaksi Bisnis Saham Dan Penyelesaian Sengketa Melalui Pengadilan*, (KENCANA, Jakarta.2014, h.1)

⁹ Brian Derlie Viktor Sondakh, Engelen R. Palandeng, Debby Telly Antouw, *Tinjauan Penyelesaian Sengketa Pasar Modal Terkait Transaksi Repo Dalam Memperoleh Kembali Saham Dilihat Dari Perkara Perdata*, Lex Privatum Vol. IX/No. 4/Apr/EK/2021, h. 5-13

¹⁰ Dimas Pasha Hafidz & Mohammad Rafi Al Farizy, *Perlindungan Hukum Pemegang Saham Terhadap Tindakan Penarikan Kembali Saham Ditinjau Dari Undang-Undang Perseroan Terbatas*, Jurnal Ilmu Kenotariatan, Vol. 4, No. 1, (2023), h. 72.

¹¹ Wenge Wang, "*The mechanisms of institutional activism: qualified foreign institutional investors in China*", Volume 14, Nomor 1, Januari 2019, h. 78-81

¹² Nindyo Pramono, *Hukum PT Go Public dan Pasar Modal*, (Yogyakarta: Penerbit Andi, 2013), h. 2.

¹³ Mas Rahmah, *Hukum Pasar Modal*, (Kencana, Jakarta, 2019),h.15

¹⁴ Sentosa Sembiring, *Hukum Pasar Modal*, (Penerbit Nuansa Aulia, Bandung, 2019),h.32

¹⁵ M. Irsan Nasarudin, Indra Surya, Ivan Yustiayandana, Arman Nefi, dan Adiwarmar, *Aspek Hukum Pasar Modal Indonesia*, Kencana. Jakarta 2014.

¹⁶ Jusuf Anwar, *Pasar Modal Sebagai sarana Pembiayaan dan Investasi*, Cetakan Ke-1, (Bandung: Penerbit Alumni, 2005), h. 120

Premature Lawsuit in Capital Market Dispute against Losses in Shares of The Sejahtera Bersama Savings and Loans Cooperative (Study Decision No. 160/PDT/2021/PT DKI)

cases, namely capital market disputes regarding losses suffered by one of the parties to the dispute, in order to provide justice and protect the interests of the injured party.¹⁷

This clearly requires improvement so that the law can be enforced according to its objectives, as well as creating a fair, orderly and efficient capital market. Talking about legal disputes in the capital market, there are several differences between capital market disputes and business disputes in general. Violations in the capital markets sector are somewhat unique. This uniqueness can be seen both from the type of violation, from the perspective of the perpetrator who is very educated and very neat in his way of working, from the pattern of violations, from the consequences that may arise, as well as from the perspective of the imposition of sanctions that are much heavier than ordinary violations of a similar nature. the violation.¹⁸

Settlement of disputes through non-litigation channels in the financial services sector through the Financial Services Authority which has functions and authority in the financial services sector as regulated in Article 1 point 1 of Law no. 21 of 2011 concerning the Financial Services Authority, namely the Financial Services Authority as a supervisory institution and also an institution that monitors the financial services industry has the authority, functions and duties to supervise the running of financial services sector activities including the capital market. If there are violations that occur in the financial services sector, the Financial Services Authority also has the authority to examine these violations and handle dispute resolution in the financial services sector, including the capital market.

The authority of the Financial Services Authority to carry out supervision in examining violations or disputes in the financial services sector as stated in Article 9 point c of Law no. 21 of 2011 concerning the Financial Services Authority, namely that the Financial Services Authority has the authority to carry out supervision, inspection and protection of consumers in Financial Services Institutions and actors and supporters of financial services sector activities. Violations that occur in the financial services sector can be resolved by the Financial Services Authority as the institution authorized to handle dispute resolution in the financial services sector including the capital market through the Alternative Institution for Dispute Resolution in the Financial Services Sector (LAPS SJK) which is an Alternative Dispute Resolution Institution provided by Financial Services Authority and replace BAPMI's role as an Alternative Dispute Resolution Institution in the Capital Markets sector. In its resolution, the Alternative Institution for Financial Services Sector Dispute Resolution (LAPS SJK) has the authority to resolve civil disputes in the financial services sector, including the capital market by providing several dispute resolution services, namely mediation, arbitration and binding opinions.

Disputing parties can resolve disputes through the Alternative Institution for Financial Services Sector Dispute Resolution (LAPS SJK) by having a written agreement and submitting a request for Mediation or Arbitration or Binding Opinion to the Alternative Institution for Financial Services Sector Dispute Resolution (LAPS SJK).¹⁹

Regulations regarding handling and resolving disputes in the financial services sector are regulated in the Republic of Indonesia Financial Services Authority Regulation Number 61/POJK.07/2020 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector. In this regulation, several articles mention the duties and authorities of the Alternative Dispute Resolution Institution (LAPS) in the financial services sector, namely in Article 3 of Financial Services Authority Regulation No. 61/POJK/07/2020 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector which states that LAPS SJK has the function of providing a forum or means for resolving disputes in the financial services sector, as well as Article 4 points a and b of the Republic of Indonesia Financial Services Authority Regulation Number 61/POJK .07/2020 Concerning Alternative Dispute Resolution Institutions in the Financial Services Sector explaining the duties and authority of the Alternative Dispute Resolution Institutions (LAPS) in the Financial Services Sector in carrying out the functions of dispute resolution services in the financial services sector which states that the Financial Services Authority is a sector institution Financial services have the function of organizing and carrying out handling and resolving disputes in the financial services sector through Alternative Dispute Resolution Institutions (LAPS) provided by the Financial Services Authority, one of which is capital market disputes.

This is in line with Article 5 point e of Law no. 8 of 1995 concerning Capital Markets as there are updates which regulate new regulations and adjustments in the financial sector including the capital market as stated in Law no. 4 of 2023 concerning the Development and Strengthening of the Financial Services Sector, namely Article 5 point c number 2 of Law no. 4 of 2023 concerning the Development and Strengthening of the Financial Services Sector which states that the Financial Services Authority has the authority to supervise and conduct inspections and investigations of parties who violate capital market provisions and their implementing regulations.

Based on the description above, it can be said that in non-litigation processes and litigation processes, they have the authority to examine disputes in the financial services sector, but in the process of resolving disputes in the financial services sector, especially

¹⁷ Susanti Adi Nugroho, *Penyelesaian Sengketa Arbitrase Dan Penerapan Hukumnya*, (Prenamedia Group, Jakarta, 2015),h.23

¹⁸ Jusuf Anwar, *Penegakan Hukum dan Pengawasan Pasar Modal Indonesia*, Edisi Pertama, Cetakan Ke1, (Bandung: PT. Alumni, 2008), h. 26

¹⁹LAPS SJK Lembaga Alternatif Penyelesaian Sengketa Sektor Jasa Keuangan, diakses dari <https://lapssjk.id/ruang-lingkup-kompetensi/>, diakses pada tanggal 28 Juli 2023, pukul 00.12 WIB.

Premature Lawsuit in Capital Market Dispute against Losses in Shares of The Sejahtera Bersama Savings and Loans Cooperative (Study Decision No. 160/PDT/2021/PT DKI)

the capital market, there are no regulations that explain the mechanism that occurs if there is a violation in the financial services sector. The capital market must first go through an examination and be resolved by the Financial Services Authority before filing a capital market dispute lawsuit in court or it can be said to be a legal vacuum.

Indonesian positive law recognizes the principle of *Lex Specialis Derogat Legi Generali* which states that special legal regulations override the application of general legal regulations. Specific regulations will actually take precedence over general regulations and it cannot be denied that specific matters are important. Article 9 point c Law No. 21 of 2011 concerning the Financial Services Authority, Article 3 and Article 4 points a and b Financial Services Authority Regulation No. 61/POJK/07/2020 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector and Article 5 point e of Law no. 8 of 1995 concerning Capital Markets as there are updates which regulate new regulations and adjustments in the financial sector including capital markets as stated in Article 5 point c number 2 of Law no. 4 of 2023 concerning the Development and Strengthening of the Financial Services Sector, is a special regulation that regulates the authority of the Financial Services Authority in carrying out examinations and processing disputes in the financial services sector, including the capital market.

If there is a violation or dispute in the financial services sector, the dispute must first be examined and processed by the Financial Services Authority through the Alternative Financial Services Sector Dispute Resolution Institution (LAPS SJK) as there are special regulations which actually take priority and regulate the authority of the Financial Services Authority in processing and examining violations and disputes that occur in the financial services sector before the dispute is finally submitted and processed through the courts.

The capital market is one of the financial services industries under the supervision of the Financial Services Authority and it is appropriate that if a violation or dispute occurs in it, the resolution is required to first go through a dispute resolution process by the Financial Services Authority. Based on this, it can be said that the District Court does not have the authority to adjudicate capital market disputes because capital market disputes must first go through an examination process by the Financial Services Authority before being processed by the court because there are special regulations that take priority and regulate the authority of the Services Authority. Finance in processing and examining violations or disputes in the financial services sector including the capital market, namely Article 9 point c of Law No. 21 of 2011 concerning the Financial Services Authority, Article 3 and Article 4 points a and b of Financial Services Authority Regulation No. 61/POJK/07/2020 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector, and Article 5 point e of Law no. 8 of 1995 concerning Capital Markets as there are updates which regulate new regulations and adjustments in the financial sector including capital markets, namely Article 5 point c number 2 of Law no. 4 of 2023 concerning Development and Strengthening of the Financial Services Sector.

2. Judge's Legal Considerations in Decision No. 160/PDT/2021/PT DKI Which Upholds Decision No. 745/Pdt.G/2019/PN JKT SEL.

The judge's legal considerations are one of the important factors in determining the judge's decision which contains justice and legal certainty. The Panel of Judges at the Appellate Level in examining Decision No. 160/PDT/2021/PT DKI which strengthens Decision no. 745/Pdt.G/2019/PN JKT SEL actively directs the proceedings in accordance with the principle that judges are active. In Decision No. 160/PDT/2021/PT DKI which strengthens Decision no. 745/Pdt.G/2019/PN JKT SEL, provides an opportunity for the Joint Savings and Loans Cooperative as the Plaintiff to explain the capital market dispute lawsuit which caused share losses for the Sejahtera Savings and Loans Cooperative and also provides an opportunity for the Defendants, namely Benny Tjokrosaputra as Defendant I, PT Rimo International Lestari as Defendant II, and PT Nonghyup Korindo Securities Indonesia as Defendant III to explain the exceptions in rejecting the lawsuit filed by the Plaintiff.

The object of the dispute in Decision No. 160/PDT/2021/PT DKI which strengthens Decision no. 745/Pdt.G/2019/PN JKT SEL are securities or shares of PT Rimo International Lestari, TBK as Defendant II, with the essence of the case being that the Plaintiff suffered losses due to the actions of the defendants, namely by allowing, not doing anything, and did not pay attention to the performance of Defendant II, Defendant I even sold Defendant II's shares on a large scale so that ownership of approximately 30% became approximately 5% with the assistance of Defendant III, carrying out acts of selling and purchasing shares in large volumes so that in essence the share price Defendant II decreased from Rp. 600,-/per share to Rp. 130,-/per share. The Panel of Judges at the Appellate Level in Decision No. 160/PDT/2021/PT DKI which strengthens Decision no. 745/Pdt.G/2019/PN JKT SEL stated that it rejected the plaintiff's lawsuit based on several legal considerations, including the existence of a premature lawsuit and proven unlawful acts.

Panel of Judges at Appellate Level in Decision No. 160/PDT/2021/PT DKI which strengthens Decision no. 745/Pdt.G/2019/PN JKT SEL in providing legal considerations, namely that there is a premature lawsuit because the lawsuit was filed by the Plaintiff without first going through an examination by the Financial Services Authority and supervision in the activities of the financial services sector including the capital market is the duty and authority of the Services Authority Finance was previously the responsibility and authority of Bapepam, and the lawsuit does not meet the applicable requirements or regulations. According to M.

Premature Lawsuit in Capital Market Dispute against Losses in Shares of The Sejahtera Bersama Savings and Loans Cooperative (Study Decision No. 160/PDT/2021/PT DKI)

Yahya Harahap, a premature lawsuit is defined as a lawsuit that is filed too early where the lawsuit cannot be filed yet because the provisions of the applicable regulations have not been fulfilled.²⁰

Regulations regarding the authority of the Financial Services Authority in examining and supervising financial services sector activities are contained in Article 9 point c of Law no. 21 of 2011 concerning the Financial Services Authority which states that the Financial Services Authority has the authority to carry out supervision, inspection and protection of consumers in Financial Services Institutions and actors and supporters of financial services sector activities. This is in line with the provisions of the Capital Markets Law, namely Article 5 point e of Law no. 8 of 1995 concerning Capital Markets as there are updates which regulate new regulations and adjustments in the financial sector including capital markets as stated in Article 5 point c number 2 of Law no. 4 of 2023 concerning the Development and Strengthening of the Financial Services Sector which states that the Financial Services Authority has the authority to supervise and conduct inspections and investigations of parties who violate capital market provisions and their implementing regulations.

The District Court and the Financial Services Authority both have the authority to examine and supervise the activities in the financial services sector, including the capital market, but in the process of resolving disputes in the financial services sector²¹, especially the capital market, there are no regulations that explain the mechanism that occurs if there is a violation in the market capital must first go through an examination and be resolved by the Financial Services Authority before filing a capital market dispute lawsuit in court or what can be called a void in norms. The vacuum of norms in Indonesian positive law can be referred to as a condition where there is a vacuum or absence of statutory regulations that regulate a certain order in society.²²

A void in norms can result in legal uncertainty (*rechtsonzekerheid*) or uncertainty about legal regulations in society, which in turn will give rise to legal chaos (*rechtsverwarring*), because certain things or circumstances are not or have not been regulated regarding the use and application of these norms which gives rise to confusion and chaos in society.²³ To overcome this legal vacuum, it is necessary to make legal discovery efforts by Judges to fill the legal vacuum in order to create justice.

The panel of judges in examining and deciding a case is not permitted to reject a case on the grounds that there are no governing legal regulations, the regulations do not regulate clearly or are incomplete and judges in deciding a case also have three elements, namely justice, expediency and legal certainty. that must be considered by the judge when deciding a case. Regarding this matter, judges are not fully able to uphold these three principles, especially when carrying out the legal discovery process because there are no governing legal regulations, the law does not clearly regulate something, or the law is no longer in accordance with society's values. In this case, the judge ignored the principle of legal certainty in order to uphold the principle of justice. The judge's efforts in implementing the legal findings.²⁴

Legal discovery activities by judges must be seen as an effort to create legal certainty regarding an issue. Article 5 Paragraph (1) of Law Number 48 of 2009 concerning Judicial Power states that judges are truly required to explore, obey and understand the legal values and sense of justice that exist in society, therefore the court decision contains a finding. Law must be seen as an effort to realize the ideals of legal certainty, justice²⁵ and benefit as long as it is based on adequate legal considerations and is carried out using acceptable legal discovery techniques or can be called jurisprudence.²⁶

The District Court and the Financial Services Authority have the same authority in examining the activities of the financial services sector including the capital market, therefore there are legal principles that regulate the application of special regulations overriding general regulations or what can be called the *Lex Specialis Derogat Legi Generali* principle. The rationale for giving priority to special regulations is because they are more relevant, compatible, and specifically adapted to meet more specific legal needs and issues that cannot be covered by general regulations.²⁷

The special regulations in question are regulations that stipulate that the Financial Services Authority has the authority to examine and process disputes in the financial services sector, including the capital market, namely in Article 9 point c of Law no. 21 of 2011 concerning the Financial Services Authority, and Article 5 point e of Law no. 8 of 1995 concerning Capital Markets as there are updates which regulate new regulations and adjustments in the financial sector including the capital market as stated in Law no. 4

²⁰M. Yahya Harahap, *Hukum Acara Perdata tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan* (Jakarta: Sinar Grafika, 2016), h. 457.

²¹ Fakriah, Efa Laela. *Mekanisme Penyelesaian Sengketa Bisnis Yang Efektif dan Efisien*. (Bandung: Keni, 2012), h. 10

²²Gamal Abdul Nasir, *Kekosongan Hukum & Percepatan Perkembangan Masyarakat*, Jurnal Hukum Replik, Vol. 5, No. 2, 2017, h. 173.

²³*Ibid.*, h. 175.

²⁴Mohammad Kamil Ardiansyah, *Pembaruan Hukum Oleh Mahkamah Agung Dalam Mengisi Kekosongan Hukum Acara Perdata Di Indonesia (Legal Reform By The Supreme Court Of Indonesia Facing The Legal Vacuum In Civil Procedure Law)*, Jurnal Ilmiah Kebijakan Hukum, Vol. 14, No. 2, 2020, h. 370.

²⁵ Astri Kharina Bangun, "Kasus Pelanggaran Pasar Modal", <http://investasi.kontan.co.id/news/bapepamperiksa-165-kasus-pelanggaran-pasar-modal>

²⁶*Ibid.*

²⁷Nurfaqih Irfani, *op.cit.*, h. 313.

Premature Lawsuit in Capital Market Dispute against Losses in Shares of The Sejahtera Bersama Savings and Loans Cooperative (Study Decision No. 160/PDT/2021/PT DKI)

of 2023 concerning the Development and Strengthening of the Financial Services Sector, namely Article 5 point c number 2 of Law no. 4 of 2023 concerning Development and Strengthening of the Financial Services Sector.

Based on the explanation above, the Panel of Judges at the Appellate Level gave legal considerations to Decision No. 160/PDT/2021/PT DKI which strengthens Decision no. 745/Pdt.G/2019/PN JKT SEL, namely a Premature Lawsuit based on special regulations governing the authority of the Financial Services Authority in processing and examining whether or not there are violations or disputes in the financial services sector including the capital market, namely in Article 9 point c of the Law No. 21 of 2011 concerning the Financial Services Authority, and Article 5 point e of Law no. 8 of 1995 concerning Capital Markets as there are updates which regulate new regulations and adjustments in the financial sector including the capital market as stated in Law no. 4 of 2023 concerning the Development and Strengthening of the Financial Services Sector, namely Article 5 point c number 2 of Law no. 4 of 2023 concerning Development and Strengthening of the Financial Services Sector.

Panel of Judges at Appellate Level in Decision No. 160/PDT/2021/PT DKI which strengthens Decision no. 745/Pdt.G/2019/PN JKT SEL in providing legal considerations was proven to have committed an unlawful act because there was a violation committed by Defendant I which caused a decrease in the value of Defendant II's shares, resulting in losses for the Plaintiff as owner of Defendant II's shares. An unlawful act is an action that harms another person and requires the perpetrator to be responsible for the loss in order to compensate for the loss. Regulations regarding unlawful acts are contained in Article 1365 of the Civil Code (KUHPerdara) regarding losses which states that the party who causes harm is obliged to be responsible for compensating the loss caused by his actions to the injured party.

This is in line with Article 111 of Law no. 8 of 1995 concerning Capital Markets which states that parties who experience a loss as a result of a violation of this Law and its implementing regulations can claim compensation from the party who violated it and the party responsible for the loss either individually or Together with other parties who have the same demands. The capital market dispute raised by the Plaintiff was due to losses experienced by the Plaintiff due to actions taken by Benny Tjokrosaputra as Defendant I, namely offering to purchase shares of Defendant II, namely PT Rimo International Lestari, to the Plaintiff in large amounts using a blocksale mechanism (transactions in large amounts) and these shares were not traded for three months with unlock conditions (can be traded) in a row, so that the Plaintiff bought shares of PT Rimo as Defendant II in large quantities in a row, namely with a total value of Rp. 90,000,000,000.- (ninety billion rupiah) and caused the share price of PT Rimo as Defendant II to rise.

Then when the share price of PT Rimo as Defendant II rose, Benny Tjokrosaputra took advantage by selling his ownership shares in PT Rimo amounting to 25% (twenty five percent) from 30% (thirty percent) to 5% (five percent) thus causing significant reduction in share prices from Rp. 600,-/per share to Rp. 130,-/per share. This significant decline in share prices lasted for two years starting from November 15 2017 to August 2019, this resulted in hidden losses in share funds and the inability to withdraw or sell the share funds. The Plaintiff's loss is calculated based on the Plaintiff's cost of funds as a non-bank financial institution whose members are the general public. The Plaintiff's investment deposit is 20% per year, so that in two years the Plaintiff's total loss is IDR 126,000,000,000 (one hundred and twenty-six billion). rupiah).

Based on this, it can be seen that there was bad faith carried out by Benny Tjokrosaputra as Defendant I because Defendant I wanted to take material advantage of his ownership shares, namely by deliberately offering to purchase shares of PT Rimo as Defendant II in large amounts to the Plaintiff, so that the Plaintiff bought shares in PT Rimo as Defendant II in large quantities in a row which caused the share price to rise. Benny Tjokrosaputra as Defendant I then took advantage when the share price rose by selling his ownership shares in PT Rimo and resulted in losses for the Plaintiff, namely that PT Rimo's share funds as Defendant II were hidden and he could not withdraw or sell the share funds.

The act of bad faith carried out by Benny Tjokrosaputra as Defendant I which caused losses to the Sejahtera Bersama Savings and Loans Cooperative as Plaintiff can be interpreted as an unlawful act because it has fulfilled the elements of an unlawful act. The elements of unlawful acts according to Article 1365 of the Civil Code, namely:²⁸

1. There is an act and the act is against the law.

Benny Tjokrosaputra's actions as Defendant I against the Sejahtera Bersama Savings and Loans Cooperative as Plaintiff have violated the provisions of the Capital Market Law as there are updates which regulate new regulations and adjustments in the financial sector including the capital market as stated in Article 92 of Law no. 8 of 1995 concerning Capital Markets as amended by Article 92 of Law no. 4 of 2023 concerning the Development and Strengthening of the Financial Services Sector which states that each party is prohibited from carrying out two or more securities transactions, whether carried out individually or jointly with other parties, carrying out directly or indirectly which can influence the price of securities to rise, fall, or permanent and the action is aimed at obtaining benefits for oneself or another party. Based on this article, Benny Tjokrosaputra's action was to offer to purchase shares of PT Rimo International Lestari in large quantities using a blocksale mechanism (transactions in large amounts) and these shares were not traded for three months with unlock conditions (can be traded) consecutively, so that the Sejahtera Bersama Savings

²⁸*Ibid*, h. 254 – 257.

Premature Lawsuit in Capital Market Dispute against Losses in Shares of The Sejahtera Bersama Savings and Loans Cooperative (Study Decision No. 160/PDT/2021/PT DKI)

and Loans Cooperative as Plaintiff purchased shares in PT Rimo as Defendant II in large quantities in a row, namely with a total value of Rp. 90,000,000,000.- (ninety billion rupiah) and caused the share price of Defendant II, namely PT Rimo, to rise. Then when the share price of PT Rimo rose, Benny Tjokrosaputra took advantage by selling his ownership shares in PT Rimo amounting to 25% (twenty five percent) from 30% (thirty percent) to 5% (five percent) thereby causing a decline in the share price. significantly, this is an act that violates Article 92 of Law no. 8 of 1995 concerning Capital Markets as amended by Article 92 of Law no. 4 of 2023 concerning the Development and Strengthening of the Financial Services Sector which states that parties in the capital market are prohibited from carrying out securities transactions that directly or indirectly cause securities prices to remain fixed, increase or decrease because they want to take advantage of themselves.

2. Adanya Kesalahan.

Benny Tjokrosaputra's actions in violating the applicable law can be said to have made a mistake by violating the provisions of the Capital Market Law as there are updates which regulate new regulations and adjustments in the financial sector including the capital market as stipulated in Law no. 4 of 2023 concerning the Development and Strengthening of the Financial Services Sector, namely in Article 92 of Law no. 8 of 1995 concerning Capital Markets as amended by Article 92 of Law no. 4 of 2023 concerning the Development and Strengthening of the Financial Services Sector which should have been avoided because the provisions of the capital markets law regulate violations in the capital markets sector as well as sanctions and their application, so that Benny Tjokrosaputra can know and avoid violating actions. capital market provisions and causing losses due to capital market violations.

3. There is a loss.

The Sejahtera Bersama Savings and Loans Cooperative suffered material losses in large amounts due to a significant decline in share prices as a result of the actions of Defendant I, namely Benny Tjokrosaputra, which resulted in a decrease in share funds and the accumulation of share funds and the inability to withdraw or sell the share funds.

4. There is a casual relationship between actions and losses.

Based on the description that the author has outlined in points 1 and 3, the casual relationship between actions and losses can be seen from the actions of Benny Tjokrosaputra who committed an unlawful act by violating the provisions of Law no. 8 of 1995 concerning Capital Markets as there are updates which regulate new regulations and adjustments in the financial sector including the capital market as stated in Law no. 4 of 2023 concerning the Development and Strengthening of the Financial Services Sector, namely offering to purchase shares of PT Rimo International Lestari as Defendant II to the Sejahtera Bersama Savings and Loans Cooperative in large amounts using a blocksale mechanism (transactions in large amounts) and these shares are not traded for three months with unlock conditions (can be traded) in a row, so that the Sejahtera Bersama Savings and Loans Cooperative bought shares of PT Rimo as Defendant II in large quantities in a row, namely with a total value of Rp. 90,000,000,000.- (ninety billion rupiah) and caused the share price of PT Rimo as Defendant II to rise.

Then when the share price of PT Rimo as Defendant II rose, Benny Tjokrosaputra took advantage by selling his ownership shares in PT Rimo amounting to 25% (twenty five percent) from 30% (thirty percent) to 5% (five percent) thus causing significant reduction in share prices from Rp. 600,-/per share to Rp. 130,-/per share. This significant decline in share prices lasted for two years from November 15 2017 to August 2019, this resulted in hidden losses in share funds and the inability to withdraw or sell the share funds. The Plaintiff's loss is calculated based on the Plaintiff's cost of funds as a non-bank financial institution whose members are the general public. The Plaintiff's investment deposit is 20% per year, so that in two years the Plaintiff's total loss is IDR 126,000,000,000 (one hundred and twenty-six billion rupiah).

Based on the description above, it can be explained that the Judge's legal considerations in deciding the case of Decision No. 160/PDT/2021/PT DKI which strengthens Decision no. 745/Pdt.G/2019/PN JKT SEL, namely that he was proven to have committed an unlawful act because there was loss caused by the defendant's actions based on the provisions of Article 1365 of the Civil Procedure Code (Civil Code) and in line with Article 111 of Law no. 8 of 1995 concerning Capital Markets.

IV. CONCLUSION

1. The authority of the District Court in adjudicating capital market disputes without going through an examination by the Financial Services Authority, i.e. the District Court does not have the authority to adjudicate capital market disputes because capital market disputes must first go through an examination process by the Financial Services Authority before being processed by the court because there are special regulations which takes priority and regulates the authority of the Financial Services Authority in processing and examining violations or disputes in the financial services sector including the capital market, namely Article 9 point c of Law No. 21 of 2011 concerning the Financial Services Authority, Article 3 and Article 4 points a and b Financial Services Authority Regulation no. 61/POJK/07/2020 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector, and Article 5 point e of Law no. 8 of 1995 concerning Capital Markets as there are updates which regulate new regulations and adjustments in the financial sector including capital markets, namely Article 5 point c number 2 of Law no. 4 of 2023 concerning Development and Strengthening of the Financial Services Sector

Premature Lawsuit in Capital Market Dispute against Losses in Shares of The Sejahtera Bersama Savings and Loans Cooperative (Study Decision No. 160/PDT/2021/PT DKI)

2. Judge's legal considerations in Decision No. 160/PDT/2021/PT DKI which strengthens Decision No. 745/Pdt.G/2019/PN JKT SEL, namely that there is a premature lawsuit because the lawsuit was filed by the Plaintiff without first going through an examination by the Financial Services Authority as the Institution with authority to examine activities in the financial services sector including the capital market based on the provisions of Article 9 point c of the Law -Law No. 21 of 2011 concerning the Financial Services Authority, and Article 5 point e of Law no. 8 of 1995 concerning Capital Markets as there are updates which regulate new regulations and adjustments in the financial sector including capital markets, namely Article 5 point c number 2 of Law no. 4 of 2023 concerning the Development and Strengthening of the Financial Services Sector, as well as the existence of unlawful acts because there were losses resulting from the defendant's actions based on the provisions of Article 1365 of the Civil Procedure Code (KUHperdata) and this article is in line with Article 111 of Law No. . 8 of 1995 concerning Capital Markets.

3. The Financial Services Authority as a supervisory institution in the financial services sector should be able to educate and provide broader information and direction regarding dispute resolution if disputes occur in the capital market as this is the authority of the Financial Services Authority. The District Court should be able to participate in educating the wider public that Settlement of disputes in the financial services sector, including the capital markets, can be carried out through a non-litigation process by finding a mutual agreement between the disputing parties and producing a profitable agreement. Capital market players, especially investors, should pay more attention to existing provisions in the capital market and be more precise in choosing capital market dispute resolution, namely first processing it by the Financial Services Authority as the institution with authority to supervise and inspect the existence of capital market disputes. violations in the financial services sector including the capital market before filing a capital market dispute lawsuit in court.

REFERENCES

- 1) Tavinayati, dan Yulia Qamariyanti, 2009, *Hukum Pasar Modal Di Indonesia* (Jakarta: Sinar Grafika).
- 2) Eduardus Tandelilin, 2007, *Analisis Investasi dan Manajemen Portofolio* (Yogyakarta: BPFE Yogyakarta).
- 3) Sherly Ayuna Putri, Ema Rahmawati, dan Nun Harrieti, *Penyelesaian Sengketa Hukum Pasar Modal Pada Pengadilan Negeri*, Paper Ilmiah Hukum, Vol. 4, No. 1, 2019.
- 4) Asril Sitompul, Zulkarnain Sitompul, dan Bismar Nasution, 2007, *Insider Trading, Kejahatan Di PasarModal* (Jakarta: Books Terrace & Library).
- 5) Firman Floranta Adonara, *Prinsip Kebebasan Hakim dalam Memutus Perkara Sebagai Amanat Konstitusi*, Jurnal Konstitusi, Vol. 12, No. 2, Juni 2015.
- 6) Gatot Supramono, 2014, *Transaksi Bisnis Saham Dan Penyelesaian Sengketa Melalui Pengadilan*, (KENCANA, Jakarta)
- 7) Brian Derlie Viktor Sondakh, Engeliem R. Palandeng, Debby Telly Antouw, *Tinjauan Penyelesaian Sengketa Pasar Modal Terkait Transaksi Repo Dalam Memperoleh Kembali Saham Dilihat Dari Perkara Perdata*, Lex Privatum Vol. IX/No. 4/Apr/EK/2021.
- 8) Wenge Wang, "The mechanisms of institutional activism: qualified foreign institutional investors in China", Volume 14, Nomor 1, Januari 2019.
- 9) Nindyo Pramono, *Hukum PT Go Public dan Pasar Modal*, 2013, (Yogyakarta: Penerbit Andi).
- 10) Mas Rahmah, 2019, *Hukum Pasar Modal*, (Kencana, Jakarta)
- 11) Sentosa Sembiring, 2019, *Hukum Pasar Modal*, (Penerbit Nuansa Aulia, Bandung)
- 12) M. Irsan Nasarudin, Indra Surya, Ivan Yustiyandana, Arman Nefi, dan Adiwarmarman, 2014. *Aspek Hukum Pasar Modal Indonesia*, (Kencana. Jakarta).
- 13) Jusuf Anwar, 2005, *Pasar Modal Sebagai sarana Pembiayaan dan Investasi*, Cetakan Ke-1, (Bandung: Penerbit Alumni)
- 14) Susanti Adi Nugroho, 2015, *Penyelesaian Sengketa Arbitrase Dan Penerapan Hukumnya*, (Prenamedia Group, Jakarta)
- 15) Jusuf Anwar, 2008, *Penegakan Hukum dan Pengawasan Pasar Modal Indonesia*, Edisi Pertama, Cetakan Ke1, (Bandung: Alumni)
- 16) LAPS SJK Lembaga Alternatif Penyelesaian Sengketa Sektor Jasa Keuangan, diakses dari <https://lapssjk.id/ruang-lingkup-kompetensi/>, diakses pada tanggal 28 Juli 2023, pukul 00.12 WIB.
- 17) M. Yahya Harahap, 2016, *Hukum Acara Perdata tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan* (Jakarta: Sinar Grafika).
- 18) Fakriah, Efa Laela, 2012. *Mekanisme Penyelesaian Sengketa Bisnis Yang Efektif dan Efisien*. (Bandung: Keni)
- 19) Gamal Abdul Nasir, *Kekosongan Hukum & Percepatan Perkembangan Masyarakat*, Jurnal Hukum Replik, Vol. 5, No. 2, 2017.
- 20) Mohammad Kamil Ardiansyah, *Pembaruan Hukum Oleh Mahkamah Agung Dalam Mengisi Kekosongan Hukum Acara Perdata Di Indonesia (Legal Reform By The Supreme Court Of Indonesia Facing The Legal Vacuum In Civil Procedure Law)*, Jurnal Ilmiah Kebijakan Hukum, Vol. 14, No. 2, 2020.

Premature Lawsuit in Capital Market Dispute against Losses in Shares of The Sejahtera Bersama Savings and Loans Cooperative (Study Decision No. 160/PDT/2021/PT DKI)

- 21) Astri Kharina Bangun, "*Kasus Pelanggaran Pasar Modal*", <http://investasi.kontan.co.id/news/bapemamperiksa-165-kasus-pelanggaran-pasar-modal>
- 22) Peraturan Otoritas Jasa Keuangan No. 61/POJK.07/2020 Tentang Lembaga Alternatif Penyelesaian Sengketa di Sektor Jasa Keuangan.
- 23) Lintang Cahyani Andira & Iswi Hariyani, *Keabsahan Kontrak Elektronik Dalam Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi*, Jurnal Ilmu Kenotariatan, Vol. 1, No. 2, 2020.
- 24) Dhifa Nadhira Syadzwina & Esti Setyowati, *Peran Notaris, Restrukturisasi, Perusahaan Non Badan Hukum*, Jurnal Ilmu Kenotariatan, Vol. 1, No. 2, 2020.
- 25) Dimas Pasha Hafidz & Mohammad Rafi Al Farizy, *Perlindungan Hukum Pemegang Saham Terhadap Tindakan Penarikan Kembali Saham Ditinjau Dari Undang-Undang Perseroan Terbatas*, Jurnal Ilmu Kenotariatan, Vol. 4, No. 1, 2023.