

# LEGAL PROTECTION OF CAPITAL MARKET INVESTORS IN THE EVENT OF A SUSPENSION OF STOCK TRADING ON THE INDONESIAN STOCK EXCHANGE BASED ON INDONESIAN LAW

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## Abstract

Stock investment in the capital market is a high-risk high return investment. One of the risks faced by capital market investors is the stock trading suspension sanction imposed by the IDX as experienced by capital market investors in PT HK Metals Utama (HKMU) stocks. This suspension sanction is detrimental to investors due to the suspension of HKMU stock trading. Investors should be more careful to carry out risk management by cutting losses when they see a notation that HKMU shares will be suspended. This research aims to analyze the legal consequences and legal position of investors in the event of a suspension of stock trading and to analyze the legal actions or steps that can be taken by investors to sell their shares through off-exchange transactions. This research uses a research method with a normative juridical approach that is referred to the laws and regulations in the field of capital markets and applicable legal theories. The specification of this research is descriptive analytical. The data collection techniques used by researchers in this research are in the form of literature studies by searching for data as complete as possible from secondary data derived from primary and secondary legal materials that are relevant to related cases, then analyzed qualitatively. Based on the research results, the following can be obtained. First, the legal consequences experienced by investors are that investors cannot conduct buying and selling transactions of HKMU shares on the stock exchange as stated in Article 1.5. IDX Regulation regarding Securities Suspension and investors have legal standing guaranteed by Articles 28-30 of the OJK Law and legal standing to conduct transactions outside the stock exchange as stipulated in Article 6 paragraph (3) POJK regarding Securities Transactions. Second, legal actions that can be taken by investors are selling their stocks through off-exchange transactions, submitting claims to OJK to make written orders by conducting disgorgement funds, and as a last resort can file a claim or lawsuit for compensation to the emiten.

**Keywords:** Investors, Indonesia Stock Exchange, Suspension of Stock Trading, Over-the-Counter Transactions

## INTRODUCTION

Investment as one of the sources of development financing and the main agenda in the National Medium-Term Development Plan (RPJMN) is the capital needed in Indonesia's economic development to achieve national development goals. One of the investments referred to in the RPJMN is investing in the capital market. The capital market aims to support the implementation of national development in order to increase equity, growth, and national economic stability towards the growth of people's welfare (Abubakar, 2009).

Legally, the definition of capital market is stated in Article 1 Number 12 of Law Number 4 of 2023 concerning Development and Strengthening of the Financial Sector (P2SK Law) which defines that:

"Capital Market is part of the Financial System related to the activities of:

- a. public offering and securities transactions;
- b. investment management;
- c. listed companies and public companies related to the securities they issue; and
- d. institutions and professions related to securities".

Stocks traded in the capital market are one type of securities. As securities, stocks have the characteristics of a bearer of rights, contain commercial value, and can be transferred or traded. A limited liability company that sells its stocks to the public and makes a public offering is referred to as an listed companies and is also referred to as a public company, so it is shortened to 'tbk' (Sudaryat, 2021).

The capital market has a strategic function in national economic development. Apart from being alternative financing for the business world, the capital market is also an investment alternative for investors, both domestic and foreign investors, and institutional and individual investors. The determination of the capital market as an alternative financing is closely related to the development of the Indonesian capital market which continues to grow rapidly. The main point of the success of the capital market to attract interest in investing is that there is legal protection and legal certainty for investors. This is very important for the capital market because investors do not have direct access to the issuing company that issues securities or securities (Abubakar & Handayani, 2019).

The legal standing of capital market investors is investment in the form of a portfolio (portfolio investment). Investors do not aim to own or control the company, but investors only want to take profits based on the price difference between the selling price and the purchase price (capital gain) (Abubakar & Handayani, 2019). Investment in stocks in the capital market has high risks, including a high decrease in stock prices, no buyer when you want to sell stocks, sanctions against listed companies that harm investors, bankruptcy and other risks. However, investment in the capital market is high risk high return, so as investors we must be more careful to carry out risk management when investing in the capital market. For example, conducting in-depth research on market prices, analyzing the stocks to be purchased including the company's performance, and diversifying portfolios by buying stocks of companies in different industries as an effort to minimize losses (BNI Sekuritas, 2023).

Listed companies or issuers that have been listed on the stock exchange must comply with all regulations created by the Self Regulatory Organization (SRO). In the Indonesian capital market, the SROs are the Indonesia Stock Exchange (IDX), the Indonesian Securities Guarantee Clearing House (KPEI), and the Indonesian Central Securities Depository (KSEI) (Desiyantie, 2022). Stock trading activities organized by the IDX cannot be separated from problems that occur in listed companies, one example is the delay in submitting financial reports. These problems must be followed up by the IDX by imposing sanctions on listed companies in the form of a suspension of stock trading against listed companies that have violated the obligations that must be fulfilled by the listed company. The suspension results in a temporary suspension of the buying and selling of stocks, thus inhibiting investors from buying and selling stocks of an issuer. Investors must wait for the suspension to be lifted in order to sell their stocks again (Kheista & Adam, 2023).

Stock trading suspension is a temporary suspension of the listed company's stock trading activities by the IDX. Based on Kep00077/BEI/05-2023, securities suspension is a temporary suspension of trading securities of listed companies on the IDX. As a result, the suspended stocks become passive stocks, so that with the suspension condition, investors cannot make transactions on the Exchange for the stocks they own (Kheista & Adam, 2023).

Stock trading suspension by the IDX can also be interpreted as a form of sanction given by the IDX to listed companies by temporarily suspending their trading for a certain period of time so that there is no single investor buying or selling their stocks until notification of the lifting of the suspension (Bonjou & Muryanto, 2019). Suspension may occur under the following conditions (OCBC Indonesia, 2023):

1. Stocks in UMA Status (Unusual Market Activity);
2. Audit Opinion of the Company's Financial Statements Disclaimer or Adverse;
3. The company is late in submitting obligations to the IDX (financial statements, late fees, annual listing fees, and others);
4. The company is not transparent in providing information (violation of the transparency principle);
5. The company or subsidiary is in bankruptcy or there is a request for suspension of debt payment obligations.

In August 2023, Indonesia Stock Exchange announced a temporary suspension on the trading of PT HK Metals Utama Tbk (HKMU) stock. The suspension was caused by, Rejection opinion on the audited financial statements and Delay in submitting financial statements. Until now, the suspension of HKMU shares is still ongoing. The IDX also announced that HKMU is threatened with potential delisting because it does not carry out its obligations as an Issuer and the Issuer experiences conditions or events that significantly negatively affect the listed company.

Furthermore, according to the IDX's disclosure of information, the suspension of trading in HKMU shares was carried out because the company had violated regulations related to the submission of annual audited financial reports ending December 31, 2022 (IDX Regulation Number I-E concerning Obligations to Submit Information). This is in line with IDX announcement number Peng-SPT-00005/BEI.PP1/07-2023, Peng-SPT-00013/BEI.PP2/07-2023, Peng-SPT-00008/BEI.PP3/07-2023 dated July 3, 2023.

The most important thing in investing in the capital market is risk management. The purpose of risk management itself is carried out so that investors can increase potential profits and minimize losses. One form of risk management in stock trading practice is cut loss. Cut loss is a term used to describe the situation when investors decide to sell stocks at a price lower than the purchase price, so that investors experience losses. Based on this understanding, investors will indeed experience a loss if they cut loss. However, cut loss is an important action in the capital market, as it allows investors to avoid greater losses (Hendrik, 2021).

Furthermore, when stocks owned by investors have been suspended by the IDX, investors can still do several things. First, wait for the lifting of the suspension status. This step has a weakness because investors do not know exactly when the suspension status will be opened by the IDX. It can even run for a matter of months, years, or the suspension status will not be opened at all which causes the stocks to be threatened with forced delisting and is very detrimental to investors. Second, investors can sell stocks suspended by the IDX through the Negotiated Market outside the stock exchange. This step is beneficial because investors can reduce losses. However, the disadvantage is that it is difficult to find other investors who are interested in buying stocks that are being suspended by the IDX (OCBC Indonesia, 2023).

Based on the description above, this research aims to determine the legal consequences and legal standing of investors in the event of a stock trading suspension and formulate legal actions that can be taken by investors to sell their stocks through over-the-counter transactions.

## RESEARCH METHOD

In this research, researchers will use the normative juridical method. The normative juridical method is a legal research that is conducted by researching laws and regulations and library materials or secondary data that are used as the basis for research by searching for applicable regulations and literature related to the research discussion (Soekanto & Mamudji, 1985). The normative juridical method serves to understand the phenomena that occur related to legal issues that develop and are associated with applicable laws and regulations, especially regarding capital market law.

## RESULTS AND DISCUSSION [Arial 10 bold font]

### Legal Consequences and Legal Standing of Investors in the Event of a Suspension of Stock Trading on the Indonesia Stock Exchange

Stock trading activities organized by the IDX cannot be separated from problems that occur in listed companies, one example is the delay in submitting financial reports. These problems must be followed up by the IDX by imposing sanctions on the listed company in the form of a temporary suspension of stock trading. According to Article III.1.4. IDX Regulation Number I-L regarding Securities Suspension states that,

*"Securities suspension may occur because the Listed Company does not disclose information".*

Furthermore, Article III.2.1 of IDX Regulation Number I-L concerning Securities Suspension states that,

*“For the conditions as referred to in article III.1.4, of this Regulation, Securities Suspension is implemented in all markets”.*

When referring to Article III.1.1. IDX Regulation Number I-E concerning Obligation to Submit Information which states that,

*“The Listed Company is obliged to submit periodic financial statements to the Exchange, if the financial statements are not submitted, then the Exchange considers that the Listed Company has not carried out its obligation to submit financial statements”.*

Furthermore, Article II.6.4 and Article II.6.5 of IDX Regulation Number I-H regarding Sanctions states that,

*“Especially for Listed Companies that are late in submitting Financial Statements are subject to suspension sanctions if starting from the 91st calendar day since the deadline for submitting Financial Statements has passed, the Listed Company does not fulfill the obligation to submit Financial Statements or does not fulfill the obligation to pay penalties”.*

During the suspension period, investors do not receive the benefits that should be obtained by selling their stocks if the stocks experience an increase in price (capital gain). Investors also cannot minimize the losses experienced if it turns out that their stocks have decreased in price (capital loss). The legal consequences of the suspension of trading in stocks can be found in Article I.5. IDX Regulation Number I-L regarding Securities Suspension which states that,

*“Securities Suspension is a temporary suspension of the trading securities of a Listed Company on the Stock Exchange”.*

The temporary suspension of securities trading means that investors cannot buy and sell stocks during the temporary suspension of securities trading by the IDX.

The suspension of stocks has an adverse impact on investors who invested their capital in stocks. During this suspension period, investors can only wait until the stock suspension is lifted. Investors have been unable to trade their stocks on the stock exchange for more than a year. Of course, this is very detrimental to investors because they cannot buy and sell stocks, which would have been possible if the IDX had not imposed a suspension sanction.

Regarding legal standing, legal standing is a basis that must be owned by justice seekers in a law enforcement process. Black's Law Dictionary defines legal standing as A Party's right to make a legal claim or seek judicial enforcement of a duty or right. Referring to the definition of consumers according to Article 1 number 15 of the OJK Law,

*“Consumers are parties who place their funds and/or utilize services available at Financial Services Institutions, one of which is investors in the Capital Market”.*

The investor in question is an investor who invests his funds in the capital market. This shows that investors have rights and have legal certainty guaranteed by laws and regulations.

Furthermore, Article 28 through Article 30 of the OJK Law, clearly states that OJK is authorized to take action to prevent investor losses, OJK is obliged to provide investor complaint services, OJK is obliged to facilitate the resolution of investor problems that are harmed by listed company, OJK is authorized to conduct legal advocacy for investors who are harmed. This clearly shows that the legal standing of investors and legal protection of investors are guaranteed rights by laws and regulations that must not be violated in order to realize justice and legal certainty for investors.

The investor's rights are guaranteed by Article 6 paragraph (3) of OJK Regulation Number 22/POJK.04/2019 concerning Securities Transactions which states that,

*“Over-the-Counter Transactions can be carried out through direct negotiations between Parties or through an over-the-counter trading organizer that has obtained a license from the Financial Services Authority”.*

Based on the explanations and regulations mentioned above, it can be concluded that the standing of investors when their stocks are suspended by the IDX, investors can still fight for their rights because the legal certainty of investors is still protected by the relevant laws and regulations in the capital market sector.

### **Legal Actions or Procedures Can be Taken by Capital Market Investors if They Want to Sell Their Stocks Through Over-the-Counter Stock Transactions**

Investors still have legal standing to conduct over-the-counter transactions. Investors can still fight for their rights through over-the-counter transactions. The investor's rights are guaranteed by Article 6 paragraph (3) of OJK Regulation Number 22/POJK.04/2019 regarding Securities Transactions which states that,

*“Over-the-Counter Transactions may be conducted through direct negotiations between Parties or through an over-the-counter trading organizer that has obtained a license from the Financial Services Authority”.*

The validity of over-the-counter transactions in Indonesia is stated in Article 1 paragraph (7) of OJK Regulation Number 22/POJK.04/2019 regarding Securities Transactions, which are as follows:

*“Over-the-Counter Transactions are Securities Transactions between Securities Companies or between Securities Companies and other Parties that are not regulated by the Stock Exchange, and securities transactions between parties that are not Securities Companies”.*

It can be concluded that over-the-counter transactions are not prohibited in Indonesia. Furthermore, Article 15 of the POJK regarding Securities Transactions emphasizes that,

*“The Stock Exchange is prohibited from making regulations that prohibit or prevent the Securities Company, Issuer, Securities Administration Bureau, or other Parties to register Securities obtained through Over-the-Counter Transactions and require that the transfer of Securities must be based on Exchange Transactions.”*

Reviewing Article 8.1.1. Regulation of KSEI Year 2012 regarding Central Custodian Services, the settlement of transactions outside the stock exchange with KSEI as the LPP provides services for the settlement of over-the-counter transactions conducted by way of overbooking of securities and/or funds between securities accounts at KSEI. This transaction settlement may take the form of securities transaction settlement accompanied by overbooking of funds and securities transaction settlement without overbooking of funds. Referring to the OJK Regulation on Securities Transactions and the KSEI Regulation on Central Custodian Services above, it can be concluded that investors can conduct over-the-counter transactions to sell their stocks, considering that the legality of over-the-counter transactions has been guaranteed and legally implemented in Indonesia.

Settlement of transactions outside the stock exchange is carried out by means of book-entry of securities and/or funds between securities accounts at KSEI (KSEI, n.d.). This transaction settlement may consist of securities transaction settlement accompanied by transfer of funds and securities transaction settlement without transfer of funds. When executing the settlement of transactions outside the stock exchange, the instruction must be informed to KSEI through the C-BEST system. Such instruction is informed by both the buyer and the seller. The data informed through the C-BEST system must be matched between the seller and the buyer, such as the transaction settlement date, securities code, number of securities, and others.

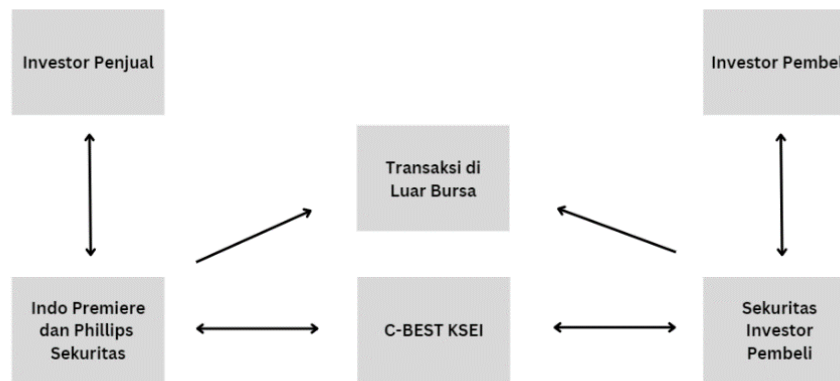
Discussing instructions that must be informed to KSEI through the C-BEST system, there are several types of instructions that can be used by account holders in C-BEST, among others (KSEI, n.d.):

- a. *Delivery Versus Payment (DVP)*, this function is used by account holders to carry out instructions for the delivery of equity securities through the C-BEST system where the securities sender will receive payment (funds) from the securities receiver;
- b. *Receive Versus Payment (RVP)*, This function is used by account holders to carry out instructions to receive equity securities through the C-BEST system where the recipient of the securities must submit funds to the sender of the securities;
- c. *Delivery Free of Payment (DFOP)*, This function is used by account holders to carry out instructions for the delivery of equity securities through the C-BEST system without payment from the recipient of the securities;
- d. *Receive Free of Payment (RFOP)*, This function is used by account holders to carry out instructions to receive equity securities through the C-BEST system without payment to the securities sender.

Based on several instruction options above, according to the researcher, the most suitable instruction for the case experienced by the investor is the DVP instruction. Referring to Article 24 paragraph (2) of OJK Regulation Number 22/POJK.04/2019 concerning Securities Transactions which states,

*“Securities Broker-Dealer and/or Custodian conducting or settling Over-the-Counter Transaction for the benefit of its Client, shall ensure the availability of instruction document from the Client and the document which becomes the basis of the Client's transaction”.*

Based on the practical explanation above, the parties involved in an over-the-counter transaction in this case are the investor, the buyer investor, the securities broker or securities company of the investor and the buyer investor, and KSEI through the C-BEST system to settle the transaction. Furthermore, the following researchers describe the flow of the transaction mechanism outside the stock exchange in the figure below:



**Figure 1.** Mechanism of Over-the-Counter Transactions (Source: Research results with MandiriSekuritas)

Based on the figure above, the following can be explained:

- After the investor completes the necessary documents and requirements, the investor places an order to sell his/her stocks to Indo Premiere Sekuritas and Phillips Sekuritas;
- After the buyer investor completes the necessary documents and requirements, the buyer investor places a purchase order for the investor's stocks with the buyer investor's securities;
- Indo Premiere Sekuritas and Phillips Sekuritas process over-the-counter transactions with securities owned by the buyer investor for the benefit of their respective investors through KSEI's C-BEST system, the instruction carried out is DVP.
- After each securities company has input the transaction data into KSEI's C-BEST system, KSEI will complete the transaction by transferring the ownership of stocks owned by the investor to the buyer investor and paying the buyer investor's funds to the investor in accordance with the price agreed upon by the investor and the buyer investor.

Considering that the mechanism for settling transactions over the counter as explained previously has weaknesses due to the difficulty of finding buyer investors who want to buy shares that are being suspended. Researchers argue that investors can also involve OJK through the *una via* principle mechanism and written orders. This is based on Article 100B of the P2SK Law which states in essence that OJK can provide written orders to Parties that commit violations to return profits obtained and/or losses that can be avoided illegally from administrative violations or criminal acts. Furthermore, Article 100C of the P2SK Law emphasizes that OJK can impose administrative sanctions (fines) accompanied by written orders.

The mechanism is further detailed in the Regulation of the Financial Services Authority (OJK) Number 65 of 2020 concerning Return of Unauthorized Profits and Investor Loss Compensation Funds in the Capital Market Sector (POJK 65/2020). Based on Article 1 paragraph (2) POJK 65/2020, it is explained that,

"Return of Unauthorized Profits is an order of the Financial Services Authority to return profits obtained or losses avoided illegally by the Party who committed and / or the Party who caused the violation of the laws and regulations in the field of capital markets."

Furthermore, Article 1 paragraph (4) POJK 65/2020 explains that,

"Investor Loss Compensation Fund is a fund collected from the imposition of Unauthorized Profit Refunds with the aim of being administered and distributed to investors who are harmed and are eligible to submit claims"

Implementation, the disgorgement fund is a pooled fund from the imposition of unauthorized profit returns with the aim of being administered and distributed to aggrieved investors who are eligible to file claims. To ensure that violating parties cannot enjoy unauthorized profits through the transfer of assets or disbursement of assets at financial services institutions, OJK is authorized to order in the form of blocking the financial services institution and order the transfer and disbursement of assets to the violating party and the financial services institution.

Furthermore, the funds collected from the imposition of unauthorized profit returns can be used to compensate losses to aggrieved investors and the development of the capital market industry. Through the imposition of unauthorized profit returns to the party who committed and/or the party who caused the violation, OJK can take remedial action by establishing an investor loss compensation

fund (disgorgement fund) which will be returned to the harmed investors. This is done by OJK with the intention of increasing investor protection and investor confidence in investing in the capital market.

In the implementation of the disgorgement fund, there are three related parties. First, the fund account provider, which is the party appointed by OJK to provide a fund account as payment for the return of unauthorized profits and distribution of investor compensation funds. Second, the administrator, which is the party appointed by OJK to administer and distribute investor loss compensation funds. Third, the capital market industry development fund manager, which is a party appointed by OJK to manage inflexible investor loss compensation funds and the remaining investor loss compensation funds for capital market development.

Article 9 of POJK 65/2020 provides extra protection to investors which states that,

“In the event that the Party subject to the Return of Unauthorized Profits does not make payment of the entire amount of the Return of Unauthorized Profits, OJK may take action:

- a. Proceed further to the investigation stage in accordance with the provisions of the Law on the Financial Services Authority;
- b. File a civil lawsuit in accordance with applicable provisions; and/or
- c. Submitting a request for a bankruptcy statement in accordance with statutory provisions regarding bankruptcy and postponement of debt payment obligations.”

As a last resort, investors can file a claim for compensation against the issuer as required by Article 111 of the Capital Market Law which states that,

“Any Party who suffers loss as a result of a violation of this Law and/or its implementing regulations may claim compensation, either individually or jointly with other Parties who have similar claims, against the Party or Parties responsible for the violation.”

In addition, investors can also file a lawsuit for compensation to the issuer through the court based on unlawful acts as stipulated in Article 1365 of the Indonesian Civil Code which states that,

“Every act that is against the law and brings loss to another person, obliges the person who causes the loss due to his fault to replace the loss.”

Given that the suspension sanction is carried out by the issuer for violating the provisions in the capital market and causing losses to investors, so investors can file a claim for compensation or a lawsuit for compensation.

## CONCLUSION

The legal consequences of the suspension of trading of stocks are listed in Article I.5. IDX Regulation Number I-L regarding Securities Suspension which states that Securities Suspension is a temporary suspension of trading securities of a Listed Company on the Stock Exchange. The legal consequences experienced by investors during the suspension of stocks that are still attached are that investors cannot buy and sell stocks on the stock exchange or in other words, trading transactions in stocks are suspended by the IDX. Investors have a legal position guaranteed by Article 28 through Article 30 of the OJK Law which emphasizes that OJK has the authority to prevent investor losses, handle complaints, facilitate problem solving, and provide legal defense to aggrieved investors. This shows that investors' legal rights are protected by regulations that must be respected for the sake of justice and legal certainty.

The legal action that can be taken by investors as the owner of stocks subject to suspension is to sell their shares through over-the-counter transactions as required by Article 6 paragraph (3) of POJK regarding Securities Transaction and Article 8.1.1. KSEI Regulation regarding Central Custodian Services. Furthermore, investors can submit a claim to OJK to make a written order to conduct a disgorgement fund as stipulated in Article 100 of the P2SK Law and POJK 65/2020 concerning Return of Unauthorized Profits and Investor Loss Compensation Fund in the Capital Market Sector. As a last resort, investors can file a claim for compensation to the issuer and a lawsuit for compensation based on unlawful act as stipulated in Article 111 of the Capital Market Law and Article 1365 of the Civil Code.

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