



DISGORGEMENT FUND TO CREATE CORRECTIVE JUSTICE AS A LEGAL PROTECTION MEASURE FOR INVESTORS IN THE CAPITAL MARKET

Legal Protection of Investors Against Disgorgement Fund to Realize Corrective Justice

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ABSTRACT

Disgorgement Fund is the repayment of funds obtained through illegal or unethical business transactions, imposed on violators by courts. Legal protection for capital market investors in Indonesia is not yet effective and optimal. There is no easy way to claim compensation for losses in the capital market because investors consider losses as an investment risk. This article aims to analyze the implementation of disgorgement funds and disgorgement fund practices to realize corrective justice as an effort to protect the law for capital market investors in Indonesia. The method used is normative legal research, using primary and secondary legal sources. Data analysis techniques use conceptual methods and statutory approach methods. The results of the analysis show that OJK issued disgorgement fund regulations as an effort to improve investor protection and law enforcement in the capital market through POJK No. 65/POJK.04/2020 and SEOJK No. 17/SEOJK.04/2021. The regulation of the disgorgement fund mechanism still needs improvement to prevent violators from enjoying illegal profits, recover investors' losses, and take preventive measures against future violations. The Directorate of Sanctions Determination and Capital Market Grievances at OJK emphasizes that the order for disgorgement of funds is not a lawsuit from the investor through remedial action, aligning with the principle of corrective justice, where all parties have equal rights to seek redress. Tighter supervision should be implemented by OJK to prevent legal violations while ensuring equity in the restoration of rights and the effectiveness of the legal system in dealing with disputes in the capital market.

Keywords: corrective justice; capital market; disgorgement fund; investors; legal protection

1. INTRODUCTION

The capital market plays an important role in every country as a place to allocate funds effectively and efficiently with the aim of achieving maximum future profits. The capital market is a forum for the long-term buying and selling of securities products by holding meetings between surplus parties and capital deficit parties. Capital markets have the capacity to create profit opportunities that impact the economy. Companies can also use this opportunity to influence society through various investment options. However, in addition to potential profits, opportunities for loss can occur due to criminal behavior referred to as "white-collar crime".¹

The Indonesian people's careless attitude towards regulations has the potential to cause losses for those who invest in the stock market. According to an anthropological perspective, law has a place in the cultural structure of society. Law functions as a norm that regulates the production and distribution of wealth as well as a method of protecting society from internal disturbances and external threats.² Legal regulations are important in protecting investors from activities in the capital market. In this context, investors are often the ones who feel the impact of losses the most. Therefore, clear and firm legal regulations are needed to resolve this problem.

1 I Komang Ngurah Wirya Jaya, I Nyoman Putu Budiarta, and Desak Gde Dwi Arini, "Disgorgement Sebagai Upaya Perlindungan Hukum Dalam Pengembalian Keuntungan Tidak Sah Dan Dana Kompensasi," *Jurnal Analogi Hukum* 4, no. 1 (2022): 50–54, <https://doi.org/https://doi.org/10.22225/ah.4.1.2022.50-54>.

2 Andi Dewi Pratiwi, "HUKUM ADAT DALAM PERSPEKTIF ANTROPOLOGI HUKUM", *Jurnal Hukum Unsulbar*, 4(2), 44-48. <https://doi.org/10.31605/j-law.v4i2.2662>. (diakses pada 08 November 2023).

Various categories of criminal acts related to the capital market are regulated in Articles 90-98 of Law Number 8 of 1995 concerning Capital Markets (UUPM), namely fraud, market manipulation, and insider trading. The UUPM outlines the criminal sanctions that will be imposed for such violations, in accordance with Article 104, in addition to outlining various types of violations in the capital market. According to this article, those who commit this criminal act are threatened with a maximum fine of IDR 15,000,000,000.00 (fifteen billion rupiah) and a maximum imprisonment of 10 (ten) years.³

Violations of various forms in the capital market, such as stock price manipulation, fake transactions, and other illegal activities, still continue to occur and are detrimental to investors. However, the process of compensating customers for losses is often complex and overlooked by law enforcement, causing investors to bear significant financial losses. For example, the case of Sarijaya Permana Sekuritas (SPS) began with the submission of a letter from SPS to the Indonesia Stock Exchange (BEI) on December 12, 2008, which stated that the company faced liquidity problems due to the opening of 17 nominee accounts with total value of IDR 235 billion and ended with the disclosure of embezzlement actions involving approximately IDR 235 billion which caused losses to thousands of customers, then the Antaboga Delta Sekuritas (ADS) case with losses reaching IDR 1.4 trillion which started with payment failure on November 17, 2008, as well as the PT Andalan Artha case Advisindo (AAA) as a securities company caused losses of around IDR 120 billion and the Jiwasraya case also became a concern because it harmed customers with a restructuring process that never found a solution.

Criminal sanctions are a form of sanction that aims to provide a deterrent effect to criminal perpetrators, in accordance with UUPM Number 8 of 1995 article 104, these sanctions are made in the hope of preventing the same criminal act from recurring, but this is still in the context of the criminal being given criminal sanctions, on the other hand, customers/investors who often feel a loss and become The victim does not immediately receive protection or return of rights after the criminal is given criminal sanctions.

In this context, the Financial Services Authority (OJK) has regulated the use of disgorgement fund. Disgorgement fund requires perpetrators of capital market violations to return profits obtained illegally or avoid losses that should arise. Dana disgorgement This comes from the perpetrators of capital market violations themselves. Recovery of losses resulting from crime is very important to provide protection for the injured party.⁴ Justice, one of the main goals of the law itself, cannot be separated from the provision of legal protection.⁵ Several previous studies analyzed about disgorgement in Indonesia, including Mentari's research analyzing disgorgement fund to retail investors due to violations of OJK regulations and in the context of corrective justice.⁶ A comparative study by Kharisma & Hunaifa analyzes regulatory issues regarding fund disbursement in Indonesia, the United States, and the United Kingdom and to develop ideal laws regarding disgorgement fund.⁷ Putri & Damayanti discuss regulations disgorgement in competition law in Indonesia and compare it with several other countries.⁸ Putri found that Indonesia needed to develop a theoretical framework such as *actio de in rem verso* to create a deterrent effect, by providing effective and proportional sanctions.⁹

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- 3 Rezza Aryansyah and Arman Nefi, "Penerapan Disgorgement Fund Sebagai Upaya Memberikan Perlindungan Bagi Investor Di Pasar Modal Indonesia," *Jurnal Ilmu Sosial Dan Pendidikan (JISIP)* 6, no. 3 (2022): 10404–11, <https://doi.org/10.36312/jisip.v6i3.3428/http>.
 - 4 Mahrus Ali and Ari Wibowo, "Kompensasi Dan Restitusi Yang Berorientasi Pada Korban Tindak Pidana," *Yuridika* 33, No. 2 (2018): 260, <https://doi.org/10.20473/ydk.v33i2.7414>.
 - 5 Hari Agus Santoso, "Perspektif Keadilan Hukum Teori Gustav Radbruch Dalam Putusan PKPU·PTB," *Jatiswara* 36, no. 3 (2021): 325–34, <https://jatiswara.unram.ac.id/index.php/js/article/view/341>.
 - 6 Nikmah Mentari, "Pengembalian Keuntungan Tidak Sah Terhadap Investor Ritel: Keadilan Korektif Melalui Konsep Disgorgement," *Jatiswara* 38, no. 1 (2023): 1–13, <https://doi.org/10.29303/jtsw.v38i1.462>.
 - 7 Afilya Kharisma, Dona Budi Hunaifa, "Comparative Study of Disgorgement and Disgorgement Fund Regulations in Indonesia, the USA and the UK," *Journal of Financial Crime* 30, no. 3 (2023): 635–49, <https://doi.org/10.1108/JFC-01-2022-0022>.
 - 8 Uni Tsulasi Putri and Vina Damayanti, "Disgorgement in Indonesian Competition Law: A Comparative Approach Following the Job Creation Law Enactment," *Proceedings of the 3rd Borobudur International Symposium on Humanities and Social Science 2021 (BIS-HSS 2021)* 00, no. 2 (2023): 474–79, https://doi.org/10.2991/978-2-494069-49-7_79.
 - 9 Uni Tsulasi Putri, "Disgorgement as Remedial Action in Indonesian Capital Market Regime," *Jurnal Hukum Novelty* 11, no. 1 (2020): 1, <https://doi.org/10.26555/novelty.v11i1.a15673>. It is expected to prevent the Party for the enjoyment of illegal profit, compensate for the victim's loss, and to contain the corrective element. It also acts as a deterrence effect. Purpose/Objective

In this discussion Corrective Justice or *Keadilan Korektif* is also one of the things that needs to be understood, that corrective justice is an idea of the responsibility of one or several parties to improve justice. The idea of corrective justice is an idea that has often been developed recently because it aims to correct the loss of rights caused by injustice in society. This also fills a legal void apart from the importance of implementing criminal sanctions for criminal perpetrators.

Based on the background, the formulation of the problem in this study is as follows:

1. How to implement a *disgorgement fund* in the context of providing legal protection to capital market investors in Indonesia?
2. How to practice *disgorgement fund* to create *corrective justice* as an effort to provide legal protection to capital market investors in Indonesia?

2. RESEARCH METHODS

This research uses a normative legal method where the research uses law as a system of norms to provide justice for problems. The analysis is made using primary and secondary legal sources. In data analysis, the method used is the conceptual approach (*Metode konseptual*) which compiles several concepts as a form of insight to serve as a basis or guideline in writing and statute approach (*Metode Pendekatan Undang-undang*) that use statutory regulations. The data collection method was carried out through a literature study about concepts of *disgorgement fund* and Law no. 8 of 1995 concerning Capital Markets and PJOK No. No. 65/POJK.04/2020 Regarding the Return of Illegal Profits and Funds for Investor Losses in the Capital Markets Sector.

3. DISCUSSION

3.1 Implementation of *Disgorgement Fund* towards Capital Market Investors in Indonesia

Ease of Doing Business/ EoDB is one of at least 159 global performance indicators (GPI) that has developed rapidly in the last two decades. This index is used to assess how a country provides ease of doing business for all business actors using several indicators.¹⁰ From 2001 to 2020, the ease of doing business rankings served as a guide and benchmark for any investor wishing to invest in a jurisdiction. Several indicators in the ease of doing business (EoDB) are used as a guide in investing in a country.¹¹ The higher the EoDB index, the greater the country's chances of attracting investors. The Ease of Doing Business (EoDB) indicator is a measure for improving regulations related to capital investment, which can be measured from the start of the business to the end of the business running according to plan, and according to the agreed contract. One of the work programs of President/Vice President Jokowi-Maruf Amin is to draft effective laws to open up employment opportunities and other business climates, as well as reforming investment conditions in Indonesia. The government encourages investment in Indonesia while harmonizing obesity and various laws and regulations governing investment.¹²

It is very understandable that the work program that has been created by the government is one of the impetus for the formation of regulations regarding the *Disgorgement fund* in Indonesia, so this regulation is

Study: This study aims to study on how the disgorgement as remedial action would be applied and create a deterrence effect in the Indonesian Capital Market Regime. Design/Methodology/Approach: This is normative legal research that uses a qualitative research method. This study conducted a literature review and comparative study with disgorgement regulation within in respect of securities law in common law and civil law jurisdiction. Findings: In the upcoming disgorgement technical manner, OJK will give a written order for the Party who violate capital market regulation and pursuing illegally obtained profit or illegally avoided loss to return sum amount of money sum up with interest (if any

10 Marulak Pardede, "Reformasi Peraturan Investasi di Indonesia (Suatu upaya peningkatan iklim daya saing investasi)", Jurnal penelitian hukum De Jure Volume 23, No 2, Juni 2022, https://ejournal.balitbangham.go.id/index.php/dejure/article/download/3493/pdf_1

11 Marulak Pardede, "Reformasi Peraturan Investasi di Indonesia (Suatu upaya peningkatan iklim daya saing investasi)".

12 Marulak Pardede, "Reformasi Peraturan Investasi di Indonesia (Suatu upaya peningkatan iklim daya saing investasi)".

also an important regulation that needs to be paid more attention to in terms of its implementation for investors in the capital market in Indonesia. This discussion is certainly no less important than other investment regulations to provide effects that contribute to both aspects *benefit* or material benefits or non-material benefits to the community, especially investors, and of course, it is hoped that it will have an effect that also contributes to returns as one of the supporting factors in achieving the work program created to achieve government targets.

In Indonesia, the concept of *disgorgement* can be adopted in determining the disposition of fines against violators of anti-monopoly regulations and unfair business competition. The administrative action of sanctions which previously contained a maximum provision of IDR 25,000,000,000, which may be considered disproportionate to the profits obtained by business actors, has been eliminated. As in Law Number 11 of 2020 concerning Job Creation, the latest regulations only regulate the minimum limit for imposing a fine of IDR 1,000,000,000. It is possible to consider disgorgement of unfair competition as an administrative fine as regulated in Law Number 5 of 1999 in Law Number 11 of 2020 concerning Job Creation. Further provisions regarding the criteria, types, amount of fines, and procedures for imposing sanctions are regulated in Government Regulation Number 44 of 2021 concerning the Implementation of Prohibitions on Monopoly Practices and Unfair Business Competition.¹³

In economic activities in the capital market, the opportunity for violations of statutory regulations is also very likely to occur. Law Number 8 of 1995 concerning Capital Markets, which is also known as the Capital Markets Law (UUPM), lists violations in the capital markets sector which are broken down into three categories: (1) Administrative violations as referred to in Article 102 UUPM; (2) Criminal acts as regulated in Article 103 to Article 110 UUPM; and (3) Civil violations as intended in Article 111 UUPM. The term objective investor is used in the capital market to increase investor confidence in all activities that take place there and to help investors understand the rights and obligations associated with it as a subject of capital market law as part of the financial services sector. However, the protection provided by Indonesian capital market law does not fully guarantee investor security when investing.¹⁴

SIPF Indonesia's legal authority as a provider of investor protection funds has been granted. Customer securities accounts for the Investor Protection Fund were managed by 112 (one hundred and twelve) Securities Brokers and 21 (twenty one) Custodian Banks in 2016. The establishment of SIPF Indonesia functions to protect investors' assets from losses resulting from potential criminal acts, staff or management activities in securities companies as well as the potential failure of securities companies in the capital market. Capital market laws and regulations cover several forms of unlawful acts, among others:

1. **Fraud:** Article 90 UUPM indicates that securities activities on the stock exchange or fraud committed through prospectuses are both considered types of capital market fraud. In addition, fraud can be committed on both publicly traded securities *over the counter* as well as securities listed on the stock exchange.
2. **Market Manipulation:** Law Number 8 of 1995 concerning Capital Markets has 3 (three) articles that regulate market manipulation. Article 91, Article 92, and Article 93 are three articles that regulate market manipulation.
3. **Insider Trading:** Trading in shares or securities by company employees is referred to as insider trading. One example of this type of insider trading is bonds. Although this term generally refers to illegal profit-seeking activities in the financial market environment which are usually carried out by utilizing internal information, such as unpublished company plans or decisions, insider trading is still possible and even legal in some jurisdictions (Articles 95, 96, and 97 UUPM).

Violations of the law, whether administrative, civil, or criminal, are very likely to result in financial losses for capital market players, especially investors. According to OJK Regulation Number 1/POJK.07/2014 concerning Alternative Institutional Dispute Resolution in the Financial Services Sector, there are several main

13 Putri and Damayanti, "Disgorgement in Indonesian Competition Law: A Comparative Approach Following the Job Creation Law Enactment."

14 Elvira Fitriyani Pakpahan et al., "Peran Dan Kewenangan Profesi Penunjang Pasar Modal (Notaris) Dalam Menghadapi Era Globalisasi," JCH (Jurnal Cendekia Hukum) 5, no. 2 (2020): 323, <https://doi.org/10.33760/jch.v5i2.239>.

ideas and dispute resolution structures, such as internal settlement (*internal dispute resolution*), where every financial services institution is obliged to resolve complaints first. If a settlement agreement cannot be reached, the dispute can be resolved externally (*external dispute resolution*) or through court.¹⁵

Indonesia follows the idea of *remedial action*, or corrective action with the principle of imposing sanctions when enforcing *disgorgement*. More detailed information about *remedial action* and *penalty setting* is not in POJK 65/POJK.04/2020 but in RPOJK *Disgorgement* and *Disgorgement Fund* explained that “*Disgorgement* It is a corrective action that is expected to ensure that the party who committed the violation cannot enjoy the benefits obtained illegally, to compensate for the losses of the victim of the violation, which contains a corrective element, and can have a deterrent effect.” Although not explicitly stated in POJK 65/POJK.04/2020, this explanation actually reflects the disbursement mechanism used in accordance with that document.¹⁶

Disgorgement applied to parties who violate the laws and regulations governing the capital markets sector and/or parties who cause violations, as regulated in Article 2 Paragraph (1) POJK 65/POJK.04/2020. In terms of administrative, technical, and criminal violations, including capital market crimes, violations in this context have a very broad and ambiguous scope. But when considering the basic idea of *disgorgement*, it is clear that the types of violations that can result in *disgorgement* are those that result in illegitimate profits or avoidable losses.¹⁷ In Indonesia, if a case has reached the investigation stage and capital market criminal violations are found, indications often emerge of other criminal acts being investigated both at the investigation level and in court. Apart from that, of course, the rules *Disgorgement fund* This is also a complement to existing forms of administrative, criminal, and civil sanctions.

Disgorgement carried out by parties who violate capital market laws and regulations in Indonesia is the only source of the *Disgorgement Fund*.¹⁸ Investors’ legal protection to recover losses is uncertain because the source of funds depends on the ability to pay off the affected party’s *disgorgement*. OJK can only form an Investor Loss Compensation Fund (DKKI) if the funds obtained are deemed feasible, in accordance with Article 10 paragraph (1) POJK 65/POJK.04/2020. The amount of disbursement collected, the planned operational costs for carrying out the disbursement of funds, and the initial assessment of whether investors are making a loss or not are taken into account when determining the feasibility of disbursing funds.

After doing the *internal assessment*, OJK issues written orders to disburse payments and imposes administrative sanctions on violators of laws and regulations in the capital markets sector.¹⁹ After receiving the order, the infringer has 30 (thirty) days to make payment. Payments can be made using fixed assets such as land, land and buildings, and/or cars if the party subject to the expenses cannot make payments through a fund account. OJK Circular Letter Number 17/SEOJK.04/2021 concerning Return of Illegal Profits and Compensation Funds for Investor Losses in the Capital Markets Sector, Number V number 7 states that the OJK directs the distribution of wealth in Securities accounts and/or other accounts at Depository and Settlement Institutions, financial services institutions, and/or other related parties, with a copy from the party who is obliged to disgorgement, in the event that the party who is obliged to disgorgement refuses to pay. OJK can issue warnings in the form of warning letters 2 (two) times with a grace period of 30 (thirty) days between each warning for violators who do not pay in full.

In the event that the party ordered to pay the disbursement does not make the payment after receiving 2 (two) warnings, the OJK can take several steps, including extending the investigation stage, filing a civil case, and/or filing a bankruptcy petition. These three actions gave rise to new problems which also sparked debate at the OJK, namely the absence of effective procedures to cover investor losses because investors

15 Ema Rahmawati and Rai Mantili, “Penyelesaian Sengketa Melalui Lembaga Alternatif Penyelesaian Sengketa Di Sektor Jasa Keuangan,” *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 3, no. 2 (2018): 240–60, <https://doi.org/10.22304/pjih.v3n2.a2>.

16 Vania Regina Artemisia Wijaya, “Disgorgement: Pemulihan Kerugian Investor Pasar Modal (Studi Komparasi Amerika Serikat Dan Indonesia),” *Al-Adl : Jurnal Hukum* 14, no. 1 (2022): 133, <https://doi.org/10.31602/al-adl.v14i1.5991>.

17 Wijaya, “Disgorgement: Pemulihan Kerugian Investor Pasar Modal (Studi Komparasi Amerika Serikat dan Indonesia).”

18 Ridho Ramadani (2022), “Analisis Atas Konsep Disgorgement Dan Disgorgement Fund Dalam Pasar Modal”, *Locus: Jurnal Konsep Ilmu Hukum*, 2(1), hlm. 1–5. Tersedia pada: <https://jurnal.locusmedia.id/index.php/jkih/article/view/17> (Diakses: 8 November 2023)

19 Raysa Mayasonda, Lastuti Abubakar, and Ema Rahmawati, “Kajian Terhadap Rencana Pengaturan Disgorgement Dalam Pasar Modal Indonesia,” *JCH (Jurnal Cendekia Hukum)* 6, no. 1 (2020): 1, <https://doi.org/10.33760/jch.v6i1.279>.

who should have received compensation quickly through disbursement still had to wait for the investigation process, civil litigation, and bankruptcy. In reality, investors who lose money from the start can do this without going through the procedure of *disgorgement*, especially deep bankruptcy filing. Although the OJK anticipates that repayment of bills can be equated with taxes and customs having first rights, the OJK does not determine the level of preferred creditors whose payments take priority. Therefore, OJK must assess the appropriate steps to take and the most effective actions when the party ordering the disbursement does not want to pay.

OJK determines new distribution funds and appoints an administrator whose task is to create a distribution plan and submit it to OJK no later than 21 (twenty one) working days after being appointed. The distribution plan must contain information about the history of disbursement of funds, requirements for investors who are entitled to submit a claim, the period for submitting a claim is a minimum of 21 days and a maximum of 90 days, how to calculate the amount of real losses, procedures for distributing funds, and costs associated with administration and distribution of fund. OJK can approve the distribution plan for the Organizer's proposal with or without changes. The manager then publishes the distribution plan on the disbursement fund website after the distribution plan is approved.

Every claim submitted by investors must be confirmed by the administrator, who then produces a claim payment plan and submits it to the OJK no later than five working days after verification. In the event that the investor's claim payment plan is granted, OJK will inform the fund account provider to transfer the disbursement money to each investor's fund account no later than three working days after receiving the order. In connection with the distribution of disgorgement funds, there are 2 (two) provisions.

Distribution will be given according to the number of claims submitted by each investor if the amount of disbursement funds exceeds the amount of investor claims. The remaining funds will then be used to advance the development of the capital markets industry. The distribution will be given proportionally or pro rata if the amount of disbursement is less than the amount of the investor's claim. Distribution will be given according to the number of claims submitted by each investor if the amount of disbursement funds exceeds the amount of investor claims. The remaining funds will then be used to advance the development of the capital markets industry. Second, the distribution will be given proportionally or pro rata if the amount of disbursement is smaller than the amount of the investor's claim.

Even though there is no space for the public to provide input regarding the distribution plans announced by the organizers, the regulations regarding the procedures for disbursing funds in Indonesia are clearer and more detailed. OJK capabilities only provide *approval* or agreement with adjustments to the distribution plan. The requirements for investors who are entitled to receive disbursement funds are only negatively regulated by POJK 65/POJK.04/2020, which states that investors who have received compensation from violators or filed independent lawsuits previously are not entitled to receive disbursement money.

Article 30 of the same regulation, OJK has the authority to act as a legal representative and provide direction to financial services institutions to resolve disputes arising from lawsuits and provide compensation to plaintiffs. Through these actions, it can be concluded that the OJK is giving financial services institutions a second chance to resolve internal disputes resolution (IDR) or reach a settlement with the financial services institutions that are the target of the lawsuit. Apart from that, OJK is taking legal action in an effort to protect investors by providing compensation funds for assets that have been invested as capital in the capital market.²⁰

Based on the explanation above, it can be concluded that a *disgorgement fund* is created when illegitimate profits are collected with the intention of being administered and distributed to investors who experience losses and meet the criteria for filing a claim. OJK has the authority to order the blocking of the financial services institution, as well as orders to transfer and disburse assets to the party committing the violation and the financial services institution, to ensure that the party who violates cannot enjoy illegal profits through this. SIPF is the institution appointed to manage its *disgorgement fund* collected from the proceeds of unauthorized operations in the capital market.

So in practice, does every investor understand the concept of legal protection *disgorgement fund* and understand the claims process and how to meet the criteria when experiencing a loss. This is a problem

20 Amanda Athasya and Yudho Taruno Muryanto, "Tugas Dan Fungsi Otoritas Jasa Keuangan Dalam Sengketa Perdata Terkait Perlindungan Hukum Bagi Konsumen," *Jurnal Privat Law* 7, no. 2 (2019): 164, <https://doi.org/10.20961/privat.v7i2.34403>.

of weakness in general publications that investors, in general, must pay attention to so that with proper understanding, investors understand and being aware of the risks of investing and calculate the costs of preventing risks for the investments they make.

3.2 *Disgorgement Fund Practices to make it Happen Corrective Justice As an Effort to Legal for Investors in the Capital Market.*

The return of illegal income obtained by the perpetrator of the violation through legal channels is referred to as *disgorgement*. Money earned through unethical business practices or unlawful activities must be repaid. *Disgorgement* is viewed as a legal remedy or corrective action.²¹ *Disgorgement* is usually a type of restitution that is calculated based on the profits the perpetrator obtained from the crime committed.

The Directorate for Determining Sanctions and Objection to the OJK Capital Market emphasized that the order to return illegal profits or losses avoided is not based on investor lawsuits. This is called a concept of *remedial action* which is an implementation of *corrective justice*. This rights-oriented view is manifested in *corrective justice* especially taking into account that this type of justice places fundamental equality between the parties. Both are equal in obtaining rights. Rather than being a goal, the goal-oriented view sees rights and rights holders as a means to an end.

Proponents of a rights-oriented view consider law as a right itself, whereas those on the contrary view law as a means to achieve rights. The rights-oriented view emphasizes distributive justice rather than *corrective justice*, where these two perspectives have two different principles of justice. The difference between these two views is also known as the difference between the formalist-orthodox view represented by Henry Weinrib and the functionalist view represented by legal scholars who use a legal economic analysis framework.²² In this case, the idea of improvement functions as a real change of justice based on experiences that occur and harm investors. Draft *corrective justice* has the intention or close relationship to restore rights or restore rights. The plaintiff's right as a victim in this case is to enforce what should belong to the victim and demand the obligations of the perpetrator, between the perpetrator and the victim there is a normative relationship. The nature of the restoration of rights in *corrective justice* is determined by a balanced relationship between rights and obligations.

In civil law, *corrective justice* provides an adequate picture in operationalizing case resolution. According to Weinrib, *corrective justice* is a form of private relationship because it integrates three aspects, namely unity, goodness, and character. The correlation between loss and profit is a form that represents the unity of private legal relations. Because loss and gain are not two things that stand alone, they are related to each other. Taking this point of view, Weinrib treats corrective justice as a single normative unit. *Corrective justice* also defines various forms of personal relationships. Corrective equality of losses and profits is a distinct operational category of a set of equivalent proportions. Profit and loss are correlated in the interaction between disputing parties.²³

In corrective justice, victims and perpetrators of the same injustice are treated as one and the same. Corrective justice emphasizes appropriate rights and obligations that represent norms that bind the parties together.²⁴ Corrective justice aims to improve the condition of the victim and the responsibility of the offender. Speaking of which, the violator has a responsibility that remains in effect as long as the victim's rights have not been fulfilled, so the violator needs to return the victim's rights against unauthorized taking.

To achieve justice, interested parties must have clear norms for balance in the concept of Corrective justice. Corrective justice is useful for justifying personal responsibility for someone who creates conditions

21 Matthew C. Solomon, Alex Janghorbani, and Michael Heckmann, "Kokesh and Its Impact on SEC Enforcement, a Year Later," Enforcement, Sec Developments, Sec Guidance, United States, 2018, <https://www.clearyenforcementwatch.com/2018/06/kokesh-impact-sec-enforcement-year-later/>.

22 Markus Y. Hage and Pangih Kusuma Ningrum, "Corrective Justice Andits Significance on The Private Law," *JILS (Journal of Indonesia Legal Studies)* 5, no. 2 (2020): 277–94. <https://doi.org/10.15294/jils.v7i1.46691>

23 Hage and Ningrum, "Corrective Justice Andits Significance on The Private Law."

24 Dewi Setyowati, "Memahami Konsep Restorative Justice sebagai Upaya Sistem Peradilan Pidana Menggapai Keadilan", *Pandecta research law journal*, Vol 15, No 1 (2020), hlm.121-141, Tersedia pada : <https://doi.org/10.15294/pandecta.v15i1.24689>, (diakses pada 08 November 2023).

of profit and loss from a normative perspective. Corrective justice embodies norms that regulate conditions for fair interactions. Advantages and disadvantages must be seen from what one must have and what one must not have from a normative point of view. According to Weinrib, normative profits occur when a person's asset ownership is greater than what it should be according to norms. Meanwhile, normative losses occur when a person's property ownership is smaller than what it should be according to norms.

Corrective justice prohibits someone from increasing wealth unnecessarily. If one's wealth increases, the wealth they obtain comes from something they should not have. On the other hand, some people lose the wealth they should have. Corrective justice tries to resolve this injustice by taking someone's wealth that should not be obtained, while people who experience unnecessary losses, with corrective justice, will obtain additional wealth from someone's wealth that should not belong to them. Taking someone's wealth obtained from something they should not have can be justified if there is a correlation between the parties to the dispute. This correlation can be justified if there is a unitary, bipolar, and expressive bonding relationship between the two parties. Without these three correlations, it is not justified to take someone's wealth to add to other assets.

The statement refers to the funds obtained from the Return of Illegal Profits (PKTS), which is then referred to as the Investor Loss Compensation Fund when discussing the idea of recovery in the context of corrective justice. In accordance with Article 10 (POJK 65/2020), funds obtained through the implementation of PKTS which were deemed unfit to be used in establishing an Investor Loss Compensation Fund were instead used to advance the capital markets sector. The development of the capital markets industry which includes outreach activities, training, and seminars in this field is explained in this article.

This article shows how the PKTS philosophy is incompatible with the concept of remedy. PKTS funds are not returned to less fortunate investors if it is impractical or does not comply with the requirements. In fact, the remedy aims to change the situation of investors who suffer losses due to loss of funds to investors who get their funds back. Investors' conditions will not improve in situations that may arise in accordance with Article 10 paragraph (3) POJK 65/2020. In fact, those who suffer losses due to financial crimes usually demand compensation.

Referring back to POJK 65/2020 Article 9 letter C concerning bankruptcy, it should be noted that bankruptcy is a procedure with significant consequences, especially for those who commit violations in the form of issuers. For example, suppose it is determined that an issuer has committed a violation of the law which results in losses for investors who have securities in the issuer. Investors who suffer losses as shareholders should not act as creditors who will obtain bankruptcy assets because PKTS is not paid, forcing them to be declared bankrupt. The draft of PKTS legal action needs to be reviewed considering its aim as corrective action.

Securities Institution Investor Protection Fund (SIPF) in Indonesia offers protection to investors in addition to disbursement. However, SIPF protection cannot compensate investors for insider trading and such fraudulent transactions. Regulations relating to the protection of proprietary funds are needed to provide legal guarantees to investors. Therefore, in order for the disgorgement to function well and protect investors, the harmonization of regulations carried out by the OJK must be transparent and efficient. In the future, POJK is expected to be able to offer appropriate solutions for fund liquidity and disbursement, so that investors who contribute money to the capital market are more confidence in the follow-up of their investments.

The legal protection for investors provided by PKTS in the capital markets sector has shown a significant increase. Although the Indonesian capital market is very late in implementing investor loss recovery through PKTS, the United States and other countries with common law systems, such as Singapore and India, have done so with disgorgement. Additionally, one of the few concepts that are well-developed and used by capital market regulators globally is disgorgement. OJK can offer protection by defending OJK initiatives in court and responding to petitions from other aggrieved parties. Cases can be filed by legal representatives proposed by the OJK or by the OJK itself. Even though it is stated in Article 30 of the OJK Law, Unlawful Acts (PMH) have never occurred. Apart from that, repressive legal protection must be regulated so that the legal certainty of filing lawsuits under the authority of the OJK becomes clearer and brighter. Article 29 of the OJK Law which regulates the establishment of authority to serve investor complaints actually contains repressive protection..

With the development of law in Indonesia which is considered quite good and the concept of disgorgement that has been implemented, legal protection efforts for investors who have lost their rights have become better.

Furthermore, it is whether the form of corrective justice implemented is currently sufficient. In practice, even though fund disgorgement has been implemented, there are still many problems that investors have lost their rights experience, apart from the general publicity problems described above.²⁵ It is also necessary to pay attention to the problem of investors losing their rights which can still occur so in practice it still needs to be deepened with more transformative regulations.

4. CONCLUSION

Currently, there is no easy way to claim compensation for losses suffered by investors in the capital market, because the majority of investors consider losses as an investment risk. Investors who are legally protected from the impact of losses resulting from violations of rules and regulations are not yet effective and optimal. The Financial Services Authority (OJK) issued regulations regarding the return of illegal profits (disgorgement) and compensation funds for investor losses in the capital markets sector (disgorgement funds) as an effort to increase investor protection and law enforcement in the capital markets. To prove its implementation in fund disgorgement practices, OJK issued POJK No. 65/POJK.04/2020 and SEOJK No. 17/SEOJK.04/2021. Disgorgement mechanism arrangements in Indonesia still need to be improved to prevent violators from enjoying illegal profits, recover investor losses, and take steps to prevent future violations. The Directorate for Determining Sanctions and Objection to the OJK Capital Market emphasized that an order to return profits obtained illegally or avoid losses does not constitute a lawsuit on the part of the investor. This concept is known as remedial action, which is in line with the principle of corrective justice. This approach focuses on restoring justice by considering that this principle confirms the existence of fundamental equality between all parties involved. In the principle of corrective justice, all parties have the same right to obtain restoration of their rights.

There is a need to provide further education to investors regarding the importance of legal protection against investment risks and how to claim losses due to violations of regulations, with reinforcement through guidance and seminars from the OJK. Second, it is necessary to continue to develop and strengthen regulations on disgorgement and loss compensation funds. Periodic evaluation of POJK No. 65/POJK.04/2020 and SEOJK No. 17/SEOJK.04/2021 can guarantee compliance with capital market developments. OJK must increase supervision and inspections to prevent violations and illegal profits, ensuring compliance with regulations. Furthermore, to strengthen the remedial approach and corrective justice principles, it is important that all parties involved have equal access to the restoration of rights and that the legal system works fairly and effectively in handling disputes. OJK collaboration with legal institutions and academics is needed to continue to improve regulations and legal practices related to investor protection in the capital market, in order to achieve more optimal protection.

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