

APPLICATION OF PRINCIPLE FULL DISCLOSURE AND LEGAL PROTECTION FOR INVESTOR DUE TO MARKET MANIPULATION OF SHAREPRICES BY ISSUERS IN CAPITAL MARKET

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Abstract

Capital market plays an essential role in economic activity, particularly in the allocation of public money which is can't be separated from the role of investor and issuer as well as the implementation of capital market, stipulated in the Capital Market Law No. 8 Year 1995. The transaction mechanism between the investor and the issuer themselves known as the Initial Public Offering (IPO) which furtherly understood as the process of selling securities from the issuers to investors. Hence, in the running of capital market itself there were found such a violation in the principle of full disclosure, also, the market manipulation that obviously undertook in the IPO that would obviously causes several losses for the investor rights. The research method was carried out using a judicial normative legal approach, in which, solely through the examination of library materials or secondary data. All the legal materials obtained would be analyzed using a logical/systematical interpretation referring to the relatable laws and regulations, also supported from the judge decision that strengthened the legal issue which further explaining the research's result and discussion. It is clear that the Issuer responsibility would be served under the supervision of the Financial Services Authority (OJK) that would undertook either the preventive or the repressive action toward every crimes formed by the issuer. So does in the market manipulation cases, there would be imposing sanctions contained in the Capital Market Law in the form of criminal and administrative sanctions which were given intentionally of having a deterrent effect and providing legal certainty upon the Capital Market Law.

Keyword: Capital Market; Principle of Full Disclosure; Legal Protection; Market Manipulation

Abstrak

Pasar modal memegang peranan penting dalam kegiatan perekonomian, khususnya dalam pengalokasian uang masyarakat yang tidak lepas dari peran investor dan emiten serta penyelenggaraan pasar modal, yang diatur dalam Undang-undang Pasar Modal No. 8 Tahun 1995. Mekanisme transaksi antara investor dan emiten sendiri dikenal dengan istilah Initial Public Offering (IPO) yang selanjutnya dipahami sebagai proses penjualan efek dari emiten kepada investor. Oleh karena itu, dalam penyelenggaraan pasar modal sendiri ditemukan adanya pelanggaran prinsip keterbukaan penuh, serta adanya manipulasi pasar yang nyata-nyata dilakukan pada saat IPO yang tentunya akan menimbulkan banyak kerugian bagi hak-hak investor. Metode penelitian dilakukan dengan pendekatan hukum normatif yuridis, yaitu hanya melalui pemeriksaan bahan pustaka atau data sekunder. Seluruh bahan hukum yang diperoleh akan dianalisis dengan penafsiran yang logis/sistematis dengan mengacu pada peraturan perundang-undangan yang berlaku, juga didukung dengan putusan hakim yang memperkuat permasalahan hukum yang selanjutnya menjelaskan hasil penelitian dan pembahasan. Jelas bahwa tanggung jawab Emiten akan berada di bawah pengawasan Otoritas Jasa Keuangan (OJK) yang akan melakukan tindakan preventif maupun represif terhadap setiap kejahatan yang dilakukan Emiten. Begitu pula dalam kasus manipulasi pasar, akan dikenakan sanksi yang

terdapat dalam Undang-Undang Pasar Modal berupa sanksi pidana dan sanksi administratif yang diberikan dengan sengaja untuk memberikan efek jera dan memberikan kepastian hukum terhadap Undang-undang Pasar Modal.

Kata Kunci: Pasar Modal; Prinsip Pengungkapan Penuh; Payung hukum; Manipulasi Pasar

A. Introduction

A big sum of money is necessary to carry out national economic growth, as the government can't fund the vast majority of national economic development needs only through taxation or income.¹ Thus, the capital market is one possible source of finance for economic growth.

The capital market is similar to the market in general meeting place for sellers and buyers; however, it varies from the conventional market in trading various instrument of long-term financing in the form of bonds and stocks. The capital market connects among investors, businesses and government entities trading instrument and long-term funding, which was stipulated in Article 1 Capital Market Law Number 8 of 1995:

“Capital market is an activity related to the public offering and securities trading, public companies related to the securities it issued, as well as institutions and professions related to securities.”

The capital market plays an essential role in economic activity, particularly in the allocation of public money (*dana yang terhimpun dari masyarakat*). The capital market increases the liquidity of those who have a surplus of cash particularly in society (savers or investors), while simultaneously transferring funds to those who need them (businesses) for investment. Investor (those with surplus capital) investment decisions are influenced by their expectations of a company's future performance, as they are willing to invest if they believe the project has a good chance of becoming lucrative.

The capital market can't be separated from diverse environmental forces, both economic and non-economic, along as it was part as an economic mechanism. The impact of the microeconomic environment, such as corporate performance, changes in company strategy, financial statement releases, or company dividends, always elicits a reaction from capital market players.² To fulfill this function, the capital market sector need rules that are effective and have an integrity in order to promote the expansion of the capital market.

The roles of investor and issuers in the capital market distinguished by the transaction mechanism between the investor and issuers known as the Initial Public Offering (IPO) which denoted the process of selling securities from the issuers to the investors. As this was the main

¹ Jusuf Anwar, *Pasar Modal Sebagai Sarana Pembiayaan dan Investasi*, (Bandung: Alumni, 2005), page 1.

² Widioatmadjo, *Pengetahuan Pasar Modal untuk Konteks*, (Jakarta: PT Elex Media Komputindo, 2015), page. 32

trading mechanism because by this trade, so that the issuer obtained the capital from the capital market.³ In order to guarantee the investor's rights, thereby, the author demands the application of principle full disclosure during the conducted of IPO. Once the relevance of the existence and position of the element of principle full disclosure in the capital market is recognized and surely implemented, it is not viable for the issuer to perform in such a crime upon this case.

An IPO that launched by a company must first meet the standards and procedures outlined in the Capital Market Law Number 8 of 1995, as issuer may only excused make a public offering of securities just in case they have submitted a registration statement to OJK, and that registration statement has been pronounced valid. This principle is quite important to apply when issuers tend to compile a prospectus, which denoted the written information that becomes the basis for potential investor on to decide whether to buy or not the securities issued by the issuers. So that, they are not harmed due to issuer's dishonesty in disclosing the condition of their companies.

As in the financial sector, investor want legal protection to safeguard them against the risk of self-inflicted loss. As they are someone who have money and want to put it into enterprises that produces pollution. Before acquiring stocks, investors will undertake research and observations on corporate profitability, prospects for firm issuers, and other studies. Investors might analyze from a variety of perspectives in order to increase revenue while minimizing risk. Investors and traders are not the same thing since investors invest for a long-term while traders invest for a short-term surplus.

Hence, in the implementation of the capital market itself as long as it was protected by the Capital Market Law Number 8 of 1995, there were found forms of crime and any act against the law that tend to disturb also hinder the implementation of the capital market itself, in this case, the market manipulation from manipulating the price in securities buying and selling activities. The market manipulation further regulated in the Article 90 – 92 Capital Market Law Number 8 of 1995.⁴ If seen through the regulations above, actions that are not allowed are transactions in two securities or more, direct or indirect, which can affect the dynamics of securities prices and can influence other parties to buy, sell or hold securities. Based on the explanation regarding the capital market law and market manipulation crimes above, through this research the authors try to find out the control of the prohibition of manipulation practices in the capital market that have an impact on investors and try to seek knowledge regarding the from of legal asylum for investors who suffered losses in market manipulation practices.⁵

³ Raeandhi Rahmadi, *Supremasi Hukum*, (Tangerang: Unis, Volume 16 Number 2, 2015), page 83.

⁴ Asril J, *Penyelesaian dan Pencegahan Manipulasi Pasar dalam Pelaksanaan Pasar Modal*, (Bandung: Jurnal MEA, 2019), page 274-228.

⁵ Septiana, H. K., "*Analisis Tanggung Jawab Hukum Terhadap Tindak Pidana Manipulasi Pasar dan Perlindungan Hukum bagi Investor Minoritas Studi Kasus: Posa*", (Mataram: Jurnal Ilmu Sosial dan Pendidikan, 2021), page 5.

As a legal fact from the case above, The PT Sarijaya Permana Sekuritas case, which featured the misappropriation of 8700 client money worth IDR 2.5 billion by the chairman and commissioners of PT Sarijaya Permana Sekuritas in their usage of 17 fake accounts, is one of the most well-known instances on the Indonesia Stock Exchange.⁶ There is no doubting that the present arrangement at PT Sarijaya Permana Sekuritas is a critical litmus test for Indonesia's insurance market, in other word, if the management is not successful or effective, the society's perceptions and beliefs will be harmed further the damage of insurance goods. Therefore, all applicable regulations must be implemented by the government. Based on the description above, it could be concluded that there was a gap between the provision that regulated market manipulation and the violation of principle full disclosure and the legal facts that also present what actually happening in the field.

Thus, this research is entitled as "Application of Principle Full Disclosure and Legal Protection for Investor due to Market Manipulation of Shareprices by Issuer in Capital Market" was made aimed to guarantee is the principle full disclosure whether truly implemented, so does the investor's rights are legally protected from the market manipulation in the capital market.

B. Method

This study employs a judicial normative legal research method, as well as a statutory and case approach. Data was gathered through library research, using primary legal materials such as laws and regulations, as well as secondary legal materials such as books and literature on principle full disclosure and market manipulation in the capital market. This research typology is a prescriptive typology, which means it provides a description and analysis of the problem in order to find solutions to the corresponding problems. The main issue in this investigation is application of full disclosure, also the legal protection for investor due to market manipulation of shareprices by issuers. The data analysis methods are used in this study by using a logical/ systematical interpretation, and also supported from the judge decision as registered in the research results and discussion. Then, the data is attached in the form of narrative text and possibly in the form of a description which then become the answer to the legal issue of the problem in writing this legal thesis. In this case, the author reviews and processes the legal materials obtained in order to analyze the issues concerning the parties' positions in the practice of aircraft financing and the legal efforts in Indonesia to provide legal certainty to the parties involved. The results of this research take the form of prescriptive analysis, which is a type of research that uses existing legal

⁶ Teti Purwanti, "CNBC Indonesia: *Sederet Kasus Pasar Modal RI Paling Panas, ada Asabri*", (CNBC, 2022), retrieved from <https://www.cnbcindonesia.com/market/20221202085203-17-393146/sederet-kasus-pasar-modal-ri-paling-panas-ada-asabri>, was accessed on March, 23 2022.

problems to propose a solution based on the findings of an analysis of the applicable legislation and legal theory.

C. Result and Discussion

1. Issuer Responsibility related to the Violation of the Principle Full Disclosure in the Capital Market

Issuer also known as a party conducting a public offering on to sell securities to the public based on the procedures regulated in the applicable laws and regulations. In the running of emiten duties, a company both private and state-owned enterprises, seeking capital from the stock exchange by issuing securities. In this term, as an issuer can indeed be private companies or state-owned companies, both public companies and private companies. Therefore, the issuer must have done the *Initial Public Offering* (IPO) as known as *go public* previously. However, there is a difference between a public company and an issuer.⁷

Still from the OJK website, a Public Company is a Limited Liability Company as referred to in Article 1 number 1 General Provisions of Law Number 40 of 2007 concerning Limited Liability Companies stipulated that:

“The shares are owned by at least 300 (three hundred) shareholders and have a paid-up capital of at least IDR 3,000,000,000 (three billion rupiah) or a number of shareholders and paid-up capital stipulated by a Government Regulation.”

Issuers are required to submit a Registration Statement to conduct a Public Offering and Public Companies are required to submit a Registration Statement as a Public Company. Upon the Registration Statement, the Financial Services Authority provides an effective statement indicating the completeness or fulfillment of all procedures and requirements for the Registration Statement that are required in the applicable laws and regulations.⁸

It becomes clear that each profession has its own duties but are systemically connected to each other. Each profession has its own role in preparing a prospectus that can be accounted for. The application of the principle of openness is carried out to maintain the potential of the capital market which is a source of financing for development activities and an alternative investment. In the UUPM, the regulation on the application of the principle of openness starts with the regulation that requires the fulfillment of material information to investors. The same provisions also need to be applied to companies that have met the requirements as a public company with the aim of

⁷ Otoritas Jasa Keuangan, “*Emiten dan Perusahaan Publik*”, (OJK, 2019), retrieved from <https://www.ojk.go.id/id/kanal/pasar-modal/Pages/Emiten-dan-Perusahaan-Publik.aspx>, was accessed on 3 April, 2023.

⁸ CIMB Niaga, *Apa Itu Emiten*”, (CIMB Niaga, 2022), retrieved from <https://www.cimbniaga.co.id/id/inspirasi/perencanaan/apa-itu-emiten-pengertian-fungsi-dan-tujuannya>, was accessed on 3 April, 2023.

protecting the interests of their shareholders. The company institutionally has a responsibility towards each information provided to the public since the permit to conduct a public offering.⁹

In capital market activities, one of the mechanisms so that information disclosure is guaranteed for investors is through the requirement to provide a prospectus. The parties involved in preparing the prospectus are capital market supporting professions. Capital market supporting professions are a group of other parties classified by law as parties having the function of participating in supporting the capital market. Issuers and parties involved in preparing the prospectus, must be responsible for conveying important information relating to the company's securities to investors. If there is a violation of the principle of openness in making an incorrect prospectus, then the responsibility lies with the parties who made the prospectus. This is regulated in article 80 paragraph (1) UUPM, which states that:

"Each related party is required to be responsible for losses resulting from the submission of such incorrect information."

As for the juridical responsibilities imposed on issuers and supporting professionals in making prospectuses that are distorted or incorrect so that they mislead and harm investors, it is regulated in Article 111 UUPM which states that:

"Every party who suffers losses as a result of violations of this law and or regulations its implementation can claim compensation, either individually or jointly with other parties who have similar claims, against the party or parties responsible for the violation."

Based on the description above, it becomes clear that the prospectus is not a promotional event aimed solely at influencing investors' interest in investing. Furthermore, the prospectus is an information window for investor candidates who are considering investing. This is based on Article 78 of the Capital Law Market regarding the consequences of liability for an incorrect prospectus, which states that:

- (1) Each prospectus is prohibited from containing untrue information about material facts or does not contain correct information about material facts needed so that the prospectus does not give a misleading picture.*
- (2) Each party is prohibited from stating, either directly or indirectly, that Bapepam has approved, permitted or authorized a security and/or has conducted research on various aspects of the advantages or disadvantages of a security.*
- (3) Provisions regarding the prospectus are further regulated by Bapepam.*

Regarding to the West Jakarta District Court with Lawsuit Number 1683/Pid.B/2016/PN.JKT.BRT, the victim of this case filed a criminal report due to one of the violation principle full disclosure, the criminal act of fraud that committed by Larasati (defendant). Based on the final court decision, the party who is criminally responsible for reimbursing investor funds has proven fraudulent elements, including the flow of investor funds to Larasati's individual

⁹ Sri Hartono, *Kapita Selekta Hukum Perusahaan*, (Semarang: Mandar Maju, 2000), page 55.

accounts. The lawsuit referred to the West Jakarta District Court Judge based on the Article 378 Jo. Article 55 paragraph (1) of the Criminal Code of Conduct renders a decision with a sentence of 2,5 years in prison.¹⁰

The object of the crime committed by Larasati in this case was bonds based on Article 1 Point 5 of the Capital Market Law is an effect conducted in capital market activities and carried out through brokerage of securities companies which can be proven by the involvement of management to the heads of the relevant securities companies and utilizing the account facilities of the said securities companies. Nonetheless, there are strong characteristics of criminal acts of capital market fraud, which are indicated by the number of victims investors in total massive, using camouflage of capital market products, and there is an element of involvement from the related securities companies (insiders).

Until now, in Indonesia, there is no institution that guarantees investor's investment funds, so that in the event that an investor suffers a loss, he must seek legal action to seek compensation from the party that made the investor lose or bear the loss himself. Several possible factors are used as a basis for judges in making decisions. The decision on the Larasati case uses the basis of Article 378 of the Criminal Code but viewed from the several legal aspects of the capital market, we are of the opinion that a verdict would be more appropriated if it used the basis of criminal acts of fraud in the capital market sector as stipulated in the Capital Market Law, that underlie this opinion are aspects of criminal acts and their sanctions, aspect of legal objects, and the presence of strong characteristics of criminal acts of capital market fraud.

2. The Legal Protection for the Investor, related to the Market Manipulation of Shareprices Conducted by Issuer in the Capital Market

The purpose of capital market law is to guarantee the implementation of an orderly activities, fair, and efficient capital market as well as protecting the activities of investors in public. Investor protection is a very important pillar, because if investors don't get adequate protection, then investors will be reluctant to carry out transactions on the exchange floor. Without a sufficient number of investors capital market activity will be sluggish and the capital market will not be developed functionally. Capital market law thus provides a very important portion of investors protection, in which can be done by two ways; through the mechanism of information transparency (principle full disclosure) and through rules that prevent market manipulation including a ban on insider trading.¹¹

¹⁰ Based on a copy of the decision that the author obtained through the Archives Section of the West Jakarta District Court Number 1683/Pid.B/2016/PN.JKT.BRT

¹¹ Budi Untung, *Hukum Bisnis Pasar Modal*, (Yogyakarta: Andi Yogyakarta, 2011), page 172.

Hereinafter OJK occupied the Bapepam-LK duties as the supervisor in the capital market, by its duties to uphold the protection of consumer in financial services in Indonesia. Consumer protection in the capital market will be referred to as capital market investor protection, therefore, the aspect of protecting capital market investors falls under the authority of the OJK. Regarding consumer protection, it is stated in Article 28 – 30 of the OJK Law, which are provisions that explicitly regulate consumer and public protection for the financial services industry. The forms of legal protection provided by the OJK for consumers are preventive and repressive in nature, bearing in mind that the OJK's task is to carry out the regulatory and supervisory functions of the financial services sector.¹² Article 28 of the OJK Law provides legal protection in the nature of preventing losses to consumers and the public which is carried out by the OJK, namely:

- a. Providing information and education to the public on the characteristics of the financial services sector, its services and products;*
- b. Asking the Financial Services Institutions to stop its activities if the activity has the potential to harm the community; and*
- c. Other actions deemed necessary in accordance with the provisions of laws and regulations in the financial services sector.*

The Capital Market is currently in high demand across all demographics, especially millennials. The phrase "high risk, high return" refers to stock market investment. The government and businesses can sense the existence of the capital market. This money can be utilized for long-term initiatives. Companies seek funds through the capital market by selling ownership rights to the general public. Along with the noisier flow of funds in the capital market, it also has a negative side effect in the form of the rise of different crimes committed by the users themselves. Also, the intricacy and difficulty of proving criminality in the capital market in court is a loophole exploited by the market's sensitivity to facts based on information in the capital market.

Crime in the capital market is becoming more raucous, as seen by the more sophisticated strategies employed to defraud the market. Article No. 8 of the Capital Market Act of 1995 (UUPM) distinguishes three categories of capital market fraud: market manipulation, fraud, and insider trading, in addition to these three sorts of crimes, there are others in the capital market sector, such as unregistered brokers, unregistered securities, unfair trading, churning, margin accounts, and price manipulation.¹³

Pseudo transactions are market manipulations as defined by the Capital Market Law. The quasi-transaction established in the PT DSFI case was that there was no change in ownership in the securities transaction owned by PT DSFI, as required by article 91 of the Capital Market Law. According to Article 92 of the Capital Market Law which stipulates that:

¹² Hilmiah Hilda, "*Perlindungan Hukum Bagi Investor Dalam Pasar Modal*", (UIN Jakarta Press, Volume 1, 2014), page 350.

¹³ Asril, J, "*Penyelesaian dan Pencegahan Manipulasi Pasar dalam Pelaksanaan Pasar Modal*", (Bandung: UIN Bandung, MEA Journal 3.1, 2019), page 274.

"Each party is prohibited from taking action, either directly or indirectly, with the intention of creating false or misleading descriptions regarding trading activities, market conditions, or Securities prices on the Stock Exchange."

This provision forbids a series of securities transactions by one or more parties conspiring to create an artificial securities price on the Stock Exchange, also no ownership-changing after deal with the process of public offering. Thus, it was not based on the strength of the actual request to sell or buy securities with the intention of benefiting oneself or another party.

Based on description above, the illegal activity was the sale and purchase of shares that didn't result in a change in ownership towards what actually happening in the PT DSFI case. In this case, the stock exchange is evidenced by a 100% increase in shares less than three months. The original purpose of the actor is to gain from the gap between the growing share price and the share price before it goes up. Finally, in order to prevent inflicting injury to oneself, the market price is raised in order to benefit.¹⁴

Legal protection that protects all parties participating in the capital market operation against fraud are required for the capital market to progress. Legal protection attempts to establish pleasant and safe circumstances for persons and legal organization, as well as legal clarity. Moreover, OJK always seeks to avoid parties with adequate competence and power who have the potential to commit manipulation crimes in order to convince the public that the disinformation is true.

Not apart from that, OJK by its duties as stipulated in Article 50 paragraph (1) juncto paragraph (2) OJK Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector, that:

"Financial Services Business Actors required to have an internal control system related to consumer protection, where the internal control at least includes the compliance of financial services business actors towards the implementation of the principle consumer protection."

Also, in Article 53 OJK Regulation Number 1/POJK.07/2013 concerning the Consumer Protection in the Financial Services Sector stipulated that:

"Financial Services Business Actors and/or parties who violate the provisions in this Financial Services Authority Regulation are subject to administrative sanctions, including:

- a. Written Warning;*
- b. Fines, namely the obligation to pay a certain amount of money;*
- c. Limitation of business activity;*
- d. Suspension of business, and;*
- e. Revocation of Business Activity Permit."*

OJK once found violation of laws and regulations in the Capital Market, taking into account the role or involvement of parties in the occurrence of those violations and in order to provide a

¹⁴ Budi Firmana, *"Perlindungan Hukum Terhadap Investor Akibat Praktik Manipulasi Transaksi di Pasar Modal"*, (Jakarta: UIN Jakarta, 2020), page 32.

deterrent effect for financial services industry actors. OJK establishes sanctions against parties proven to have committed violations, both against company as legal entities and to individual officials involved in them. Per the Magnus case, OJK imposed administrative sanctions in the form of revocation of business license as a broker-dealer and underwriter because Magnus lent accounts of PT Bank Mandiri TBK (1040002011919) and PT Bank Central Asia TBK (4583009321) on behalf of Magnus illegal transaction to Larasati, where the loan was not within the scope of activity in the field of securities business.¹⁵

Nowadays, by emergence of many cases upon the violation of investor protection in the financial services sector. OJK seeks to provide various efforts, both in terms of policy, supervision and law enforcement. On to close, the government should realize that the law enforcement that must not be separated from the framework of justice, on to prevent the counter-productive, which in turn will backfire on the development of the capital market in Indonesia. Also, the OJK as the provider of consumer interest of protection should enhance the literature education and guidance detailly about capital market sector.

D. Conclusion

The authors' legal facts presented in this journal are based on normative research findings combined with the author's analysis as a form of in-depth understanding of capital market. According to the issuer responsibility, it would be under the supervision of Financial Services Authority (OJK), as they have two characteristics, namely preventive and repressive. OJK must carry out the task of providing information and education to public related to the financial services sector, its services, characteristics, and products. Meanwhile, in the repressive effort, whether a dispute between a consumer and a financial services industry company, the OJK has the authority to defend the law in the interest of the consumer, namely in this case the investor, the securities company and other parties causing the investor's losses.

For the investor's legal protection, in the cases of market manipulation of shareprices. It was quite corelated in the application of sanctions contained in the UUPM in the form of criminal and administrative sanctions. All forms of crime that occur in capital market need to be regulated detailly in a special regulation, so that, there will be no multi-interpretation regarding the category of capital market crime itself. Along with the strengthening of legal enforcement due to several losses for investor that fall into the criminal category, it should be accompanied by the implementation of socialization related to the capital market to the whole public in order to prevent and reduce the investor losses, the violation, also the crimes in the capital market.

¹⁵ Vicky Prayitno, "Studi Kasus Tindak Pidana Pasar Modal pada PT Reliance Securities, TBK dan PT Magnus Capital", (Dharmasiswa: Jurnal Program Magister Hukum FHUI, Vol 2, Article 9, 2022), page 666-667.

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Legal Instruments:

- Article 1 Capital Market Law Number 8 of 1995
- Article 78 Capital Market Law Number 8 of 1995
- Article 80 Capital Market Law Number 8 of 1995
- Article 90 Capital Market Law Number 8 of 1995
- Article 92 Capital Market Law Number 8 of 1995
- Article 111 Capital Market Law Number 8 of 1995
- Article 28 – 30 OJK Law Number 21 of 2011
- Article 1 Limited Liability Companies Law Number 40 of 2007
- Article 50 OJK Regulation Number 1/POJK.07/2013
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