



## Potential Legal Conflict For The Implementation Of Financial Services Authority Regulation Number 65 /POJK.04/2020

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### **Abstract**

*Financial Services Authority Regulation Number 65 / POJK .04 / 2020 was promulgated to increase effectiveness and justice in law enforcement in the capital market sector. The form of legal protection regulated is the Return of Unauthorized Profits and the Investor Loss Compensation Fund (Disgorgement Fund). The research objective in this paper is to find potential legal conflicts that arise in the implementation of the Financial Services Authority Regulation Number 65 / POJK .04 / 2020. The research method, this type of research is normative juridical research, which uses secondary data. This study uses a statutory and conceptual approach. The conclusion is that there are two potential legal conflicts. First, there is a potential conflict between the Financial Services Authority Regulation Number 65 / POJK .04 / 2020 and Law Number 37 of 2004. Second, the Potential Conflict between the Financial Services Authority Regulation Number 65 / POJK .04/2020 with Law Number 37 the Year 2004 and Law Number 40 the Year 2007, which will obstruct legal objectives.*

## **1. Introduction**

At present, there are many cases relating to violations committed by capital market players. Capital market players get profits illegally from their activities in the capital market. The capital market actors' violations will directly harm investors and indirectly public trust in capital market institutions. Based on this situation, at the end of 2020, Financial Services Authority (FSA) issued POJK Number 65 /POJK.04/2020 concerning Returns of Illegal Profits and Compensation Funds for Investors' Losses in the Capital Market Sector. This regulation's primary purpose is to increase effectiveness and fairness in law enforcement in the capital market sector. This regulation will take effect six months from the date of enactment. This regulation will be valid for six months from December 29, 2020. It is essential to study the potential legal conflicts from a juridical perspective if this FSA Regulation is enforced. Studies on potential conflicts in implementation are adequate to do so that implementing these regulations can be achieved. The objective of the law is to provide legal certainty, as said by Hans Kelsen. The legal issues raised are potential conflicts in implementing the Financial Services Authority Regulation Number 65 / POJK .04 / 2020.

Based on the legal facts above, the legal issues taken are potential legal conflicts in

implementing the Financial Services Authority Regulation Number 65 / POJK .04 / 2020. The research objective in this paper is to find potential conflicts that appear in the implementation of the Financial Services Authority Regulation Number 65 / POJK .04 / 2020.

This paper's originality can be proven that the Financial Services Authority Regulation Number 65 / POJK .04 / 2020, passed on December 29, 2020, means that there is no writing-related to potential conflicts in the implementation of these regulations in the form of scientific writing. Some opinions examine possible legal issues that may arise in implementing POJK Number 65 / POJK .04 / 2020 but in the form of the views written in popular newspapers. James Purba conveyed this opinion<sup>1</sup>. This article reveals the legal consequences of implementing FSA Regulation Number 65 / POJK .04 / 2020. Previous research that has become the State of this research's art, among others, is the result of research written in a general juridical perspective, among others, by Félix E Mezzanotte<sup>2</sup> who writes on investor protection. Yannis Manuelides wrote another article related to the capital market in his article entitled Using the local law advantage in today's eurozone with some references to the Republic of Arcadia and the Mamatas judgment<sup>3</sup>. You wrote the research results with the capital market in Indonesia Makes with the title "The Legal Practice Of Corporate Take over and Mandatory Tender Offer (MTO) in Indonesian Capital Market"<sup>4</sup>. This study's results discuss legal issues in Indonesia's capital market, another article in which Latusti Abubakar and Tri Handayani wrote an analysis of legal protection for investors in the Capital Market, Investors' legal protection the Transaction Settlement Guarantee Function in the Capital Market<sup>5</sup>. This study analyzes legal protection for investors in the capital market from the guarantee function perspective. There is also research on whether the COVID-19 pandemic can be categorized as a Force Majeure condition<sup>6</sup>. Previous research is presented with two interests. The first interest is as a basis for this research. The second interest is to show the novelty of this article. As the basis for this research, it can be interpreted that this previous research resulted in findings on the importance of legal protection for investors through regulations associated with each function in the capital market. This research is the basis of this research, which also focuses on protecting investors in implementing regulations. The second interest of providing previous research shows the novelty of this article. Previous research that has been done is presented, showing the originality of the writing in this article. That

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<sup>1</sup> James Purba, "Beleid Kompensasi Kerugian Tinggalkan Celah," *Kompas*, January 14, 2021.

<sup>2</sup> Félix E Mezzanotte, "An Examination into the Investor Protection Properties of Robo-Advisory Services in Switzerland," *Capital Markets Law Journal* 15, no. 4 (December 3, 2020), <https://doi.org/10.1093/cmlj/kmaa024>.

<sup>3</sup> Yannis Manuelides, "Using the Local Law Advantage in Today's Eurozone (with Some References to the Republic of Arcadia and the Mamatas Judgment)," *Capital Markets Law Journal* 14, no. 4 (October 1, 2019), <https://doi.org/10.1093/cmlj/kmz021>.

<sup>4</sup> Yozua Makes, "The Legal Practice of Corporate Takeover and Mandatory Tender Offer (MTO) in the Indonesian Capital Market," *Indonesian Capital Market Review* 6, no. 2 (August 13, 2014), <https://doi.org/10.21002/icmr.v6i2.3589>.

<sup>5</sup> A Latusti and H Tri, "Perlindungan Hukum Investor Melalui Fungsi Penjaminan Penyelesaian Transaksi Di Pasar Modal," *Recht Idee* 14, no. 1 (2019).

<sup>6</sup> Ratna Januarita and Yeti Sumiyati, "Legal Risk Management: Can the COVID-19 Pandemic Be Included as a Force Majeure Clause in a Contract?," *International Journal of Law and Management* ahead-of-print, no. ahead-of-print (November 13, 2020), <https://doi.org/10.1108/IJLMA-05-2020-0140>.

research related to potential forms of conflict that arise in implementing the Financial Services Authority Regulation Number 65 / POJK .04 / 2020 in achieving legal objectives has never been done before, none of which is directly related to the Financial Services Authority Regulation 65 / POJK .04 / 2020.

## 2. Research Method

This research is normative juridical research. Juridical research is research that focuses on laws and regulations. The type of data used is secondary data. This study uses secondary data that consisting of primary and secondary legal materials. The primary legal materials used include Law No. 40 of 2007 concerning Limited Company, Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, Law No. 8 of 1995 concerning Capital Markets, Law No. 21 of 2011 Concerning and Regulation Of Financial Services Authority Number 65 / POJK .04 / 2020. Secondary legal materials include various books, national and international journals, data sources from the internet, and dictionaries. The data collection technique is done by using literature. This study uses a statutory and conceptual approach. The data analysis technique used is qualitative data analysis techniques. Drawing conclusions is used with deductive inference.

## 3. Result and Discussions

### 3.1. Law and Legal Functions in Economic Activities.

Law, according to HLA Hart<sup>7</sup>, as a positivism adherent, separates primary and secondary regulations<sup>8</sup>. Primary regulations regulate behavior with consequences on weak enforcement of these regulations and secondary regulations<sup>9</sup>. That deals with procedural methods to enforce these regulations.

Legal norms are social norms distinguished from other social norms, as Xiaoqun Xu said. That there must be a distinction between the terms "law," "customs," and "social norm." The term law is anything that is issued or applied to a judge<sup>10</sup>. For example, there is civil code and code commerce. The difference between legal norms and other social norms is that in legal standards, more concrete sanctions are given than those contained in norms other than legal norms. Sanctions in legal norms are more substantial in guaranteeing that acts deemed to violate the rules and disturb public order are not carried out. There is a difference in terms of the sanction mechanism and the Party issuing the norm between the terms law and custom. Based on its function, the law can be divided into two views. The first is the view that the law in its operation can follow the full development of society. Both laws were made to be a guide and able to manipulate society. The second view is that law is made to change society in a situation that is desired by law.

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<sup>7</sup> HLA Hart, *The Concept Of Law*, 2nd ed. (United Kingdom: Oxford University, 2012).

<sup>8</sup> S. Philip, "Jeremy Bentham and HLA Hartz, Utilitarian Tradional Jurisprudence, ," *Jurisprudence*, 2010, 147-67.

<sup>9</sup> H. David and W.S, Sonna, "HLA Hart"s Secondary Rules: What Do "officials' Really Think?," *International Journal of Law in Contexts* 14, no. 1 (2018): 62-86.

<sup>10</sup> X Xu, "Law Custom and Social Norm : Civil Adjudications in Qing and Republican China," *Law and History Review* 36, no. 1 (2018).

The importance of law in economic activities, especially activities in the capital market, can be seen from the history of developing the capital market in Indonesia and the development of international capital markets in general, as stated by David Harrison<sup>11</sup>. David said that law is used to resolve conflict conflicts that occur in economic activity. The law is used to protect the community. There are several different approaches and different principles of thinking in protecting these communitie Research conducted by Prasanna Tantri shows the importance of law in economic activity<sup>12</sup>.

Economic activities are human activities in fulfilling their daily needs using a limited number of satisfying tools to get maximum satisfaction. Economic activities are often referred to as business activities. The examples of economic activities are Activities related to producing activities, selling activities, and purchasing goods and services. These activities are used to make a profit. The objective of obtaining profit from a legal aspect is indeed an element of the Company. The Company uses the profit, which is the goal of economic activity in maintaining the Company's sustainability. Based on this, financial or business activities are differentiated from social activities<sup>13</sup>. This view is based on Adam Smith's view, who said that the division of labor has existed in modern society. Humans cannot do and fulfill their own needs and a division of labor. Everyone must exchange production goods with production goods owned by other parties. As a result, some people can raise capital, and then that person can expand their business. Some people can only become workers for those who own the Company. On that basis, the formation of social class in society. It can be understood that the person who owns the capital and the business becomes very useful for others. The consequence is that seeking profit for investors is expected because the goal is to benefit many people. If people have capital and business, then many workers can be supported by the interaction of those who have the capital. The purpose of seeking profit is used for the business and benefits many people. If this is not the case, the State's duty to regulate the purpose of seeking profit can be returned according to its nature. Adam Smith, in essence, said the need for State intervention in economic activity. Law becomes a State instrument to be able to realize legal protection for the community. Discussion of legal and financial relations is the essence of law and development<sup>14</sup>.

From the macro aspect, the State carrying out its economic activities in achieving the goals of public welfare requires laws to regulate economic actors' behavior in carrying out financial actions. The need for economic activity regulation becomes urgent, especially in imbalance, stagnant situations, and unstable political conditions<sup>15</sup>. A. Posner and E. Glen Weyl<sup>16</sup> said That private property is inherently monopolistic and would all be better if private ownership were converted into a public auction for public benefits. This opinion shows that the State's interference in arrangements that will

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<sup>11</sup> David and Sonna, "HLA Hart's Secondary Rules: What Do "officials' Really Think?,"

<sup>12</sup> P Tantri, "Creditors' Rights and Strategic Default: Evidence from India," *The Journal of Law and Economics* 63, no. 3 (2020).

<sup>13</sup> A Agus, *Etika Bisnis Bagi Pelaku Bisnis* (Jakarta: PT Jakarta Grafindo Perkasa, 2012).

<sup>14</sup> YS Lee, "General Theory of Law and Development," *Cornell International Law Journal* 50, no. 3 (2017).

<sup>15</sup> B Nina, "Beyond The Shareholder Coprporation,: Alternatives Business Fprms and Contestation Of Markets," *Journal Of Law and Society* 14, no. 1 (2018).

<sup>16</sup> E, A Posner and Glen. E. Weyl., *Radical Markets, Uprooting Capitalism and Democracy for A Just Society* (New Jersey: Princetoon University Press, 2018).

regulate a specific economic position aims to benefit the public. Furthermore, Eric A. Posner also stated<sup>17</sup> What if there is a situation where regulations cannot be enforced at the level of human rights? Implementation will fail to resolve human rights violations. In Intellectual Property Rights, as one of the areas that drive the economy, Heather A. Haveman<sup>18</sup> "Economists, sociologists, and legal scholars agree that intellectual-property law is fundamental to markets because legal control over copying motivates creative productions. In essence, it is said that life activities, especially economic activities, require legal intervention, which can serve as a guide for economic actors to ensure that economic activities take place in the interests of many people.

Based on the concept of the need for law in economic activities above, the capital market is a non-bank financial institution (Financial institutions are divided into financial institutions in the form of banks and not in the form of banks), which requires legal protection in their activities. The public as an investor who purchases securities in the Capital Market is one of the parties that has a significant role in the sustainability of Capital Market operations. The community's critical role as investors in these economic activities demands a legal position in protecting capital market players. Currently, economic activity does not depend only on banking institutions<sup>19</sup>.

The concept of legal protection itself is based on The definition of Agreement<sup>20</sup> The Agreement is the source of a legal relationship. The legal relationship in question is an alliance. An alliance can be born out of an agreement or taken as an explanation concerning the law. A contract is a legal relationship between two people that causes legal consequences. A legal relationship is reflected in the rights and obligations given by law. If the Agreement is the source of legal relations or alliances, it reflects each Party's rights and responsibilities. The order created by the law only becomes a reality when the subject of law is given rights and burdened with obligations. Every legal relationship created by law always has two aspects whose content is one of the rights party being on the other side of the obligation. Rights and obligations are not a set of rules or rules, but rather a balance of power in the form of individual rights as one reflected in the obligations to the other. Rights are interests protected by law, while interests are individual or group claims expected to be fulfilled. In its essence, an Interest contains the power guaranteed and protected by law in carrying it out. It means that the law must provide protection and protection for the subject matter of law to exercise its right, which is in the interest of the individual or group expected to be fulfilled. The law is expected to function to protect the exercise of these rights and obligations. Hans Kelsen argues that the definition of a legal right is an interest protected by law. Alternatively, a legal will is doubtful that there will be no legal right before law exists. As long as the rule of law has not guaranteed a right, it has not yet become a legal right, it means that the law precedes, or at the same time, the right to Legal Protection is a guarantee of the exercise of rights obligations<sup>21</sup>. The State's legal protection arrangements will provide benefits, namely protecting against fraud,

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<sup>17</sup> Posner. E.A, *The Twilight of Human Right Law* (United Kingdom: Oxford University, 2014).

<sup>18</sup> Heather A.H, "Cultural Spillovers: Copyright, Conceptions of Authors, and Commercial Practices," *Law & Society Review* 52, no. 1 (2020): 7-undefined.

<sup>19</sup> Varsha Mooneeram-Chadee, "The Regulation of Islamic Banking in Mauritius," *ISRA International Journal of Islamic Finance* 12, no. 2 (July 23, 2020), <https://doi.org/10.1108/IJIF-09-2019-0139>.

<sup>20</sup> S Mertokusumo, *Mengenal Hukum* (Yogyakarta: Penerbit Cahaya ATma , 2019).

<sup>21</sup> Manan. A., *Aspek-Aspek Pengubah Hukum* (Jakarta: Penerbit Kencana , 2013).

discrimination, and abuse to the public.

Legal protection for the community as investors who entrust their funds to capital market institutions guarantees community rights fulfillment.

### **3.2. Financial Services Authority Regulation Number 65 / POJK .04 / 2020 in Legal Protection Perspective**

The capital market is one of the financial institutions under the regulation and supervision of the Financial Services Authority based on Law Number 21 of 2011 concerning the Financial Services Authority. Concerning the objectives, duties, and authorities of The Financial Services Authority, The Financial Services Authority issued POJK 65 /POJK.04/2020 concerning Returns of Illegal Profits and Compensation Funds for Investor Losses in the Capital Market Sector. The POJK is based on Law No. 21 of 2011 concerning Financial Services Authority and Law No. 8 of 1995 concerning the Capital Market. The POJK was made to increase effectiveness and fairness in law enforcement in the capital market sector. The objective of the law to achieve justice, in this case, can be interpreted as a legal objective to be able to guarantee the fulfillment of investors' rights from fraud committed by the Party who committed the violation. This legal objective is following the meaning of legal protection given by Sudikno Mertokusumo. According to Hans Kelsen and positivism adherents who prioritize legal purposes to achieve legal certainty, this is also following the law definition.

The Financial Services Authority is an institution based on regulating and supervising capital market institutions to issue POJK 65 /POJK.04/2020 on Unauthorized Returns of Profits and Compensation Funds for Investor Losses in the Capital Market Sector. POJK consists of five Chapters and 29 articles. There are several essential aspects in this regulation as follows:

- a. The Financial Services Authority has the duty and authority to regulate and supervise the financial services sector, including the Capital Market. (It is in the "remember" and "weigh" section and the "general explanation" section of POJK 65 /POJK.04/2020)
- b. Based on the duties and authorities in the field of supervision, The Financial Services Authority has the authority to issue a written order to uphold fairness and effectiveness of capital market activities (It is in the "remember" and "consider" section, and the "general explanation" section of POJK 65 /POJK.04 / 2020.
- c. In number two, the Financial Services Authority's authority is to impose on parties who commit and or cause violations of the Capital Market Law to carry out illegal returns on profits.
- d. The mechanism for determining the return of benefits is illegal. (Chapter II)
- e. There is an obligation on the Party that is subject to unauthorized profit returns to make an illegal profit return payment to The Financial Services Authority to the fund account provider. The Financial Services Authority appoints the provider of the fund account. (articles 4, 5, 6,)
- f. The Financial Services Authority has the authority to issue orders to the Depository and Settlement institutions and financial services institutions to block securities accounts, also block other accounts, and transfer assets from parties subject to unauthorized returns (Article 8)
- g. Repayment of illegal profits obtained can use fixed assets and disposal of assets

- through auction (Article 7)
- h. Legal remedies that The Financial Services Authority can take if the Party that is obliged to return the illegitimate profit does not pay the entire amount of the unlawful profit returns (Article 9)
  - i. Establishment of investor loss compensation fund (chapter IV)
  - j. The appointment, requirements, rights, obligations, and authority of the administrator are the authority of the Financial Services Authority (Articles 12,13,14,15, 16)
  - k. Mechanisms for submitting claims, paying claims, and distributing compensation for losses to investors (Articles 20, 21,22,23, 24)
  - l. The mechanism for closing accounts and the investor's loss compensation fund website (Articles 26, 27)
  - m. Mechanism of dismissal of administrators and dissolution of investors' compensation funds (Articles 28, 29)

In brief, it can be reviewed that there are two arrangements to realize fair financial activities and protect the community's interests.

1. The arrangement regarding Refund of Unauthorized Profits
2. The arrangement regarding Investor Loss Compensation Fund arrangement

This regulation will increase investors' protection and confidence in investing in the capital market. Legal protection, which can be interpreted as ensuring the fulfillment of interests, is the right that can be demanded to be fulfilled following the concept of legal protection from Sudikno Mertokusumo. The Financial Services Authority carries out the State's role as an institution given the task of supervising Capital Market institutions. The legal protection concept embodied in the Financial Services Authority regulation can be seen from two aspects. First, The Financial Services Authority's authority can give written orders to block and book-transfer and disbursement of assets to the Party who committed the violation. The written order is intended so that the Party who commits the violation cannot enjoy the benefits obtained illegally. From the legal objectives perspective, the law guarantees that illegal profits are not rights that must be certified by law. The objective of the law can be realized in this situation. From the perspective of the legal protection concept, there is a guarantee that the Party obtaining illegal profits will not enjoy the results of the illicit gains. The idea of legal protection can be seen clearly in this situation. Second, the Arrangement of the Investor's Loss Compensation Fund (Disgorgement Fund) will be used to return to the injured investor. The existence of this investor's loss compensation fund will guarantee the fulfillment of the injured investor's rights. From the perspective of legal objectives, the law guarantees the rights of investors can be recovered. The purpose of the law to provide legal certainty can be realized in this situation. From the legal protection concept perspective, there is a guarantee that investors' interests whose rights must be protected by law can be realized. The concept of legal protection can be seen clearly in this situation.

The Financial Services Authority Regulation Number 65 / POJK .04 / 2020 embodies the legal concept as stated by Harts<sup>22</sup>. that the law consists of primary regulations that embody the substance of the provisions of The Financial Services Authority Regulations to regulate the behavior of capital market players and secondary

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<sup>22</sup> Hart, *The Concept Of Law*.

regulations<sup>23</sup> which are regulations that deal with procedural methods to enforce these regulations. Secondary rules in The Financial Services Authority Regulation are law enforcement procedural methods for parties who receive unauthorized profits and guarantees of collecting funds for investors who have rights.

### **3.3. Potential conflicts that arise in the implementation of the Financial Services Authority Regulation Number 65 / POJK .04 / 2020**

As previously described, the purpose of this regulation is to protect the interests of the community. Law is the embodiment of this legal protection. Based on the concept of legal protection, there must be an implementation mechanism that guarantees investor rights fulfillment. From the analysis results, it can be seen that there is a potential legal conflict that will occur in the implementation of the Financial Services Authority Regulation Number 65 / POJK .04 / 2020. Potential legal disputes will be explained below :

#### **3.3.1 Potential Conflict Between Financial Services Authority Regulation Number 65 / POJK .04 / 2020 and Law Number 37 the Year 2004 Concerning Bankruptcy and Postponement of Obligation to Pay Debt**

Financial Services Authority Regulation Number 65 / POJK .04 / 2020 Article 5 states that:

- (1) A party subject to Return of Unauthorized Profits is obliged to pay the Return of Unauthorized Profits to the Financial Services Authority no later than 30 (thirty) days after receipt of the Determination of the Return of Unauthorized Profits.
- (2) The Financial Services Authority does not receive the refund of the Unauthorized Profits paid as referred to in paragraph (1). It cannot be used for the Financial Services Authority's operational activities.
- (3) Refund of Unauthorized Profits is made through a fund account provided by the Fund Account Provider.
- (4) If the Party subject to the Return of Unauthorized Profits does not pay within the period referred to in paragraph (1), the Financial Services Authority will issue the first warning letter in the form of a Refund of Unauthorized Profits at the latest 30 (thirty) days after the expiration of the period. The payment term for Refund of Unauthorized Profits.
- (5) Suppose a Party subject to Return of Unauthorized Profits does not pay within the period as referred to in paragraph (4). In that case, the Financial Services Authority will issue a second warning letter in the form of a Refund of Unauthorized Profits payment order no later than 30 (thirty) days after the end of the letter's first rebuke.
- (6) Further provisions regarding the Return of Unauthorized Profits' payment procedure as referred to in paragraph (1) and paragraph (3) shall be stipulated by the Financial Services Authority.

Article 5 provides the offending Party to pay to The Financial Services Authority

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<sup>23</sup> David and Sonna, "HLA Hart's Secondary Rules: What Do "officials' Really Think?."



through a fund account provider's fund account. The payment is made within 30 days from the receipt of the Determination from The Financial Services Authority. The Financial Services Authority provides an extension of 60 days after the warning I. The total period of payment for the offender to the fund account is 90 days. Furthermore, the provisions outlined in Article 7 are regulated. Article 7, in essence, states that the offending Party can pay the obligation to return unauthorized profits through a fund account and can also make payments using fixed assets. Fixed assets can be in the form of land, land, and buildings, and motorized vehicles, and the delivery of fixed assets as referred to in the letter a must be accompanied by a legal ownership document and a substitution power of attorney to the Financial Services Authority for the disposal of the assets. The release of these assets can be done through an auction mechanism.

Furthermore, article 9 regulates the situation of the offending Party not fulfilling its obligations. has the authority to take three actions, namely:

- a) further processing to the investigation stage following the provisions of the Law on Financial Services Authority;
- b) file a civil suit following the applicable requirements; and
- c) apply for a bankruptcy statement following the statutory provisions concerning bankruptcy and suspension of debt payment obligations.

The first potential legal conflict is between article 9 of the Financial Services Authority Regulation Number 65 / POJK .04 / 2020 and Article 189 of Law No. 37 of 2004. The provisions of Article 9 of the Financial Services Authority Regulation Number 65 / POJK .04 / 2020 state that if the party violators do not carry out the obligation to return unauthorized profits, The Financial Services Authority can file a bankruptcy application. The provisions of article 9 will undoubtedly create a legal conflict with the provisions in Law Number 37 of 2004 about Bankruptcy and Postponement of Obligation to Pay Debt. Bankruptcy is one of the legal measures to provide guarantees for repayment of debtor's obligations. A debtor who can be filed for bankruptcy is a debtor who has more than one creditor. The legal consequence is that if the debtor is in default, all assets of the debtor will be managed by the Curator, following Article 189 of Law Number 37 the Year 2004. At the settlement stage, the Curator will make a list of the distribution of debtors' assets. According to the article's order, the list will be requested for the Supervisory Judge's approval and distributed to creditors. The provision implies that if the offender does not fulfill the payment obligations as determined by The Financial Services Authority, then The Financial Services Authority's efforts to file for the offender's innocence do not guarantee investor rights acquisition. This description can be assessed as a potential legal conflict between Law Number 37 of 2004 and Financial Services Authority Regulation Number 65 / POJK .04 / 2020. If not anticipated, this legal conflict will hamper the law's purpose to provide justice and legal certainty, according to Harts' opinion. The purpose of law for justice and providing legal protection is hampered.

### **3.3.2.Potential Conflict Between Financial Services Authority Regulation Number 65 / POJK .04 / 2020 and Law Number 37 the Year 2004 and Law Number 40 the Year 2007.**

The second potential legal conflict is between article 9 of the Financial Services Authority Regulation Number 65 / POJK .04 / 2020, Law Number 37 of 2004, with

Article 150 of Law Number 40 of 2007 concerning Limited Liability Companies. Article 150 paragraph 4 of the PT Law states that:

Suppose the remaining assets resulting from liquidation have been distributed to shareholders, and there are creditors' claims as referred to in paragraph (2). In that case, the district court orders the liquidator to withdraw the remaining assets resulting from the liquidation that has been distributed to shareholders.

If linked to article 150 of the Limited Liability Company Law, Article 9 of the Financial Services Authority Regulation Number 65 / POJK .04 / 2020, and Law No. 37 Of 2004 Law. If compensation has been paid to shareholders as investors, the Curator can ask for payment back. Suppose there is still a claim to fulfill the debtor's debt obligations that have not been paid. It means that the Financial Services Authority Regulation Number 65 / POJK .04 / 2020 can hinder the purpose of issuing the Financial Services Authority Regulation Number 65 / POJK .04 / 2020. If it is not immediately resolved, the function of law in economic activity, as stated by Eric Posner, David Harrison, will not be achieved.

#### **4. Conclusion**

Financial Services Authority Regulation Number 65 / POJK .04 / 2020 was promulgated to increase effectiveness and fairness in law enforcement in the capital market sector. The form of legal protection regulated is the Return of Illegal Profits and the Arrangement of the Investor Loss Compensation Fund (Disgorgement Fund). The findings obtained are that there are two potential legal conflicts. First, there is a potential conflict between the Financial Services Authority Regulation Number 65 / POJK .04 / 2020 and Law Number 37 of 2004. Second, the Potential Conflict between the Financial Services Authority Regulation Number 65 / POJK .04/2020 with Law Number 37 the Year 2004 and Law Number 40 the Year 2007, which will obstruct legal objectives. These potential conflicts must be anticipated immediately before enacting the regulations to guarantee the legal function's achievement to provide legal protection for the parties in economic activities.

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#### **References**

- Agus, A. *Etika Bisnis Bagi Pelaku Bisnis*. Jakarta: PT Jakarta Grafindo Perkasa, 2012.
- David, H., and W.S, Sonna. "HLA Hart's Secondary Rules: What Do "officials' Really Think?," *International Journal of Law in Contexts* 14, no. 1 (2018): 62-86.
- Hart, HLA. *The Concept Of Law*. 2nd ed. United Kingdom: Oxford University, 2012.
- Heather A.H. "Cultural Spillovers: Copyright, Conceptions of Authors, and Commercial Practices." *Law & Society Review* 52, no. 1 (2020): 7-undefined.
- Januarita, Ratna, and Yeti Sumiyati. "Legal Risk Management: Can the COVID-19 Pandemic Be Included as a Force Majeure Clause in a Contract?" *International Journal of Law and Management* ahead-of-print, no. ahead-of-print (November 13, 2020). <https://doi.org/10.1108/IJLMA-05-2020-0140>.
- Latusti, A, and H Tri. "Perlindungan Hukum Investor Melalui Fungsi Penjaminan Penyelesaian Transaksi Di Pasar Modal." *Recht Idee* 14, no. 1 (2019).

- Lee, YS. "General Theory of Law and Development." *Cornell International Law Journal* 50, no. 3 (2017).
- Makes, Yozua. "The Legal Practice of Corporate Takeover and Mandatory Tender Offer (MTO) in the Indonesian Capital Market." *Indonesian Capital Market Review* 6, no. 2 (August 13, 2014). <https://doi.org/10.21002/icmr.v6i2.3589>.
- Manan. A. *Aspek-Aspek Pengubah Hukum*. Jakarta: Penerbit Kencana, 2013.
- Manuelides, Yannis. "Using the Local Law Advantage in Today's Eurozone (with Some References to the Republic of Arcadia and the Mamatas Judgment)." *Capital Markets Law Journal* 14, no. 4 (October 1, 2019). <https://doi.org/10.1093/cmlj/kmz021>.
- Mertokusumo, S. *Mengenal Hukum*. Yogyakarta: Penerbit Cahaya Atma, 2019.
- Mezzanotte, Félix E. "An Examination into the Investor Protection Properties of Robo-Advisory Services in Switzerland." *Capital Markets Law Journal* 15, no. 4 (December 3, 2020). <https://doi.org/10.1093/cmlj/kmaa024>.
- Mooneeram-Chadee, Varsha. "The Regulation of Islamic Banking in Mauritius." *ISRA International Journal of Islamic Finance* 12, no. 2 (July 23, 2020). <https://doi.org/10.1108/IJIF-09-2019-0139>.
- Nina, B. "Beyond The Shareholder Corporation, : Alternatives Business Fprms and Contestation Of Markets." *Journal Of Law and Society* 14, no. 1 (2018).
- Philip, S. "Jeremy Bentham and HLA Hartz, Utilitarian Tradional Jurisprudence, ." *Jurisprudence*, 2010, 147-67.
- Posner. E.A. *The Twilight of Human Right Law*. United Kingdom: Oxford University, 2014.
- Posner, E, A, and Glen. E. Weyl. *Radical Markets, Uprooting Capitalism and Democracy for A Just Society*. New Jersey: Princetoon University Press, 2018.
- Purba, James. "Beleid Kompensasi Kerugian Tinggalkan Celah." *Kompas*. January 14, 2021.
- Tantri, P. "Creditors' Rights and Strategic Default: Evidence from India." *The Journal of Law and Economics* 63, no. 3 (2020).
- Xu, X. "Law Custom and Social Norm : Civil Adjudications in Qing and Republican China." *Law and History Review* 36, no. 1 (2018).

### **Regulations**

The Law No. 40 Of 2007 Concerning Limited Liability

The Law No. 21 Of 2011 Concerning Financial Services Authority

The Law No 37 Of 2004 Concerning Bankruptcy Law and Suspension of Payment Obligations

Financial Services Authority Regulation Number 65 / POJK .04 / 2020, concerning Returns of Illegal Profits and Compensation Funds for Investors' Losses in the Capital Market Sector.