

Protection of Investors' Rights in Margin Transactions by The Company

Ratu Vidi Sulistyani

Universitas Islam Sultan Agung ,E-mail: Vidi168@gmail.com

Abstract. *The purpose of this study is to analyze investor rights protection arrangements in the analysis of margin transaction financing and the implementation of investor rights protection arrangements in the analysis of margin transaction financing by Stock Exchange Companies when selling shares by force. The research method applied is sociological juridical. The approach is carried out through the conception of law as a real and functional social institution, which is obtained empirically through going directly to the field to obtain the required information. The results of this study indicate that the arrangement for protecting investors' rights in the analysis of margin transaction financing by a Stock Exchange Company when a share sale is made by force has actually been regulated in a letter of agreement, which is stated in Bapepam-LK Regulation Number V.D.6. The existence of these regulations has fulfilled the legal protection aspects of investors as regulated in the Civil Code, but has not fulfilled the investor legal protection aspects as regulated in the Capital Market Law and the Consumer Protection Law. The implementation of the protection of investors' rights in the analysis of margin transaction financing by Stock Exchange Companies when there is a forced sale of shares has been carried out through contracts, accompanied by the implementation of an internal control system and the implementation of haircuts by the IDX.*

Keywords: *Forced; Margin; Protection; Transactions.*

1. Introduction

Investment in the capital market is one source of funds to finance national development.¹ One of the functions of the capital market is to act as a means of financing that brings together investors as parties who have more funds with issuers, namely parties who are in need of funds.² Efforts that can be made to increase interest in investment include creating a conducive climate,

¹ Agung Sudjati Winata. *Perlindungan Investor Asing dalam Kegiatan Penanaman Modal Asing dan Implikasinya Terhadap Negara*. 2018. *AJUDIKASI: Jurnal Ilmu Hukum*, Vol. 2 No. 2. Desember 2018. page. 127

² Bagus Sujatmiko dan Nyulistiowati Suryanti. *Perlindungan Hukum Bagi Investor Pada Perusahaan Terbuka Yang Pailit Ditinjau dari Hukum Kepailitan*. *Jurnal Bina Mulia Hukum* Vol 2, Nomor 1, September 2017. Page 16

especially those related to overcoming issues in the field of law enforcement.³ The importance of law enforcement in the investment sector can be applied when forced sales occur.

A forced sale or what is known as a forced sell is an agreement agreed by the securities party with the customer.⁴ This forced sell occurs when the share value is at the forced sale ratio, where this condition occurs when the customer's margin ratio reaches 80%, which causes the company to have full authority to sell some or all of the securities in the customer's margin securities account.⁵ Forced sell becomes a risk when there is margin trading or a decline in share value, which requires customers to add collateral or liquidate or sell the shares they control to a securities company.⁶ Usually in margin trading, a forced sell occurs if a regular account customer up to T+4 is unable to complete the purchase obligation due on T+2, then the shares in the customer's regular account will be forced to sell for the amount of the customer's obligation.⁷

Executing a forced sell usually requires the involuntary sale of assets or securities to create liquidity in the event of an uncontrollable or unexpected situation. Forced sales are usually carried out as a reaction to economic events, changes in personal life, company regulations, or the legal landscape. Forced sell can refer to a number of situations where individual assets are required to be sold. In the investment world, if a margin call is issued and investors are unable to bring their investment to minimum requirements, the broker has the right to sell shares. In personal finance, an individual's assets can be liquidated for a variety of reasons including: bankruptcy, divorce, or death. In the area of security investing, forced sales can occur in an investor's margin account if the investor fails to bring their account above the minimum requirement after being issued a margin call. Forced sell generally occurs after a warning is issued by the broker, regarding the under-margin status of an account. If the account holder chooses not to meet the margin requirements, or is unable to pay them, the broker has the right to sell the current shares.⁸

In the implementation of a forced sell, there is actually a calculation, as stated in the agreement with the broker, where a forced sell occurs when the shares purchased with margin decrease by a certain percentage or if the days limit for using margin has reached the limit, then a forced sell

³ Ria Sintha Devi. Perlindungan Hukum Bagi Penanaman Modal Asing (PMA) Di Indonesia. 2019. *Jurnal Rectum*, volume I, Nomor 2, Juli 2019. page. 142

⁴ Ocbc Sekuritas. Perjanjian Pembiayaan Transaksi Efek Margin *Securities Financing Account Agreement For Margin Transaction*. Pasal 13 Tentang Penjualan Paksa. 2018. Page 12

⁵ *Ibid*

⁶ Juli Asril. *Margin Trading Di Pasar Modal Dan Regulasinya Di Indonesia. Jurnal Ilmiah Mea (Manajemen, Ekonomi, & Akuntansi)*, Vol. 3, No. 1, 2019. Page. 256-273.

⁷ Anonim. *Hindari Forced Sell Saat Pakai Limit Trading Dengan Fasilitas Marjin*. Termuat Dalam Most, Edisi 26 Maret 2020. Sumber: <https://www.Most.Co.Id>, accessed 10 June 2024

⁸ [Alicia Tuovila](https://www.investopedia.com). *Forced Selling (Forced Liquidation)*. Sumber: Investopedia, Edisi 30 Juni 2021. Diakses Dari: <https://www.investopedia.com>.

can be carried out.⁹ A forced sell can also be carried out without prior approval from the investor, and the broker has the right to choose the securities to be sold in order to reduce the risks faced by selling on the regular market. In addition, before the customer's debit balance falls below or equal to the maintenance ratio margin, all purchasing activities are suspended, and when the customer violates these provisions, the company has the right to close the customer's margin transaction financing securities account even though the agreement has not ended.

Forced sell regulations are contained in Law Number 8 of 1995 concerning Capital Markets, but the existence of these regulations does not fully explain forced sell actions. Apart from that, regulations regarding forced sell are actually contained in Bapepam Regulation Number V.D.6 concerning Financing of Securities Transactions by Securities Companies for Customers and Short Selling Transactions by Securities Companies which was refined by the Decree of the Chairman of Bapepam-LK, No. Kep. 258/ BL/ 2008. This regulation contains many requirements for customers, stock exchange members who can carry out financing, securities to be traded, and the main points of agreement that must be included in margin transactions.¹⁰ However, there are still weaknesses in these regulations, where there is no clear monitoring mechanism for compliance with these regulations. This condition is also strengthened by the existence of a lot of evidence that Bapepam was careless in supervising the capital market¹¹.

This negligence in supervision by Bapepam can be exemplified by having an impact on several issues such as the emergence of problems in the field, especially those caused by the absence of the principles of good faith (disclosure of information accurately and completely) and good communication (providing information to investors openly and quickly), which are very much needed. in contractual agreements contained in margin transactions made by securities companies. Where if one of these principles is not implemented, then margin transactions will cause problems. This is what was found in the case of PT. DBS Vickers Indonesia, which was revealed in 2009, used customer funds for forced sales of margin transaction accounts in Dedy Hartawan's regular account, which indicated a violation of regulations, where forced sells could be carried out on margin accounts, apart from that, customers also reported the company securities has carried out buying and selling of securities without the consent of the customer, in this case the customer has lost funds in his securities account of up to IDR 90 billion. As a result of this incident, customers experienced losses from the forced sell, so this needs to be

⁹ Kiki Safitri. *Mau Main Saham Pakai Margin Trading, Pahami Mekanismenya Supaya Tidak Terjebak Kerugian*. Sumber Kompas, Edisi 20 Januari 2021. Diakses Dalam <https://Money.Kompas.Com>.

¹⁰ Fitria Dina. *Perlindungan Hukum Terhadap Investor Dalam Hal Jual Paksa (Forced Sell) Di Pasar Modal (Studi Di Pt. Bni Securities Padang)*. Diploma Thesis, Upt. Perpustakaan Unand. 2015. page. 17

¹¹ Anonim. *Aksi Jual Paksa Saham Milik Nasabah Dipertanyakan*. Sumber: Detikfinance, Edisi 28 Januari 2009. Diakses Dalam <https://Finance.Detik.com>.

given more attention, because the characteristics of margin transactions have relatively high risks.

This weakness in supervision that should have been carried out by Bapepam also had an impact on the occurrence of forced sell, which was caused by the problem of share price manipulation carried out by PT Sekawan Intripratama Tbk (SIAP) in 2014, and carried out by PT Dharma Samudera Fishing Industries (DSFI) and Primarindo Asia Infrastruktur (BIMA) in 2002, all of which of course resulted in losses for customers,¹² As a result of the manipulation of share prices, it then makes customers unable to make payments, so this triggers a forced sell which of course is detrimental to these customers.

Research conducted by entitled Legal Protection for Investors as Consumers in Online Investment forms of protection for investors is included in consumer protection, this is because in terms of online investment, investors are identical to customers. Then, these protection efforts can be carried out by involving the role of the Financial Services Authority (OJK). There are 2 (two) OJK roles in legal protection for investors for suspected fictitious investments, namely through preventive and repressive measures. The preventive actions taken by the OJK to minimize and prevent people from being trapped in fictitious investments consist of 5 (five) steps, namely the OJK carries out outreach and education to the public regarding the characteristics of fund raising and investment management activities, granting business permits by the authorities to parties who collecting public funds, optimizing the function of Integrated Financial Services or Integrated Financial Customer Care (IFCC), OJK issuing regulations for implementing financial product and/or service offerings, and increasing public financial literacy.¹³

The aim of this research is to analyze arrangements for protecting investor rights in the analysis of margin transaction financing by Stock Exchange Companies when forced sales of shares are carried out and implementation of arrangements for protecting investor rights in financing analysis of margin transactions by Stock Exchange Companies when forced sales of shares are carried out.

2. Research Methods

In conducting this research, the type of research used is normative research, namely research through library research by studying and reviewing applicable legal provisions, documents or literature as well as conducting research on legal regulations, namely by analyzing legal regulations in the criminal system as follows: the starting point of the research.¹⁴ The approach

¹² Anonim. *Manipulasi Harga Saham*. Diakses dalam: [Http://www.Capital-Asset.Co.Id.](http://www.Capital-Asset.Co.Id.),

¹³ Desy Pramita, K., & Diva Hendrayana, K. (2021). *Perlindungan Hukum Terhadap Investor Sebagai Konsumen dalam Investasi Online*. *Jurnal Pacta Sunt Servanda*, 2(1), page 1-8.

¹⁴ Soerjono Soekanto & Sri Mamuji, *Penelitian Hukum Normatif*, Rajawali, Jakarta, 1985, page. 70

method used is the statutory approach. This approach is carried out by reviewing all laws and regulations related to the legal issue being handled.¹⁵

3. Results and Discussion

3.1. arrangements for protecting investor rights in the analysis of margin transaction financing by Stock Exchange Companies when forced sales of shares are carried out

So in a forced sell transaction, a broker does not have to immediately hand over the securities he is selling at that time. This allows parties who do not own the securities in question to transact on these securities. Forced sellers use the T+4 grace period to wait for a decrease in the price of the securities they have sold and then buy them back at a cheaper price. In this way he gets a profit (capital gain), namely from the difference between the selling price and the buying price.

For this purpose, a third party is present as a securities lender (lender). Usually those who act as lenders are securities companies or individuals known as brokers. Securities companies obtain securities to lend from various sources. The most common event that occurs is borrowing from the account of another customer who takes a long position (an investor who holds shares for a long period of time). The second source is from the securities company's own account and can also be borrowed from other securities companies. The final source is loans from institutional investors.

In the course of the capital market in Indonesia, the rules regarding forced sell were first regulated through the Decree of the Chairman of Bapepam No. Kep-09/PM/1997 dated 30 April 1997 concerning Financing of Settlement of Securities Transactions by Securities Companies for Customers Bapepam-LK (now OJK) then revised the rule named regulation V.D.6. The revision was in line with the financial crisis that hit the world, including Indonesia. Regulation V.D.6 concerning Securities Financing by Securities Companies for Customers and Short Selling Transactions by Securities Companies issued by Bapeppam-LK contains provisions regarding financing of securities transactions by securities companies and forced sell transactions so as to increase liquidity (the more securities trading is carried out by investors) securities transactions and the quality of financing for transaction settlement by securities companies as well as increasing legal certainty regarding securities transactions.

To anticipate transactions that could cause the JCI to fall further, Bapepam issued a number of regulations including revisions to the forced sell rules. This forced sell transaction was then regulated, among other things, by Decree of the Chairman of Bapepam-LK No. 556/BL/2008 and Financial Services Authority Regulation Number 21/POJK.04/2019. This regulation regulates Securities Transaction Financing for Customers and Short Selling Transactions by Securities Companies. The Stock Exchange is required to establish Stock Exchange regulations that regulate

¹⁵ Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi*, Prenadamedia Group, Jakarta, 2008, page. 133

the requirements for Securities which can be transacted with financing by Securities Companies and which can be used as collateral for financing in securities transactions. Forced sell transactions have resulted in current capital market conditions experiencing instability, resulting in fluctuating impacts on the world economy.¹⁶ So, basically forced sell transactions in Indonesia are allowed. However, Bapepam-LK still determines what kind of forced sell transactions are permitted. The aim is of course to secure the domestic capital market in addition to the interests of minority investors.

Regulations regarding margin trading and forced sell transactions are related to the regulations in Book III of the Civil Code, especially regulations regarding the issue of agreements that occur in margin trading and forced sell transactions. Agreements in margin trading and forced sell transactions occur between both parties where one party promises to the other party. others to do something. This is in accordance with Article 1313 of the Civil Code, which states: "An agreement is an act by which one or more people bind themselves to one or more people." The civil law in force in Indonesia recognizes freedom of contract, this can be concluded from the provisions of Article 1338 paragraph (1) of the Civil Code, which states that "all contracts (agreements) made legally apply as law for those who contain them."¹⁷

The source of freedom of contract is individual freedom, so that the starting point is also individual interests. So the nature of book III of the Civil Code is open and opens up the possibility of agreements that have not been regulated in the Civil Code in concrete terms, but are still in accordance with the principles and conditions of valid agreements in the Civil Code, in other words it is permissible to override the regulations contained in the third book.¹⁸

To protect investors, issuers who will sell securities in a Public Offering must provide investors with the opportunity to read the prospectus relating to the securities being issued, before ordering or when the order is made. In the end, after Bapepam-LK paid attention to the completeness and clarity of the issuer's documents for conducting a Public Offering in order to comply with the principles of capital market openness. This is important considering that the securities prospectus is the starting point and time for investors to consider whether to decide to buy or not a security.

The next preventive action taken by Bapepam-LK is to regulate that securities prospectuses are prohibited from containing misleading content or incorrect statements about Material Facts or presenting information about the advantages and disadvantages of the securities being offered.

¹⁶ Keputusan Ketua BAPEPAM-LK Nomor KEP-556/BL/2008 Pembiayaan Transaksi Efek oleh Perusahaan Efek bagi Nasabah dan Transaksi Short Selling oleh Perusahaan Efek

¹⁷ Subekti. dan R. Tjitrosubidjo. *Kitab Undang-Undang Hukum Perdata*. Jakarta: PT. Pradnya Paramita. 1996. page. 345

¹⁸ Endi Budiman. *Perlindungan Hukum terhadap Perusahaan Sekuritas dalam Transaksi atas Fasilitas Margin Trading*. Semarang: Universitas Diponegoro. 2010. page. 101

In practice, Bapepam-LK makes standards for preparing prospectuses for securities to be offered. This protective action begins when Bapepam-LK gives permission to SROs, mutual funds, securities companies, and supporting professions to carry out activities in the capital market.

Apart from preventive measures, Bapepam-LK also has the authority to carry out inspections and investigations. This is a consequence of the supervisory function given by law to Bapepam-LK. Inspection activities are carried out on all parties who are suspected of having committed, are attempting to commit or order, participate in, induce or assist in committing violations of the capital market law and its implementing regulations.¹⁹

3.2. Implementation of Investor Rights Protection in the Analysis of Margin Transaction Financing by Stock Exchange Companies When Forced Share Sales are Carried Out

The implementation of investor rights protection in the analysis of margin transaction financing by stock exchange companies when a forced sale of shares is carried out is outlined in the form of an agreement which is a principle of implementing the principle of freedom of contract between securities companies and their customers/investors. one of its contents is the rights and obligations of the parties as a form of legal protection. This principle is a topic in every legal study related to contracts. This may be the most important domain in contracts but in its development it has experienced ups and downs, unlike the principle of good faith which shows a stronger function, freedom of contract has actually experienced a functional decline due to the strong intervention of the State in limiting individuals in creating and managing contractual relationships.²⁰

The results of research regarding the protection of investors' rights in the analysis of margin transaction financing by Stock Exchange Companies when forced sales of shares are carried out in Indonesia can be seen in various forms of agreements which are the implementation of the principle of freedom of contract between securities companies and customers/investors, one of the contents of which is the rights and obligations of the parties as a form of legal protection. This principle is a topic in every legal study related to contracts. This may be the most important domain in contracts but in its development it has experienced ups and downs, unlike the principle of good faith which shows a stronger function, freedom of contract has actually experienced a functional decline due to the strength of state intervention in limiting individuals in creating and managing contractual relationships.²¹

¹⁹ Irsan Nasaruddin, dkk. *Aspek Hukum Pasar Modal Indonesia*, cet. 7. Jakarta: Kencana PrenadaMedia Group. 2011. page. 117.

²⁰ Endi Budiman. *Perlindungan Hukum terhadap Perusahaan Sekuritas dalam Transaksi atas Fasilitas Margin Trading*. Semarang: Universitas Diponegoro. 2010. page. 113.

²¹ Yohanes Sogar Simamora. *Hukum Perjanjian, Prinsip Hukum Kontrak Pengadaan Barang dan Jasa Oleh Pemerintah*. Yogyakarta: LaksaBang. 2009. page. 38

To protect the possibility of losses arising from securities companies, laws are needed as a basis for the courts to make decisions.²² In this context, appropriate boundaries are needed that can be used as a reference. Legal protection for securities companies in margin transactions relates to the provision of guarantees by investors. Basically, the protection of securities companies in the current conditions in the practice of margin transactions and forced selling is materially sufficiently protected, but not yet formally. This is because the legal position of agreements that are only in form, including agreements made privately, are agreements that do not meet formality requirements, even though according to the provisions of Article 1338 of the Civil Code, all agreements made legally apply as law for the parties who make them. However, even if the formality requirements are not fulfilled, it does not mean that the securities transaction settlement financing agreement (including the provision of guarantees) is void, but is an ordinary agreement that does not provide preferential rights and executorial powers for creditors (securities companies).

Actions that can be taken to protect investors' rights in the analysis of margin transaction financing by Stock Exchange Companies when forced sales of shares are carried out in a progressive legal perspective through an internal control system and the implementation of haircuts by securities companies, which can be explained in this internal control also found in stock trading. Bapepam-LK as the capital market supervisor in Indonesia has issued regulations regarding internal control, namely Bapepam-LK Regulation No. V.D.3 of 2010. This regulation stipulates that every securities company that carries out transactions for the benefit of non-affiliated parties must have at least four parts or functions, including marketing function, risk management function, bookkeeping function, custodian function, information technology function, and compliance functions.²³

4. Conclusion

Arrangements for protecting investors' rights in the analysis of margin transaction financing by the Stock Exchange Company when a forced sale of shares is carried out have actually been regulated in an agreement letter. This regulation meets the legal protection aspects of investors as regulated in the Civil Code, but does not fulfill the legal protection aspects of investors as regulated in the Capital Markets Law and the Consumer Protection Law. The concept of ideal investor legal protection in forced share sales. The implementation of investor rights protection in the analysis of margin transaction financing by the Stock Exchange Company when a forced sale of shares is carried out has been carried out through contracts accompanied by the implementation of an internal control system and the implementation of haircuts by the IDX,

²² Sarah Indah Nilam Wulandari, Perlindungan Hukum Bagi Investor Pada Perusahaan Voluntary Delisting Di Pasar Modal. (2024). *Jurnal Media Akademik (JMA)*, 2(2). Page 2594-2627

²³ Muchdarsyah Sinungan. *Kredit Seluk Beluk dan Pengelolaannya*. Yogyakarta:Tograf. 1990. page12

which can be used to determine the size of the trading limit imposed on members. exchange is 24 times the total free collateral.

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