



Challenges of Legal Consultants in Handling Law in The Capital Markets Sector

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Abstract

The financial sector in the capital market has become a favorite for investors to be able to invest in Indonesia. Capital market activities are the main spearhead in improving the welfare of the people in Indonesia, of course it cannot be separated from the main actors, especially legal consultants regarding regulations that can protect the interests of foreign and local investors. The role of this profession is very important in carrying out capital market mechanisms because this profession will determine and/or help the smooth running of capital market activities in Indonesia. The smooth running of capital market activities does not only depend on regulators, but investors who invest actually need a legal profession, namely legal consultants, to ask for legal considerations before making decisions. However, looking at increasingly complex legal events, there are certainly challenges for capital markets legal consultants to handle them. This research is legal research with a statutory approach, analytical approach and conceptual approach. The results of this research explain firstly, the role of legal consultants in the capital market directs investors to avoid or minimize legal losses in the future. The role of legal consultants is also to remind investors to carry out due diligence on shares to be purchased or executed. Legal consultants or those included in the definition of capital market supporting professions have the role of providing opinions or information (legal opinion). Second, the main basis of legal consultants in the capital markets is to provide legal opinions for investors as a form of legal consideration. However, legal consultants who carry out legal handling in the capital market must not only really understand the ins and outs of the capital market and the legal aspects of the capital market, but must also be able to carry out their duties honestly and have high credibility. Third, the challenge for legal consultants in the capital market is to maintain integrity and protect the interests of clients from parties who will harm the client in order to gain unilateral profits. It is indeed quite vulnerable to handling by capital market legal consultants because insider trading often occurs so that small investors often experience losses in both material and non-material aspects. Therefore, there is a need for the government to form legal consultants for the Capital Market with statutory legal products. In this regard, the author assesses that the legal consultant profession in the capital market requires special regulations regarding a code of ethics in order to maintain integrity in carrying out its duties as a provider of legal opinions for investors as well as its clients.

INTRODUCTION

The financial sector in the capital market has become a favorite for investors to be able to invest in Indonesia. The capital market aims to support national development by increasing equality, growth and stability of the national economy in order to improve people's welfare¹.

¹ Bayu Aji Siantria Gunawan, "The Role and Challenges of Capital Market Legal Consultants: Independence, Integrity, and Ethical Violations in Professional Practice." Syariati. Vol. X No. 01, May 2024.pp.62-78

Capital market activities are the main spearhead in improving the welfare of the people in Indonesia, of course it cannot be separated from the main actors, especially legal consultants regarding regulations that can protect the interests of foreign and local investors. In the capital market provisions in Indonesia which regulate legal consultants, it is regulated through Law Number 8 of 1995 concerning Capital Markets (UUPM) which regulates several professions that support capital market activities, such as accountants, legal consultants, appraisers, notaries and other professions stipulated by government regulations.

The role of this profession is very important in carrying out capital market mechanisms because this profession will determine and/or help the smooth running of capital market activities in Indonesia.² The smooth running of capital market activities does not only depend on regulators, but investors who invest actually need a legal profession, namely legal consultants, to ask for legal considerations before making decisions. Legal consultants as one of the capital market supporting professions as mandated by the Capital Market Law are defined as legal experts who provide legal opinions in capital market activities and are registered with Bapepam (the Capital Market Supervisory Agency (Bapepam) is an institution whose function is to supervise and regulate the capital market in Indonesia to ensure transparency, efficiency and fairness in capital market activities) which currently with the issuance of the law on the Financial Services Authority (OJK), the registration of capital market legal consultants which was previously with Bapepam has shifted to the OJK³. OJK itself has established a legal basis regarding the role of legal consultants in the Financial Services Authority Regulation (POJK) Number 66/POJK.04/2017 concerning Legal Consultants Carrying Out Activities in the Capital Market that "*Legal Consultants are legal experts who provide legal opinions to other parties carrying out activities in the capital markets sector and are registered with the Financial Services Authority*"⁴. When providing legal opinions to other parties as investors or potential investors, legal consultants must of course be registered with the Financial Services Authority⁵. Along with current technological developments, of course legal consultants are required to continue to improve their scientific abilities and upgrade themselves so that they are able to answer the needs of investors who need legal opinions on the capital markets. Therefore, the author will examine "Challenges of Legal Consultants in Handling Legal Problems in the Capital Markets Sector".

RESEARCH METHODS

Peter Mahmud Marzuki, normative legal research is a process of searching for legal rules, legal principles, and legal doctrine to answer legal problems that occur.⁶ The approach in this research uses a statutory approach (*statues approach*), analytical approach (*analytical approach*) and conceptual approaches (*conseptual approach*).

DISCUSSION

Legal Consultant Profession in the Capital Markets Sector

The legal consultant profession in Indonesia in the capital market has formed an association called the Capital Market Legal Consultant Association (HKHPM). The Association of Capital Market Legal Consultants (HKHPM) has established Professional Standards that regulate the process of preparing Due Diligence Reports and Legal Opinions for

² Rohendi, A. (2017) 'Obligations and Responsibilities of Legal Consultants as a Capital Market Supporting Profession', *Ecodemia Journal*, 1(1).

³ *On. Cit.* Bayu Aji Siantria Gunawan, "Roles and Challenges.....pp.62-78

⁴ Article 1 number 1

⁵ Article 2 POJK Number 04 of 2017 Legal Consultants Carrying Out Activities in the Capital Market

⁶ Mahmud Marzuki, *Legal Research* (Prenada Media 2005).p.35

securities to be issued on the capital market⁷. This organization is tasked with supervising its members professionally regarding various legal aspects in the Capital Market, ensuring the integrity of members, and improving the quality of knowledge and professionalism⁸. The role of legal consultants in the capital markets sector in assisting investors with legal issues can include:⁹

a. Document and Permit Management in the Capital Market

The role of legal consultation in capital market activities is to first take care of documents and certain permits. Please note first, companies must fulfill certain requirements and documents to be able to join the capital market.

b. Ensuring Protection of Investors

The role of legal consultants in other capital market activities is to ensure protection for investors;

c. Perform Legal Due Diligence

Due *diligence* is a series of examinations carried out by a legal consultant on a company. This identification aims to assess the feasibility and risks that could potentially arise when making a transaction;

d. Compliance with Trade Regulations;

Giving advice to companies regarding rules that apply and cannot be violated

e. Assist in Preparing Derivative Transaction Documents

A derivative transaction is a contract between two or more parties to fulfill the promise to buy/sell traded assets.

The role of legal consultants in the capital market directs investors to avoid or minimize legal losses in the future. The role of legal consultants is also to remind investors to carry out due diligence on shares to be purchased or executed. Legal consultants in providing legal opinions are based on article 80 paragraph (1) letter d of Law no. 8 of 1995 concerning Capital Markets. In essence, legal consultants or those included in the definition of capital market supporting professions have the role of providing opinions or information (*legal opinion*) and upon his/her approval contained in the registration statement or prospectus at the time of the public offering process (*go public*)¹⁰.

In capital market activities, especially in the public offering process (*go public*) of a company, legal consultants have the role of carrying out legal examinations (*legal audit*) towards companies that will carry out a public offering process (*go public*). From the results of the legal examination (*legal audit*) the legal consultant will provide a legal opinion (*legal opinion*) contained in the prospectus. The role of legal consultants can be said to be to support the capital market, especially the legal needs of investors. According to Bismar Nasution, this provision requires capital market supporting professionals to make opinions or assessments carried out professionally and the results are objective and fair.¹¹ Providing legal opinions, legal consultants are given limitations as a way to be held morally and legally responsible if abuse of authority occurs in the future. Legal consultants may be subject to penalties as regulated in POJK Number 66/04 of 2017 in Article 14 letters a and b, namely;

Apart from the conditions as intended in Article 13, Legal Consultants cannot carry out activities in the capital market if conditions occur:

⁷ *On. Cit.* Bayu Aji Siantria Gunawan, "Roles and Challenges.....pp.62-78

⁸ *Op.Cit.* Bayu Aji Siantria Gunawan, "Roles and Challenges.....pp.62-78

⁹ Hukumku, "The Role of Legal Consultants in Capital Market Activities". [www.hukumku.id. https://www.hukumku.id/post/peran-konsultan-hukum-dalam-kegiatan-pasar-modal](https://www.hukumku.id/post/peran-konsultan-hukum-dalam-kegiatan-pasar-modal) accessed on May 3, 2025

¹⁰ I Gede Andre Santika and Ni Nengah Adiyaryani, "Roles and Responsibilities of Legal Consultants in Capital Market Activities". Business Law Section, Faculty of Law, Udayana University.pp.1-6

¹¹ Ramon Nofrial, "Responsibilities of Legal Consultants as a Supporting Profession in Realizing the Principle of Openness in the Capital Market". Vol. 10 No. 1 January-June 2015.pp.110-124

- a) Certificate of registration of capital market supporting profession canceled by the Financial Services Authority; and/or
- b) Currently under sanctions for freezing registration certificates for capital market supporting professions.

The suspension of capital markets professional registration certificates is an effort to avoid the actions of market legal consultants who seek unilateral profits at the expense of other investors. Chairman of the Capital Market Legal Consultants Association (HKHPM), Indra Safitri, explained that the involvement of legal consultants in capital market crimes has the potential to occur because through their services, legal consultants have valuable client information relating to transactions or *trading* capital market¹². Based on the shape, Law No. 8 of 1995 about Capital Markets divides three types of crime namely *fraud* or fraud, market manipulation and *insider trading* or insider trading. Violation of form *fraud* This is stated in Articles 90 and 93 of the Capital Markets Law. Then, violations in the form of market manipulation are listed in Articles 91 and 92. Meanwhile, prohibitions *insider trading* listed in Article 95-Article 98¹³.

The author analyzes that legal consultants, although regulated in Law 8 of 1995 on Capital Markets, prohibit insider trading and have the potential to act as stock market insiders as long as they have an interest in it with other capital market players.¹⁴ The capital markets sector is a financial services industry that plays a major role in the national economy. Thus, the capital market has its own attraction for investors to gain profits. In the midst of this potential profit, there are parties who commit violations and crimes in the capital market. Therefore, capital market legal consultants have their own challenges, including meeting the legal needs of investors and the potential for committing crimes in the capital market to gain profits in it as *insider trading*.

Legal Consultant as a Party Who Provides Legal Opinions on the Capital Market

The main basis of legal consulting in the capital market is to provide legal opinions for investors as a form of legal consideration. A legal opinion is a legal emphasis given by a legal consultant to investors to ensure the legal suitability of the shares they will buy. An opinion from a legal perspective (legal opinion) by a legal consultant, called a legal opinion, must be able to explain the facts found in the company, including regarding the problem, then proceed with solving the problem as well as the best conclusions and suggestions for the company that will go public¹⁵. The legal opinion itself is a prospectus that has been explained by the legal consultant to be given to investors regarding legal issues regarding the shares to be purchased. First, it is prohibited to contain untrue things about material facts. Second, the most important facts and considerations are placed first. Third, be extra careful in using photos, diagrams or tables because they have the potential for misleading. Fourth, express them in clear and communicative language. Fifth, disclosure of material facts must be emphasized according to the business field or industrial sector¹⁶.

This activity is the task of a legal consultant, namely in making a legal opinion. The truth and honesty factors of a company that will go public must be announced through a

¹² Mochamad Januar Rizki, "Potential Involvement of Legal Consultants in Capital Market Crime". Hukumonline.com. <https://www.hukumonline.com/berita/a/potensi-keterlibatan-konsultan-hukum-dalam-kejahatan-pasar-modal-lt5bfa8e865e1f1/> accessed on May 3, 2025

¹³ *Ibid*. Mochamad Januar Rizki, "Potential for Consultant Involvement.....accessed May 3, 2025

¹⁴ Mochamad Januar Rizki, "Understanding the Provisions for Capital Market Crimes and Violations". Hukumonline.com. <https://www.hukumonline.com/berita/a/memahami-ketentuan-tindak-kejahatan-dan-pelanggaran-pasar-modal-lt6604c1867ddf8/> accessed on May 3, 2025.

¹⁵ M.S. Tumanggor, "The Role and Function of Capital Market Legal Consultants in Indonesia". pp. 37-54

¹⁶ New York Stock Exchange. Constitution and Rules. New York : NYSE, Inc, 1991

prospectus.¹⁷ Because the public or investors need to know the actual condition of the company and naturally there is confidence that the funds invested by buying shares through the capital market can be accounted for.¹⁸ When providing legal opinions, legal consultants must prioritize the values of integrity. In Capital Market activities, not all Legal Consultants can carry out activities in the capital market¹⁹. Legal consultants who carry out capital market activities must not only really understand the ins and outs of the capital market and the legal aspects of the capital market, but must also be able to carry out their duties honestly, have high credibility and continually improve their skills and knowledge.²⁰

Requiring capital market legal consultants to implement the values of integrity in making legal opinions aimed at providing objective results and not materially harming investors. This legal opinion is important, among other things, to (1) assess whether the legal actions taken by the company so far have been in accordance with the rules of its articles of association, applicable laws and regulations, material engagements it has undertaken; (2) assess the material assets owned by the company; (3) assess material engagements carried out by the company; (4) provide a warning of dangers or legal risks that may arise and may be detrimental to the company in connection with the transaction that will be carried out²¹.

Challenges of Legal Consultants in Providing Capital Market Legal Opinions in Indonesia

Capital Markets Legal Consultants can experience challenges in running due diligence obligation to make a legal opinion regarding the Issuer's situation if there is a conflict in the application of the Principle of Openness from the Issuer to Investors as follows: (a) Investors want complete disclosure of information regarding the Issuer, while the Issuer is only willing to disclose information to a certain level; (b) Investors want updated information, while Issuers try to withhold certain information for some time for the reason of reducing the costs of publishing reports; (c) Investors want to obtain detailed and accurate data²². In general, the challenge for legal consultants in providing legal opinions is that they often experience difficulties in obtaining the information expected by investors. This difficulty is also influenced by the fact that legal consultants still receive wrong information due to errors from the issuer. If the registration statement in the context of a public offering does not contain information about Material Facts, then each party signing the registration statement, both the Issuer and the Capital Market Supporting Professionals, must be responsible, both individually and jointly, for losses arising as a result of the said actions.²³

The rights of capital market legal consultants are regulated in the Code of Ethics for Capital Market Legal Consultants. They have the right to collaborate with other law offices, as long as they do not become permanent employees or partners in that office. The collaboration allows legal consultants to expand their range of services, increase efficiency and strengthen their reputation²⁴. Apart from that, legal consultants also have the right to legal protection and

¹⁷ Op. Cit. M.S. Tumanggor, "Role and Functionpp.37-54

¹⁸ *Ibid.* M.S. Tumanggor, "Role and Function.....pp.37-54

¹⁹ *Ibid.* M.S. Tumanggor, "Role and Function.....pp.37-54

²⁰ *Ibid.* M.S. Tumanggor, "Role and Function.....pp.37-54

²¹ Said Sampara, "THE ROLE OF LEGAL CONSULTANTS IN THE FRAMEWORK OF INVESTOR PROTECTION". LAW AND SOCIETY DYNAMICS VOL.7 NO.2 APRIL 2010.p.146-152

²² Hendrawan Agusta, "KHPM'S RESPONSIBILITY IN THE IPO PROCESS IF THERE ARE MATERIAL FACTS THAT ARE NOT DISCLOSED". Legal Issues, Volume 49 No.1, January 2020, Pages 48-60

²³ Hendrawan Agusta, "KHPM ACCOUNTABILITY IN.....pp.48-60

²⁴ Yuni Priscila Ginting and Andi Rania Risya Zamayya, "Increasing Understanding of the Role and Responsibilities of Legal Consultants in Supporting a Healthy and Sustainable Indonesian Capital Market". West Science Devotion Journal Vol. 03, No. 07, July, 2024, pp. 931 -940

inspection rights²⁵. This protection is important to ensure that legal consultants can carry out their duties independently and objectively without pressure from any party. Indeed, there are advantages and disadvantages in legal consultant collaboration in the Capital Market between other legal consultants. On the negative side, the existence of collaboration between capital market legal consultants sometimes does not guarantee that they will protect investors' share data which should be kept confidential.

In conclusion, the role of capital market legal consultants is very important in ensuring that every transaction and activity in the capital market complies with applicable legal provisions²⁶. With a deep understanding of capital market regulations and compliance with professional codes of ethics, legal consultants can provide objective and professional legal advice to capital market players. This not only increases investors' confidence in the Indonesian capital market, but also helps create an efficient, transparent and fair capital market.²⁷

In creating an efficient, transparent and fair capital market, this is of course a challenge for legal consultants to be able to maintain their behavior in making legal opinions and maintaining the confidentiality of their clients. These legal opinions not only help ensure regulatory compliance, but also provide a sense of security and confidence for investors. In this context, the legal consultant acts as a guarantor that all legal aspects have been considered in depth and there are no matters that violate provisions that could harm the parties involved.²⁸.

Investors themselves invest their funds in the capital market of course because there is a belief that the funds they invest will grow safely. How is it possible for transactions in the capital market to run safely and smoothly if many parties do not act professionally, which is only because of money? they then throw away their independence by defending the interests of the paying party²⁹. Legal consultant based on Minister of Finance Decree No. 1459/KMK.013/1990 in conjunction with Minister of Finance Decree No. 645/KMK.010/1995 in conjunction with Minister of Finance Decree No. 284/KMK.010/1995 is prohibited for

- a. Providing services for affiliated issuers. Legal consultants are prohibited from providing legal consulting services if the consultation is an affiliated party of the issuer, for example the legal consultant providing the services is a commissioner or a member of the board of directors of the issuer;
- b. Providing agreements for the benefit of legal consultants. Legal consultants are prohibited from providing services to issuers by making agreements that promise to provide benefits to legal consultants
- c. Checking and preparing an opinion for the issuer before receiving payment for services previously provided. Legal consultants cannot first prepare before the opinion is paid.
- d. Carry out assessments/inspections of your own work. Legal consultants are prohibited from assessing or examining issuer documents or juridical reports prepared by legal consultants who have important positions with the issuer
- e. Make an agreement with the issuer that payment for services depends on whether the results of the work are received or not. Legal consultants may not carry out work with an agreement that the issuer will pay for legal consultant services if the report or legal document is acceptable or in accordance with the issuer's interests and profits.

²⁵ I bid. Yuni Priscila Ginting and Andi Rania Risya Zamayya, "Increasing Understanding of Roles.....pp.931-940

²⁶ On. Cit. Yuni Priscila Ginting and Andi Rania Risya Zamayya, "Increasing Understanding of Roles.....pp.931-940

²⁷ Op.Cit. Yuni Priscila Ginting and Andi Rania Risya Zamayya, "Increasing Understanding of Roles.....pp.931-940

²⁸ Gillers, S. (2024). Regulation of lawyers: Problems of law and ethics. Aspen Publishing.

²⁹ Tommy Ananda Kusuma, Independence of Legal Consultants in the Due Diligence Process for Public Offerings in the Capital Market, <http://www.google.com>, April 20 2025.

- f. Obtaining a loan, purchasing goods or services from issuers with lighter terms. Legal consultants are prohibited from providing legal services to obtain loans, convenience or facilities from issuers

According to M Irsan Nasarudin and Indra Surya, legally, legal consultants are responsible for any involvement in preparing reports or legal documents that must be submitted by issuers to Bapepam³⁰. Currently, the OJK needs to provide information as a form of legal protection for the OJK when producing reports or juridical documents. This means that if the issuer makes a mistake because the documentation or legal report submitted is not accurate, correct and complete, then it is clear that the legal consultant can also be held accountable by Bapepam.³¹ Therefore, the challenge for legal consultants in the capital markets is to maintain integrity and protect the interests of clients from parties who will harm clients in order to gain unilateral profits. It is indeed quite vulnerable to handling by capital market legal consultants because insider trading often occurs so that small investors often experience losses in both material and non-material aspects.

CONCLUSION

The role of legal consultants in the capital market directs investors to avoid or minimize legal losses in the future. The role of legal consultants is also to remind investors to carry out due diligence on shares to be purchased or executed. Legal consultants or those included in the definition of capital market supporting professions have the role of providing opinions or information (*legal opinion*) and upon his/her approval contained in the registration statement or prospectus at the time of the public offering process (*go public*).

The main basis of legal consulting in the capital market is to provide legal opinions for investors as a form of legal consideration. A legal opinion is a legal emphasis given by a legal consultant to investors to ensure the legal feasibility of the shares they will buy. The legal opinion itself is a prospectus that has been explained by the legal consultant to be given to investors regarding legal issues regarding the shares to be purchased.³² Legal consultants who carry out legal handling in the capital market must not only really understand the ins and outs of the capital market and the legal aspects of the capital market, but must also be able to carry out their duties honestly and have high credibility.

The challenge for legal consultants in the capital markets is to maintain integrity and protect the interests of clients from parties who will harm clients in order to gain unilateral profits. It is indeed quite vulnerable to handling by capital market legal consultants because insider trading often occurs so that small investors often experience losses in both material and non-material aspects.

RECOMMENDATION

The need for the government to form legal consultants for the Capital Market with statutory legal products. In this regard, the author assesses that the legal consultant profession in the capital market requires special regulations regarding a code of ethics in order to maintain integrity in carrying out its duties as a provider of legal opinions for investors as well as its clients. Therefore, legal consultants will be more careful and not carelessly take actions that will harm their clients during or after carrying out legal treatment in the capital markets requested by their clients.

³⁰ Ramon Nofrial, "Responsibilities of Legal Consultants.....pp.110-124

³¹ M. Irsan Nasarudin and Indra Surya, *Legal Aspects of the Indonesian Capital Market*, (Jakarta: Prenada Media, 2004), p. 93

³² Ibid. M.S. Tumanggor, "Role and Function.....pp.37-54

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