

RE-CONCEPTUALIZING THE LEGAL STANDING CLAIM BY FINANCIAL SERVICES AUTHORITY (FSA): ITS CHALLENGE IN INDONESIAN CAPITAL MARKET

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ABSTRACT

There is small number of civil claims submitted by aggrieved investor in some cases over the Indonesian capital market. The above circumstance is caused by, inter alia, less access to justice, lack of trust to the court in examining the capital market dispute, complexion of litigation against the huge issuer company, and many other reasons. Although some cases in capital market are inflicting financial loss to the public investors, however, most of such aggrieved public investors prefer not to take any legal action (file civil claim) against the counter parties to pursue the financial indemnification under Article 1365 Indonesian Civil Code in conjunction with Article 111 Indonesian Capital Market Law. Referring to such condition, the law shall take place and play its ideal function to indemnify the aggrieved investor. The main purpose of the regulation in capital market is to protect the investor and create fair, organized and efficient market. The law enforcement shall be applied in any circumstance, including in the event of the breach of law is occurred. Due to the limited access to justice in committing litigation, the aggrieved retail investor shall be protected, including by performing legal standing claim by FSA as an alternative action for the investor protection. Since the relationship among the parties in capital market is not fully similar with the other FSS, the concept of legal standing requirements shall be strictly clarified, to be able to accommodate the position of consumer in capital market which is not only as consumer, but might also as the investor [public investor]. The implementation regulation of legal standing claim by FSA shall be stipulated in regulation of FSA (Peraturan OJK) rather than stipulated in regulation of Board of Commissioner of FAS (Peraturan Dewan Komisioner OJK). Regulation of FSA is legally binds in general and promulgated in staat gazett.

Keywords: OJK, Legal Standing, Capital Market

INTRODUCTION

Indonesia is one of the largest populations in South East Asia, and it has placed Indonesia to raise potential economic strength. A country economic system built by various relevant sectors. One of the most important sectors is Financial Services Sector (“FSS”). FSS is providing financial necessity for the development of a country or even cross border countries.

FSS is one of the primary determinants of economic dynamics in a country. Not only provides funds for production and consumption, the sector also acts as an intermediate for the public saving. With its dominant role, FSS performance determines the undulations of economic activity in any given jurisdiction due to increasingly innovative financial products (Keuangan, 2015). Accordingly, the government put high attention to the growth of economic sector due to its important role for the country.

Experiencing from a number of financial crises occurring over the past two or three decades has shown a more fragile side of rapid FSS growth, namely, its vulnerability to external and domestic economic shocks. Such shocks commonly occurred during periods of rapid FSS growth, surpassing that of the real sector. The impact of instability is significant, however, and could even spur a recession similar to that experienced by the global economy for nearly the past

decade. Therefore, FSS development should be consistent with real sector development. More importantly, FSS development should be in accordance with macroeconomic fundamentals. Indonesia with all of its advantages, including a vast geographic area, large population and abundant natural resources, holds great potential to grow prodigiously. Naturally, the FSS will play a pivotal role in the realization of optimizing such potential and establishing higher quality, sustainable economic development. Such a process should be maintained without significant fluctuations in the economic cycle (2015).

As one of the economic system, capital market has growth as one of the potential part of FSS. Capital market is an alternative of financing and alternative of investment. Pursuant to its formal description under Law Number 8 of 1995 re: Capital Market ("Capital Market Law"), capital market is defined as "the activity concerned with the Public Offering and Trading of Securities, Public Companies relating to the Securities issued, as well as institutions and professions that related to Securities."

Capital market is a market for a variety of long-term financial instruments that can be traded, both notes (bonds), equities (stocks), mutual funds, derivative instruments and other instruments. The capital market is a funding facility for companies and other institutions (for example government, private sector and others) and as a means of investing activities. Thus, the capital market facilitates various facilities and infrastructure for buying and selling activities and other related activities. Financial instruments traded in the capital market are long-term instruments (a period of more than 1 year) such as stocks, bonds, warrants, rights, mutual funds, and various derivative instruments such as options, futures, and others (IDX). Since capital market provides long term period, then it serves function differs from the banking sector that provides short-middle term of financing. Short-middle term of financing is potentially occurring mismatch. To resolve such mismatch, capital market appears to provide the necessity of long term financing and investment that required by a country.

In an expansion, investment proceeds at a rapid rate and the capital stock grows quickly. Rapid capital growth means that the amount of capital per hour of labor is growing. Equipped with more capital, labor become more productive, but the law of diminishing returns begins to operate (Mc Taggart Douglas, 2012). Information data up to December 29, 2016 indicates that Indeks Harga Saham Gabungan (IHSG) is closed at position of 5,302.57 which increases 15.45% if it compared to previous end year closing point (2015). Such growth index is the second-best index in Asian-Pacific and 5th best in the world (Keuangan, 2013). Such achievement theoretically has contributed to the growth Indonesian economic development. Considering that the capital market has important role in development, and then it shall be regulated and supervised properly to create a fair, organized and efficient market.

The concept of regulation to create fair, organized an efficient capital market is also supported by the stipulation regarding the violation or breach of law in capital market. Pursuant to the Capital Market Law, violations in the capital market are divided into several types, namely: administrative violations as referred to in Article 102 of the Capital Market Law; Criminal violations as regulated in Article 103 to Article 110 of the Capital Market Law; and Civil [private] violations as referred to in Article 111 of the Capital Market Law.

Article 111 of the Capital Market Law stipulates that any party that suffers a loss as a result of a violation of the Capital Market Law or its implementing regulations can demand indemnification, either individually or jointly with other parties who have similar demands, against the parties or parties responsible for the violation. This stipulation is in line with Article 1365 of Indonesian Civil Code.

Violations in the capital market are specifically unique in terms of their violations, perpetrators and their consequences (Anwar, 2008). However, less number of civil disputes settled through the court. Various criticisms of dispute resolution in the capital market, which are generally based on the argument that there have been no cases in the capital market that have been resolved until the court process, the resolution of cases that are long and protracted for reasons such as that the Indonesian capital market is relatively new (Anwar, 2008).

The practice of breach of law can be captured in several cases. The initial public offering of PT Katarina Utama Tbk has shown the breach of laws that is inflicting damages to the investor [shareholder]. In performing initial public offering, PT Katarina Utama Tbk. has conducted misuse of fund earned from the initial public offering in 2009 and has disclosed misleading company financial report (<http://investasi.kontan.co.id>). In line with such case, recently PT Garuda Indonesia Tbk, a state own company, and PT Hanson International Tbk, have also administratively been punished by FSA for being conducted misleading company financial report. Concisely, those cases describing merely the violations of administrative and criminal capital market law. But in the other hand, if we look further in the perspective of investor protection, those cases are inflicting financial damages to the investor. Investor relies their investment decision based on the disclosure information provided by the company. The disclosure information and investor protection are the basic principles in the capital market. However, to the best of the writer knowledge, there is less number of claims filed by the aggrieved investor against the adverse party.

Actually, in addition to the personal claim mechanism against the adverse party, there is a mechanism that requires the role and authority of FSA, it is conceptually known as legal standing action as stipulated in Article 30 of FSA Law. Due to the absence of legal standing action conducted in capital market area, it is become important legal issue. In one side, the stipulation authorizes FSA to conduct such function, but in the other hand, such function has not been performed yet by FSA in practice. Based on the above-mentioned background, it is important to describe and analyze the concept of legal standing action held by FSA to settle the capital market dispute, and further it is expected to re-conceptualizing such function, in order to answer the emerging needs and challenge in Indonesia capital market.

Pursuant to such background, the legal issues in this article are as follows:

1. How is the regulatory concept of FSA legal standing claim pursuant the prevailing laws?
2. How is the re-conceptualizing of FSA legal standing action to be in accordance with the emerging needs and challenge in Indonesia Capital Market?

LITERATURE REVIEW AND PREVIOUS STUDIES

This article is intended specifically to propose the re-conceptualizing the legal standing claim by the Financial Services Authority (FSA). The current regulation has stipulated the power of FSA to file for claim for and on behalf of the aggrieved investor or consumer in the form of legal standing civil claim action as set forth in Article 30 of FSA Law. However, current the implementation regulation is stipulated under Regulation of Board of Commissioner of Financial Service Authority (Peraturan Dewan Komisaris Otoritas Jasa Keuangan) Number 2/PDK.07/2013 re: Mechanism of Civil Claim Action Filed by Financial Services Authority for the Consumer Protection, and not under the Regulation of FSA. Further, up to this moment, there is no legal standing civil claim has been filled by the FSA although several breaches of law have been conducted and no aggrieved party sues for their compensation or indemnification.

This study is performed by using the litigation approach to settle the capital market dispute. The specific mechanism which is proposed under this article is legal standing action under the Indonesian law. Many of various study put the research into the existing mechanism of legal standing or capital market issue, however none of those has described the legal standing civil claim for capital market field. In the other hand, previous studies have been conducted over the dispute settlement in capital market, *inter alia*, article by Rahmawati (2018) regarding the implementation of small claim procedure for capital market litigation as an investor protection in the Indonesian Capital Market. Moreover, Pramudya (2015) has written an article of financial litigation in capital market in the perfective of law and economic: case study of Private Securities Litigation Reform Act of 1995. In relation with the illegal conduct (breach of law) in capital market, Velliana (2018) has conducted her research with title “Breach of Law - Misleading Information in Prospectus of Go-Public”.

This article is trying to resolve the gap among those previous research by proposing the re-conceptualizing the authority of FSA to file for legal standing claim by firstly indicating how

is the regulatory concept of FSA legal standing claim pursuant the prevailing laws and further to propose the re-conceptualizing of FSA legal standing action to be in accordance with the emerging needs and challenge in Indonesia Capital Market. Thus, this is expected to create more legal certainty and support the fair, organized, efficient capital market.

RESEARCH MATERIALS AND METHOD

This article is based on normative judicial research whereas a legal research is conducted against legal principles and regulation and also supplemented by comparative of law. According to Sunaryati (2006), legal research is daily activity of a bachelor of law. Legal research can only be conducted by bachelor of law as a person who is intentionally being educated to understand and comprehend the law as a scientific field. Further, normative research method can be applied together with the social research method.

The approach method in this article is analytical descriptive which aims to obtain a systematic, factual and accurate capture of the available fact. This article will describe the legal problem (issue), fact and other indication (including economic) in respect of the dispute settlement in capital market, especially through the class action civil claim, afterwards, analyzes it by using existing regulation to resolve such legal problem (issue).

As mentioned earlier, this legal article is supported by the economical approach. Law and economic are two systems derived from sociological system which is integrated one to another, accordingly, research in law is often implement economical science to support and assist legal science in verifying and withdrawing the conclusion. In such research, there is functional interdependency and reciprocal between legal and economic science. According to Amran, N. (2005), there is a strong relationship between legal science and economic science, whereas both study the norm and rule for the existence of human life sustainability. Therefore, the contribution of economic science and law is united in a formulation of human interest.

The conclusion of this article is conducted by using the analysis method of normative qualitative. It is not using the mathematical formulation, but it is using the descriptive analysis (qualitative).

RESULT AND DISCUSSION

General Description of Capital Market Dispute and its Settlement Mechanism

As mentioned in FSA Law, in order to realize national economy of which grows sustainably and stable, it is required activity in the sector of financial service of which is well-organized, fair, transparent, and accountable, as well as capable to realize the financial system of which grow sustainably and stable, and capable to protect the interest of consumer and public. FSA is independent agency which is free from the intervention from whatsoever party, which has function, assignment and control authority, supervision, investigation as set forth herein. One of FSA role is providing consumer and public protection in financial services sector, including capital market sector.

Discussing the breach [violation] of capital market law, there is a classification of breach of private law, as follows (Ayuna et al., 2019):

- a. Source of dispute, based on the source of dispute, the capital market dispute is sourced from the breach of law (*perbuatan melanggar hukum*) or breach of contract (*wanprestasi*).
- b. The perpetrator, based on the perpetrator classification, three pattern of breaches which often happened in capital market, namely, breach conducted individually, conducted in groups (collectively) and breach by instructing the other party (directly or indirectly) to conduct the breach (Jusuf, 2008). Moreover, it is also can be classified from the capacity, *inter alia*, as self-regulatory body, investor, issuer, supporting institution, supporting profession and many other.

- c. Legal ground, based on the prevailing legal ground, it is classified as pursuant to conventional law and Islamic Sharia principle.

Any dispute arising in relation with the private law in capital market can be settled through several available remedies, whether through the litigation or non-litigation (alternative dispute resolution). The litigation mechanism started as of the submission of claim through the court and ended with the court decision and execution of the court decision. The entire mechanism is regulated by Indonesian Civil Procedure Law. The available litigation mechanism can be conducted through general claim, small claim procedure, class action procedure, legal standing procedure or citizen lawsuit procedure.

Under the current integrated financial services system, FSA proposes alternative dispute resolution ("ADR") approach as a mechanism to be carried out by the disputing parties. The ADR is known as private dispute settlement. ADR in financial services sector is stipulated under Regulation of FSA No. 1/POJK.07/2014 re: Alternative Dispute Resolution Bodies in Financial Services Sector (Peraturan Otoritas Jasa Keuangan Nomor 1/POJK.07/2014 tentang Lembaga Alternatif Penyelesaian Sengketa di Sektor Jasa Keuangan) ("POJK No. 1/2014").

The basic concept and structure of dispute settlement under POJK No. 1/2014, are as follows (Ema et al., 2016):

- a. Internal dispute resolution, as stated in Article 2 point (1) POJK No. 1/2014, complaint shall be firstly settled by respective financial service institution.
This stipulation requires that internal dispute settlement [negotiation] between the consumer and financial service institution shall be conducted in the event of complaint filed by the consumer. This stipulation is intended to encourage amicable settlement. This is in line with the efficient and effective principles in dispute settlement.
- b. External dispute resolution, as stated in Article 2 point (2) POJK No. 1/2014. In the event that the internal dispute resolution above is not achieved, consumer and financial service institution, can conduct dispute settlement, in the manner as follows:

1) Out of court settlement; or Out of court settlement is conducted through the alternative dispute settlement body (LAPS) which is confidential (in capital market field is Badan Arbitrase Pasar Modal Indonesia (BAPMI)). Financial services institution is obliged to be member of LAPS. Any of its member is oblige to comply with the decision of LAPS. LAPS as listed in the List of LAPS is appointed by OJK and with minimum dispute settlement service, *i.e.*, mediation, adjudication and arbitration. Such LAPS shall have regulation of dispute settlement services, dispute settlement procedures, cost of dispute settlement, time frame of dispute settlement, stipulation of conflict of interest and affiliation of mediator, adjudicator and arbiter, code of conduct for mediator, adjudicator and arbiter. Such LAPS shall apply accessibility, independence, fairness, efficient and effective principles in its regulation. Such LAPS is established by financial service institutions and coordinated by its association body, and also shall provide competent human resources.

2) In court settlement Dispute settlement through the court is settlement through the court as litigation settlement which complies to and regulated by the Indonesia Civil Procedure Laws. This litigation procedure through the district court is in generally divided into three phases namely, preliminary phase, decision phase, and execution phase.

Paying attention to the "in-court settlement" in resolving the capital market dispute, it seems that such "in-court settlement" is quite less popular. Several critics are addressed to the capital market dispute settlement, the fact is there is no capital market case settled to through the court, long time period needed to settle the case and prolonged settlement since the Indonesia capital market is relatively new (Jusuf & Ema, 2018).

The capture of capital market dispute settlement seems still "vague" for most people. A reference describes the economic analysis in capital market litigation as follows:

"Theoretically it is stated that if in the view of the defendant (the party who is considered to be violating/detrimental), the plaintiff (the party who feels aggrieved) will get a bigger winning number than the number predicted by the plaintiff himself, then the defendant will likely prefer to settle the case peacefully because litigation costs are generally also greater than the peaceful costs of resolving disputes. The probability of the plaintiff's victory will depend a lot on (i) the ability of the plaintiff to prove the loss he suffered along with the legal basis that the defendant violated (the more complicated the issue, the more costs needed), (ii) the defendant's ability to prove otherwise (*i.e.*, the plaintiff's position wrong or unfounded), and (iii) the ability of the judiciary to understand the complexity of the issue at issue (because there is always the possibility of wrong application of the law). The cost component includes among others: court fees, professional consultant fees (law, accountant, finance, and appraisal services), reputation fees, other administrative costs, and opportunity costs from other activities that can be carried out if the parties do not battle in the court" (Pramudya, 2015).

The above description indicates that the litigation in capital market (especially for individual investor) is a complicated and tough remedy. Some of the aggrieved party will only consider the loss as investment risk and prefer not to take any legal remedy. Accordingly, the litigation in capital market is less popular in practice. Moreover, the policy of dispute settlement proposed by FSA is based on ADR approach as seen in FSA master plan, FSA strategy and FSA regulation.

The Regulatory Concept of FSA Legal Standing Claim Pursuant to Prevailing Laws

As has been described above, the litigation in capital market is less popular due to several reasons. Since there is no regulation can force any aggrieved party to submit for a claim through the court, then the initiative of claim fully depends on the willingness of the aggrieved party to or not to claim against the adverse party.

This circumstance has induced legal vacuum in capital market in respect of jurisprudence function as one of the source of laws. An opinion states that one of the disconnected links in maturation process of capital market law is the absence of court decision (jurisprudence), which is in essentially, such court decision (jurisprudence) is one of the important part in the process of capital market law creation, maturation and refinement. This far, there is no court decision in Indonesia capital market that deserve to be treated as source of laws. Such factors are the reasons why the maturation process of capital market runs slowly, beside that in fact the capital market law is definitely complicated (Munir, 2001). As an alternative to the general claim, the laws and practice have provided other mechanism, including the "legal standing action" mechanism.

Under the integrated FSS era, FSA Law has stipulated a mechanism known as "legal standing action". Pursuant to Article 30 of FSA Law, in the context of the consumer and public protection, the FSA is authorized to perform legal defense, includes:

- a. Instructing or performing certain actions to the Financial Service Institution to settle the complaint of the Consumer who aggrieved by such Financial Service Institution;
- b. Filing lawsuit [claim]:
 - 1) To re-obtain the aggrieved party assets from the adverse party, either under the power of the adverse party or under power of other party not in good faith; and/ or
 - 2) To obtain compensation from the adverse party that causes loss to the Consumer and/ or Financial Service Institution as the result of violation to the law and regulation in the sector of financial service.
- c. The Compensation as set forth above shall only be used to settle the indemnity to the aggrieved party.

Under the above regulation, FSA is entitled to perform for legal defense, including by instructing or performing certain actions to the financial services institution to settle the complaint the consumer who aggrieved by the financial service institution. This authority is

having very broad coverage. Under this article FSA may conduct any instruction in any form in connection with the settlement of aggrieved consumer. This article is also referred by the FSA to currently arrange the regulation draft of disgorgement and disgorgement fund as one of the legal action to protect the consumer [investor] in financial services sector.

Further, the FSA is also entitled to file for lawsuit (civil claim) against any party for the interest and the benefit of the aggrieved investor [consumer] to re-obtain the aggrieved party assets and to obtain compensation from the adverse party that causes loss to the consumer [investor] and/or financial institution as the result of violation to the law and regulation in the sector of financial services.

In relation to such article, especially in respect of the authority to file for civil claim, FSA has follow it up through a Regulation of Board of Commissioner of Financial Service Authority (Peraturan Dewan Komisaris Otoritas Jasa Keuangan) Number 2/PDK.07/2013 re: Mechanism of Civil Claim Action Filed by Financial Services Authority for the Consumer Protection ("PDK OJK No. 2/2013"). In order to protect the consumer, the FSA is authorized to perform legal defense in a form of civil claim submission. Consumer as stated in such regulation is defined as parties who place their fund and/or utilize services provided at Financial Services Institution, among others, consumer of banking, investor in capital market, insurance policy holder, member at Pension Fund, in accordance with regulations in financial services sector.

The stipulation concept of civil claim submitted by FSA pursuant to PDK OJK No.2/2013 is as follows:

- a. The civil claim for the protection of consumer is legal standing claim and not class action claim (Article 2 point (2)).
- b. Such legal standing claim conducted by FSA pursuant to the assessment and not based on the demand of consumer (Article 2 point (4)).
- c. The legal standing civil claim can only be performed by FSA if out of court settlement is not achieved (Article 3).
- d. Legal Standing civil claim is:
 - 1) To re-obtain the aggrieved party assets from the adverse party, either under the power of the adverse party or under power of other party not in good faith; and/ or ~~SEP~~
 - 2) To obtain compensation from the adverse party that causes loss to the Consumer and/ or Financial Service Institution as the result of violation to the law and regulation in the sector of financial service.
- (Article 4)
- e. Legal standing claim is based on breach of law (Article 5).
- f. Such legal standing claim can be filed, if it meets the following requirements (Article 6 (2)):
 - 1) There is breach of law conducted by financial service institution and/or other party and such party has been administratively punished by FSA;
 - 2) Such breach of law has inflicted large amount of material damages and not less number of consumers.
 - 3) The damages caused by such breach of law in financial service sector might harm the financial services system.
 - 4) The consumer is not bound to the damages settlement agreement with the adverse party whether prior to or after the damages is occurred.
 - 5) FSA has high probability to re-obtain the consumer asset and/or compensation from the adverse party.

In general theory of Indonesia civil procedure, legal standing claim has been acknowledged in Indonesian practice, although it has not been specifically regulated yet. The practice indicates that the former legal standing claim is filed in the breach of environmental law or consumer protection law.

As mentioned earlier, the Indonesia civil procedure does not strictly regulate the legal standing claim. However, such fact is not justification that legal standing action is not prohibited and unacceptable in our judicial practice (Bambang, 2004). By having the "standing" right, it does not mean that it will be automatically the success of public litigation, since basically the "standing" is merely "entrance ticket" to the "legal battle" which full of obstacles such as

verification of proof process, the available remedial tools and the capacity of judges to render the best decision. Although legal standing has been acknowledged in several regulations, its procedure and regulation have not been well stipulated in law [act], government regulation or the Supreme Court Regulation. Even though several regulations state that legal standing procedure refers to prevailing civil procedure law, as well as class action, legal standing has specific characteristic that has not been accommodated yet such prevailing civil procedure law (Susanto, 2010).

Pursuant to the above description, the concept of legal standing claim in FSS sector is as specifically regulated by Article 30 of FSA Law in conjunction with PDK OJK No. 2/2013. Such stipulations are appointing FSA as the authorized party which is entitled to file for legal standing claim in any FSS due to the integrated financial services system. Some requirements based on PDK OJK are quite strict, especially the classification of case [damages/breach] that allowed to be claimed through legal standing procedure. Such strict classification is understood since the FSA shall maturely consider any action taken to maintain the stability of financial service system. However, the implementation of legal standing as appointed by Article 30 of FSA Law is regulated under the PDK OJK No. 2/2013 (Peraturan Dewan Komisioner OJK) which is merely bind OJK internally, rather than regulated in a Regulation of FSA (Peraturan OJK) which is legally binds in general and promulgated in staat gazett.

Re-conceptualizing of FSA Legal Standing Claim to be in Accordance with the Needs and Challenge in Indonesia Capital Market

Before the re-conceptualizing of FSA legal standing claim is proposed in this article, it is important to firstly indicate the several issues arising from the existing regulation regarding the legal standing claim in capital market, as follows:

- a. The stipulation authorizing FSA to file for the legal standing in FSS already exists, however due to the integrated FSS system, the stipulation is applicable to any FSS and no stipulation specifically refers to the capital market sector.
- b. The relationship of parties in capital market is not as the same as relationship of parties in any other FSS. For example, an investor becomes a consumer in a securities company decides to buy share in a public company. The relationship arises from such transaction is, the investor is a consumer of the securities company and the investor is a shareholder of the public company. In the other hand, if a party decides to become a consumer of a bank, then the relationship is only as the consumer of the bank, whether as saving consumer or funding consumer. The comparison of relationship between the consumer in a securities company and consumer in a bank shows that both are not similar.
- c. The requirements of legal standing claim by FSA is very strict, especially the requirement of the damages caused by such breach of law in financial service sector shall be harm the financial services system. Beside it, the stipulation does not state the mechanism of compensation distribution to the aggrieved party [consumer].

Since this article also supported by comparative study, the practice of legal standing in other country is important to be reviewed. In United Kingdom, the mechanism of dispute settlement and indemnification [compensation] can be settled, inter alia, through the court based on the claim filed by FSA for the interest of the investors [legal standing] (Otoritas JAsa Keuangan, 2014). Furthermore, the Securities Commission of Malaysia has filed for claim through the court against several defendants who commit false trading, market rigging transaction and market manipulation, for the benefit of aggrieved investors (<https://www.sc.com.my>). Those data describe that in other country, the legal standing action taken by FSA is a common practice.

Base on the above description, the existing concept of FSA shall be re-conceptualized in adjusting with the specific needs in Indonesia capital market. The following are some notes that related with the legal standing claim by FSA in Indonesia capital market:

- a. The main purpose of the regulation in capital market is to protect the investor and create fair, organized and efficient market. The law enforcement shall be applied in any circumstance, including in the event of the breach of law is occurred. Due to the limited access to justice in committing litigation, the aggrieved retail investor shall be protected, including by performing legal standing claim by FSA as an alternative action for the investor protection. Since the relationship among the parties in capital market is not fully similar with the other FSS, the concept of legal standing requirements shall be strictly clarified, to be able to accommodate the position of consumer in capital market which is not only as consumer, but might also as the investor [public investor]. The implementation regulation of legal standing claim by FSA shall be stipulated in regulation of FSA (Peraturan OJK) rather than stipulated in regulation of Board of Commissioner of FAS (Peraturan Dewan Komisioner OJK). Regulation of FSA is legally binds in general and promulgated in staat gazett.
- b. The concept shall also specifically state the formulation and distribution of the compensation to the aggrieved party, in order to provide legal certainty. The similar scheme is introduced by FSA as disgorgement and disgorgement fund for the aggrieved party's compensation in the out of court settlement.

The proposed re-conceptualizing above is expected to support the law enforcement in capital market to create legal certainty in consumer protection. Several breaches of law conducted by other party (especially issuer/public company) is often inflicting damages to the investor and no legal action taken by the aggrieved investor. The concept of legal standing claim is one of the alternative remedy for the benefit and interest of the public investor. The adjustment of the existing concept shall be in accordance with the specific challenge and needs in capital market, to create and maintain a fair, orderly, efficient capital market.

CONCLUSION

Pursuant to the description, the conclusion is as follows:

1. The concept of legal standing claim in FSS sector is as specifically regulated by Article 30 of FSA Law in conjunction with PDK OJK No. 2/2013; such stipulations are appointing FSA as the authorized party which is entitled to file for legal standing claim in any of FSS due to the integrated financial services system. Some requirements based on PDK OJK are quite strict, especially the classification of case [damages/breach] that allowed to be claimed through legal standing procedure, such strict classification is understood since the FSA shall maturely considered any action taken to maintain the stability of financial service system.
2. The aggrieved retail investor shall be protected, including by performing legal standing claim by FSA as an alternative action for the investor protection, since the relationship among the parties in capital market is not fully similar with the other FSS, the concept of legal standing requirements shall be further clarified. Moreover, implementation regulation of legal standing claim by FSA shall be stipulated in regulation of FSA (Peraturan OJK) rather than stipulated in regulation of Board of Commissioner of FAS (Peraturan Dewan Komisioner OJK). Regulation of FSA is legally binds in general and promulgated in staat gazett. The concept shall also specifically state the formulation and distribution of the compensation to the aggrieved party, in order to provide legal certainty.

REFERENCES

- Anwar, J. (2008). *Law enforcement and supervision of the Indonesian capital market*, (First Edition). Bandung: PT Alumni, 26, 120.
- Adi, S.N. (2010). *Class action and its comparison with other countries*, (First Edition). Jakarta: Kencana. 363-364.
- Bambang, S. (2004). Implementation of Legal Standing Lawsuits. *Journal of Law*, 11(26), 75.
- Douglas, M.T., Christopher, F., & Michael, P. (2012). *Macroeconomic*, (Forth Edition). Printed in China: Pearson Education Australia, 754.
- Ema, R., & Rai, M. (2016). "Dispute resolution through LAPS in the financial services sector". *PJIIH Journal*, 3(2), 246-247.

- Ema, R. (2018). "Implementation of a simple lawsuit in litigation in the capital market as an effort to protect consumers (Investors) in the Indonesian capital market". *Adhaper Journal*, 4(1), 126.
- Financial Services Authority (2013). Financial Consumer Protection Strategy 2013-2027. Jakarta: Financial Services Authority, 8.
- Financial Services Authority (2014). Roadmap of financial services sector dispute resolution mechanisms 2014-2019. Jakarta: Financial Services Authority), 22.
- Indonesian Financial Services Sector Masterplan 2015-2019 (2015), Jakarta: Financial Services Authority.
- Munir, F. (2001), Modern capital market (Legal Review), Book One, Bandung: PT Citra Aditya Bakti, 1-2.
- Pramudya, A.O. (2015). Financial litigation in the capital market sector in legal and economic perspectives: Case study of the private securities litigation reform act of 1995. *Journal of Law & Capital Markets*, 8(9), 38-56.
- Sherly, A.P., & Ema, R. (2019). "Settlement of capital market legal disputes at the district court". *De Jure Legal Scientific Journal*, 4(1), 157.27,
- Velliana, T. (2018). Unlawful acts, misleading information in the go public prospectus, Tangerang, Indonesia: Faculty of Law, Pelita Harapan University.
- <http://investasi.kontan.co.id/news/bapepam-periksa-165-kasus-pelanggaran-pasar-modal> accessed on Juni 8, 2016.
- <http://www.idx.co.id/id-id/beranda/informasi/bagiinvestor/pengantarpasarmodal.aspx> accesed on September 4, 2018.
- https://www.sc.com.my/post_archive/details-of-civil-action-taken-in-2018/ accessed on September 4, 2018.