

Role of the Legal Consultant as Related Party in Trade at the Capital Market

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Abstract

The capital market has an important role, because the capital market is one alternative to collect funds from the public. In the capital market there is an expert in his field who is able to rule the capital market in the field of law is a Legal Consultant. The Legal Consultant has the duty to conduct legal examination and provide legal opinions aimed at assisting the company in realizing the public offering process. In accordance with applicable norms. This paper will provide an explanation and understanding of the role of a Legal Consultant in capital market activities. Because 3 legal consultants have high integrity and are very trusted in carrying out legal checks and providing legal opinions directly in accordance with the rule of law.

Keywords: *Role, Legal Consultant, Capital Market*

A. INTRODUCTION

In Article 1 number 13 of Law No.8 of 1995 concerning the Capital Market regarding the meaning of the article capital is activities related to public offerings with securities trading or public companies related to securities that have been issued in institutions and professions.¹

The capital market is having funds in the long term and includes a concrete market. The purpose of long-term funds is the use of funds with a maturity of more

¹ Martalena. 2011. Pengantar Pasar Modal. Yogyakarta: Penerbit Andi. hal. 2

than one year, while the purpose of a concrete market means a market in a transparent and open manner.²

The role of the capital market in stabilizing the economy of a country, in relation to the capital market there are two functions consisting of economy and finance. The economic function is the provision of facilities in implementing two interests and safeguarding the economy in the form of parties providing funds and parties requiring funds for the long term. Those who have funds will provide opportunities to invest with the aim of getting a reward in the form of dividends. Meanwhile, parties in the company can use the funds to invest, without waiting for the availability of funds in the company's activities. Article capital has a financial function as a guarantee of return of funds and interest in accordance with investors.³

The capital market is a business sector related to securities trading, for example stocks, stock certificates and bonds. Each serves as a meeting place between the seller and the buyer. Sumantoro's opinion states that the capital market has a different meaning from the concrete market, because it is a meeting place for sellers and buyers with foreign investors.⁴

The government realizes that the capital market is experiencing growth and has an important role in the smooth development of a country's economy.⁵

For the sake of realizing a public offering in a company, a legal expert is called a legal consultant. Legal opinion held by legal consultants cannot influence parties other than the issuer.⁶

A legal consultant service is needed in a company because it has evidence of involvement in disputes between other parties. Legal consultations and documents required by legal consultants can only resolve legal issues that occur, so legal consultant services are urgently needed.⁷

² Tia Pertiwi, Indra Perdana & Irda Pratiwi. 2019. *Aspek Hukum Prinsip Keterbukaan Perdagangan Saham Oleh Profesi Penunjang Pasar Modal*. Jurnal Pionir LPPM Universitas Asahan Vol. 5. No. 4 (November-Desember 2019). hal. 198

³ Abdul Halim. *Analisis Investasi di Aser Keuangan*. Jakarta: Mitra Wacana Media. hal. 2

⁴ I.N. Wahyu Saptahadi. & I Dewa Made Suartha. *Peranan Konsultan Hukum Dalam Kegiatan Pasar Modal*. Skripsi. Universitas Udayana. (diakses 28 Juni). hal. 2

⁵ I Gede Andre Santika. & Ni Nengah Adiyaryani. *Peran dan Tanggung Jawab Konsultan Hukum Dalam Kegiatan Pasar Modal*. Skripsi. Universitas Udayana. (diakses 29 Juni). hal. 2

⁶ Saidin & Rangkuti. 2019. *Hukum Investasi Dan Pasar Modal Sebuah Kajian Kritis Terhadap Kemudahan untuk Berusaha*. Jakarta: Prenamedia Group. hal. 48

⁷ Said Sampara. 2010. *Peran Konsultan Hukum Di Dalam Rangka Perlindungan Investor (Investor Protection)*. Hukum dan Dinamika Masyarakat Vol. 7. No. 2 (April. 2010). hal. 147

The responsibility of a legal consultant in conducting a public examination of the legality and documents required in a public offering. The problem that occurs with the issuer regarding the ownership of company documents must be able to overcome the problems that occur, so that it is the responsibility of a legal consultant properly. Legal examinations and legal opinions carried out by legal consultants have provided full accountability.⁸

Legal certainty in the examination by the issuer, everything is related to the law and is processed legally and transparently and openly, for example the status of the company, labor issues and the company's obligations as a third party.⁹

Legal problems that occur upon examination of a client by a legal consultant in terms of advising each client. Based on the legal problems faced by clients, it is hoped that they can help and make examples of a company's public offering.¹⁰

Legal consultants have requirements that must be met, among others:

1. Law No. 18 of 2003 concerning Advocates
2. Law No. 8 of 1995 concerning the Capital Market.
3. Regulations (PP) No. 45 of 1995. PP. 12 of 2004 and PP. 46 of 1995 concerning the Implementation of Activities in the Capital Market
4. Basic Agenda, Bylaws and code of ethics of the Capital Market Legal Consultants Association (HKHPM)
5. HKHPM Decree No. Kep. 01 / HKHPM / 2005 Concerning Professional Standards for Capital Market Legal Consultants, stipulated on February 18, 2005 and came into effect on August 18, 2005 (6 months is the socialization period).¹¹

With the explanation above, it is increasingly open to the problems that occur, for that the importance of conducting this research is what is the role of the supporting profession "Legal Consultants" as parties involved in the Capital Market.

⁸ I Gede Andre Santika. & Ni Nengah Adiyaryani. *Peran dan Tanggung Jawab Konsultan Hukum Dalam Kegiatan Pasar Modal*. Skripsi. Universitas Udayana. (diakses 29 Juni). Op.Cit, hal. 2

⁹ Ibid., hal. 3-4

¹⁰ Ibid

¹¹ Acep Rohendi. 2017. *Kewajiban dan Tanggung Jawab Konsultan Hukum Sebagai Profesi Penunjang Pasar Modal*. Jurnal Ecodemica Vol. 1. No. 1 (April. 2017). hal. 60-61

B. RESEARCH METHOD

The research method uses normative juridical, which means the concept of norms, legal rules, principles which are usually referred to as a doctoral approach. What is obtained from reading books and current laws and regulations by using legal materials in primary, secondary and tertiary law which are the main source of law.

C. DISCUSSION

The definition of a legal consultant is contained in Article 64 paragraph (1) letter b UUPM states that Legal Consultants are legal experts issuing legal opinions to other parties who have registered certificates with BAPEPAM and LK in order to carry out capital market activities. The elaboration in Article 64 paragraph (2) is quite important and clear that a legal consultant is an opinion or profession of a capital market supporter in the future in making investment decisions.¹²

The above provisions are clear that the law No.18 of 2003 concerning advocates is correct. Because the capital market must be registered through the OJK. Legal consultants must really conduct inspection and supervision within the company.

The definition of avocado contains Article 1 paragraph (1) which reads that an advocate is a person who has the profession of providing legal services both inside and outside the court based on the requirements of the applicable law. Then legal services provide an understanding based on Article 1 paragraph (2) that legal services are services provided by a legal consultant, legal assistance, exercising power, representing. Assist, defend and resolve other laws on the basis of client needs. The client's intention contains Article 1 paragraph (3) the meaning of client is a person, legal entity or institution that is willing to receive legal services from the lawyer.

As a profession that is free, independent, and responsible, it serves as an advocate role and function. The profession should enforce justice based on the law. An advocate carries out the judicial process wisely and is seen outside the court. This can increase the authority of a legal consultant to carry out his duties. Advocates' legal services outside the judiciary are increasingly increasing the need for legal issues for the community, especially human life, which is increasing in relations between

¹² Sentosa Sembiring. 2019. *Hukum Pasar Modal Cetakan Pertama*. Bandung: Nuansa Aulia. hal. 91

nations. In making trade contracts, especially the advocate profession, through legal services, has contributed to their participation in helping to resolve legal problems, including resolving disputes outside the court.

Based on the explanation above, a legal consultant provides legal services outside the court related to Article 2 paragraph (1) states that advocates are appointed based on their legal higher education status and follow special advocacy education conducted by advocate organizations. The appointment of an advocate is carried out by an advocate organization.¹³

The opinion of BAPEPAM concludes that the legal consultant's obligation to issue a legal opinion regarding the transparency and openness of a company to the capital market is due to its assessment of the budget based on the applicable laws and regulations, as material for its assessment of the assets owned by the company, as an assessment of the company's relationship with the company. other parties and as a reminder that problems that occur will harm the company.

Based on the explanation of Article 1 number (1) of OJK Regulation No.66/POJK.04/2007 regarding legal consultants, legal experts provide legal opinions to other parties carrying out activities in the capital market.¹⁴ Meanwhile, Article 2 explains that activities in the market sector require registration at the OJK in accordance with the current terms and conditions.¹⁵

Contains Decree of the Chairman of Bapepam No. Kep-37/PM/1996 regarding the registration of capital market supporting professions or Regulation No.VIII B.1 that legal consultants must register through Bapepam with the following requirements:

- a. Indonesian Citizen
- b. Have a bachelor degree (S-1)
- c. Have good character and morals
- d. Do not commit any legal issues related to criminal acts specifically for financial services
- e. Have a position as a partner in KKH by meeting the following criteria:
 1. The Head of the Legal Consulting Firm has colleagues who are responsible for legal examinations and opinions

¹³ Ibid., hal.91

¹⁴ Sentosa Sembiring. 2019. *Hukum Pasar Modal Cetakan Pertama*. Bandung: Nuansa Aulia. Op.Cit, hal. 93

¹⁵ Ibid., hal. 93

2. Conducting inspections, implementing two levels of control, namely the responsible partner and intermediate supervisor, which is carried out by the supervision of the implementing staff;
 3. Willing to become a member of the HKHPM;
 4. Live an external role model by HKHPM in order to comply with the Legal Examination Standards and Legal Opinion Standards as well as the professional Code of Ethics in carrying out activities
 5. A legal consultant office that has one partner who can organize capital market activities is required to have a cooperation agreement with a legal consultant registered with Bapepam regarding the transfer of responsibility if the legal consultant is unable to carry out his duties.
- f. HKHPM members
- g. Never been subject to administrative sanctions in the form of cancellation of a registered certificate from the OJK
- h. Have expertise in the capital market in the professional education program with a total of at least 30 professional credit units and;
- i. Do not work concurrently or have more than one position at KKH or capital market supporting professionals registered with the OJK.¹⁶

A legal consultant has complied with the applicable regulations based on the procedures and regulations carried out and has expertise in the capital market which was taken during special education. Mastery is very important for legal consultants to issue legal opinions, especially in the capital market sector. So his opinion is that the law is used to solve the problems that occur in the capital market. For this reason, it has been adjusted based on the professional standard number 3 on the issuance of the legal consultant association which states that the operators of capital market activities must have the ability and control over the understanding of regulations in the capital market sector which is actually inadequate in carrying out capital market activities.¹⁷

Based on In the explanation above, it can be concluded that a legal consultant as a capital market activity does not need to represent the interests of clients if it is in the

¹⁶ Acep Rohendi. 2017. *Kewajiban dan Tanggung Jawab Konsultan Hukum Sebagai Profesi Penunjang Pasar Modal*. Jurnal Ecodemica Vol. 1. No. 1 (April. 2017). Op.Cit, hal. 62

¹⁷ Sentosa Sembiring. 2019. *Hukum Pasar Modal Cetakan Pertama*. Bandung: Nuansa Aulia. hal. 94

interests of the public (investors). According to Muh Iman, the aspect of protection in the public interest is very important for attention in capital market transactions.¹⁸

Another legal opinion states that the influence of other parties on the freedom they have. A legal consultant is independent and objective in capital market activities. The legal consultant has no relation or position in the company when conducting an examination.¹⁹ Then the same opinion was expressed by Hadi Herdiansyah that the attitude of legal consultants must be independent and able to work based on facts in the field, influencing other parties on opinions issued freely, this will be a role model for their performance.²⁰

Article 67 UUPM the requirements stipulate that the activities carried out by the capital market on the profession they are engaged in require to be independent from any party. profession as a legal consultant is aware of careful examination of the correctness of documents that occur within the company. Anything that becomes a legal issue must be properly examined documents and disclosure of the truth must be responsible for the opinion given, for example, regarding the financial statements prepared by a public accountant in accordance with the terms and procedures determined by the business entity during the issuance.²¹

The current legal provisions, every legal consultant is required to carry out due diligence in order to obtain correct facts and information based on events that occur in the company and the transactions it carries out. The objectives of a legal consultant include being open or transparent in conveying the company's condition to investors. So that there is no confusion in the truth in the investigation that is revealed in the corporate environment. Regarding the examination, as an issuer must convey all legal aspects that occur and know the investors. If you do not convey all the actuals to the issuers and investors, legal imbalances will occur. For this reason, there is an open and

¹⁸ Elfira Fitriyani Pakpahan. Selvia Fransiska Wijaya & Agnes Fortunata. 2019. *Benturan Kepentingan bagi Konsultan Hukum dalam Kejahatan Pasar Modal*. Jurnal Ilmiah Penegakan Hukum Vol. 6 . No. 2 (Desember 2019). hal. 81

¹⁹ Standar Profesi Himpunan Konsultan Hukum Pasar Modal. No KEP.04/HKHPM/XII/2012. hal. 15

²⁰ Sentosa Sembiring. 2019. *Hukum Pasar Modal Cetakan Pertama*. Bandung: Nuansa Aulia. hal. 96

²¹ I.N. Wahyu Saptahadi. & I Dewa Made Suartha. *Peranan Konsultan Hukum Dalam Kegiatan Pasar Modal*. Skripsi. Universitas Udayana. (diakses 28 Juni). hal. 3

transparent document examination which will become a clear and detailed legal benchmark.²²

Due diligence is carried out based on the opinion of existing material information and facts, there are several ways including:

1. Examination of documents

View all documents according to the transactions that will be carried out so far.

2. Examination with Questions and Answers

Interviews with management and other parties related to existing transaction objects

3. Examinations carried out in due diligence meetings must be carried out together with other professions and capital market supporting institutions. The Legal Consultant is obliged to attend every Due Due Diligence meeting

4. Local visits conducted by Legal Consultants with capital market expert supporting institutions on the object of the transaction in order to gain an understanding of the object of Due Diligence.

5. Confirmation with other capital market supporting institutions or professionals.²³

This concept is based on the Capital Market Law, an obligation for interested parties to carry out an examination of the truth and disclosure of company information regarding its securities. Therefore some parties conclude that the duo diligence research will take steps in preparing to defend themselves for those who occur in the public offering process. The UUPM has made applicable regulations based on existing capital market activities. For this reason, the parties must respond to what happens in the audit by referring to capital market activities.²⁴

A. Zen Umar Purba's opinion states that the relationship between the issuer's capital market and legal consultants is not related. This will have an impact on attracting the market, therefore the issuer's obligation is open and ready to be dissected. From a legal point of view, the surgeon is carried out by a legal consultant to produce transparent information and openness to the public so that they can consider the facts.

²² Zuliana Maro Batubara. 2007. *Aspek Hukum Due Diligence oleh Konsultan Hukum Di Pasar Modal*. Skripsi. USU (diakses 30 Juni). hal. 3

²³ Standar Profesi Himpunan Konsultan Hukum Pasar Modal. No KEP.04/HKHPM/XII/2012. hal. 16

²⁴ Ramon Nofrial. 2015. *Tanggung Jawab Konsultan Hukum Sebagai Profesi Penunjang Dalam Mewujudkan Prinsip Keterbukaan Di Pasar Modal*. Jurnal Hukum Samudra Keadilan Vol. 10. No. 1 (Januari-Juni 2015). hal. 115

So that there is no disagreement with the community. For this reason, with the results of document inspection carried out correctly and appropriately in submitting by the issuer to a legal consultant in accordance with the legal opinion then it is written into the prospectus that has been prepared by the issuer.²⁵

Each legal opinion has the first function, to ensure that the client's actions are true and not against the law, second, to provide confidence that developments between parties have occurred, thirdly, to provide a warning about legal uncertainty and fifth, to provide protection against accusations that are not right.

The legal consultant involved in signing the legal opinion on the issuance of securities to the issuer. Legal opinion must clearly carry out the information provided by the parties in order to sign an issuance of securities.²⁶

Legal consultants provide important tasks for their legal opinions which are carried out to:

1. Providing opinions in accordance with the state of the company's budget / assets, must have permits, concrete evidence and have a relationship with outside parties
2. Determine the issuer's eligibility.
3. Responsible for the correctness of existing company laws.

According to the opinion of experts and capital market law practitioners, the role of legal consultants for the actions of companies that wish to make a public offering of shares to the public or the stock exchange is obliged to examine and examine documents that occur by the company. For this reason, legal consultants are obliged to carry out research on company documents from a legal perspective including:

- a. The validity or amendment of the deed of establishment / articles of association of the company.
- b. The truth is that the company's capital payments are made by a legal consultant as stated in the articles of association.
- c. Granting company business permits
- d. Knowing whether the ownership of the company's assets is on behalf of another party.

²⁵ Sentosa Sembiring. 2019. *Hukum Pasar Modal Cetakan Pertama*. Bandung: Nuansa Aulia. Op.Cit, hal. 97

²⁶ Ibid., hal. 97 - 98

- e. Cooperation agreements with companies in third parties for obtaining loans, trade, royalties.
- f. Corporate charges of civil or criminal proceedings. Legal issues must be disclosed by a legal consultant. Whether the company raises a case or not, if that happens it must be reported to the party in the court case.²⁷

Other parties are of the opinion that legal consultant services are needed by the issuer until the process of going public until the issuer is completed to become a public company. Legal matters containing memoranda are usually clear facts and opinions. For this reason, a memorandum is indispensable for the legal facts that occur. In accordance with the facts presented, it must have the truth in legal matters. Therefore the memorandum contains clarity which contains:

1. Clarity of facts;
2. Problem;
3. Legal basis and juridical analysis;
4. Conclusion;
5. Recommendation.²⁸

As a legal consultant profession, it is the truth of information disclosure in capital market activities. This is very much needed by the existence of an investor without investors who will find it difficult to invest in the business interests of the issuer. Because investors want to invest in trust in the capital market in a safe manner and provide the development of Indonesia's economic development. For this reason, the regulations that have been regulated in investing their capital in Indonesia have provided proper security and protection.²⁹

If transactions in the capital market run safely and smoothly if the parties do not take professional action, they are only looking for profit. In fact, the parties must act fairly and honestly in conducting their capital markets. No more legal problems that

²⁷ Rusdin. 2008. *Pasar Modal Teori, Masalah, dan Kebijakan Dalam Praktik*. Bandung: Alfabeta. hal.28-29

²⁸ Zuliana Maro Batubara. 2007. *Aspek Hukum Due Diligence oleh Konsultan Hukum Di Pasar Modal*. Skripsi. USU (diakses 30 Juni). Op.Cit, hal. 22

²⁹ Ramon Nofrial. 2015. *Tanggung Jawab Konsultan Hukum Sebagai Profesi Penunjang Dalam Mewujudkan Prinsip Keterbukaan Di Pasar Modal*. Jurnal Hukum Samudra Keadilan Vol. 10. No. 1 (Januari-Juni 2015). Op.Cit, hal. 116

occur will make people nervous and afraid to carry out capital market activities. With a smooth and safe environment, people will want to maintain capital market activities.

Provisions Legal Consultant based on KepMenKeu No. 1459/KMK.013/1990jo KepMenKeu No. 645/KMK.010/1995jo KepMenKeu No.284/KMK.010/1995 explains that the prohibition given is in the form of:

- a. Services for affiliated issuers, for example a legal consultant in the form of a commissioner or a member of the board of directors;
- b. Agreement for legal purposes;
- c. Examining and providing opinions for the issuer before making payments for services rendered;
- d. Carry out checks on his own work;
- e. Enter into an agreement with the issuer for payment of legal consultant services when the report is received;
- f. Get a loan using lighter terms.

KThe legal consultant must be responsible for any involvement that occurs in the issuer's receipt of reports to Bapepam. If an error occurs, the legal consultant is obliged to hold an accountability with Bapepam. In order to improve or test the validity of existing report documents.³⁰

The principle of responsibility for a legal consultant is based on the existing legal aspect of the capital clause. Opinions on the explanation of the benefits of money obtained in the form of a legal audit must be acted on legally. For this reason, investors are demanding compensation for losses incurred at the opinion of a legal consultant. As a result, investors no longer want to invest their capital in the capital market because they experience losses.³¹

The role of a legal consultant is prioritized in:

- a. Provide documents to be used for companies going public.
- b. Perform inspection and make the final results of the examination.
- c. Resolving legal solutions related to capital market activities.
- d. Provide assistance to other parties in need.

³⁰ Ibid., hal. 117-118

³¹ Sentosa Sembiring. 2019. *Hukum Pasar Modal Cetakan Pertama*. Bandung: Nuansa Aulia. Op.Cit, hal. 99

- e. Cooperating well with BAPEPAM in resolving legal problems related to capital market activities.

D. CLOSING

Role Legal consultants are very important in their responsibility to carry out legal examinations by expressing legal opinions in realizing the public offering process. Therefore, a legal consultant will independently provide expertise in the field of law based on facts, information and correct information regarding the legal aspects of the issuer in accordance with the legal consultant's code of ethics.

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