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FURTHER MEASURES BY THE INDONESIAN FINANCIAL SERVICE AUTHORITY ("OJK") FOR CAPITAL MARKET SUPERVISION IN AIMING TO PROVIDE GREATER LEGAL CERTAINTY

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Capital Market can be defined as the activity of trading and offering securities to the public, the activity of a public company with respect to the securities it has issued, and the activities of securities-related institutions and professions[1]. A healthy capital market industry is needed to support the creation of financial system stability, national economic growth and maintaining public trust in the Capital Market industry. As a result, any difficulty that the Capital Markets business faces must be given adequate guidance and supervision and should be remedied immediately in order to avoid disrupting financial system stability and lowering public trust.

[1] Article 1 paragraph (1) of Financial Service Authority (OJK) Regulation No. 23/POJK.04/2021

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It is common for the Capital Market industry facing financial scandals involving capital-market participants and products. False trading and stock price manipulation were among the most common violation in Indonesia Capital Market practice, according to the Indonesian Financial Service Authority ("OJK"). Other violations include the failure to meet regulatory requirements and breaking the professional code of conduct. Therefore, without robust supervision, manipulation can make public investors lose trust in the local bourse, which can negatively impact the government's target of deepening the country's capital market.

With this urgency, a comprehensive and clear framework regulation is needed to allow the OJK to fulfil its supervisory role effectively. Adequate guidance and supervision actions by OJK is aim to implement corrective steps that are fast and can be taken by the Capital Market industry players to protect the interests of investors, prevent the occurrence of widespread public losses due to misconduct of Capital Market industry players, and to maintain the business continuity of the Capital Market industry players so that they can continue to fulfil their obligations to consumers.

Essentially, OJK has been regulated in regards to its extensive supervisory authority with the Law No. 21 Year 2011 concerning the Financial Service Authority ("OJK Law"). However, the OJK has issued regulation No. 23/POJK.04/2021 concerning Further Measures for Capital Market Supervision ("POJK No. 23/2021"), which entered into effect on 3 December 2021, to fill the gap and to make a clearer framework from what OJK Law has regulated. All parties that carry out activities in the Capital Market must comply with the POJK No. 23/2021.

The OJK has the authority to conduct further supervisory measures to all Capital Market participants which are, but not limited to:[2]

a. Offsite supervision;

b. Technical inspection;

c. Inspection of compliance; and/or

d. Other supervisory measures.

[2]Article 3 of Financial Service Authority (OJK) Regulation No. 23/POJK.04/2021

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These supervisory measures are taken by the OJK to uphold its authority of directing, guiding, taking preventive steps, taking steps to solve problems, taking corrective actions, preventing further violations of compliance with regulations in the Capital Market sector, making repairs and/or adjustments in accordance with regulatory provisions and/or improving compliance in the Capital Market sector.[3] Further, Article 4 of POJK No. 23/2021 also stipulates that all Capital Market participants, including securities companies, and other interested parties (company directors, commissioners, shareholders, controlling shareholders, or controllers of these parties), must abide by the prevailing capital-market regulations and must carry out their activities in accordance with the following principles:[4]

- ✓ **Integrity;**
- ✓ **Good faith;**
- ✓ **Prudence, through the application of risk management and good governance;**
- ✓ **Professionalism; and**
- ✓ **Information disclosure.**

All Capital Market participants that are stipulated under Article 2 of POJK No. 23/2021, must comply with the existing laws and regulations in the Capital Market sector, as well as above-mentioned principles. In a case that there is a violation towards the existing laws and regulations in the capital market sector and/or above-mentioned principles, the OJK has the authority to give following sanctions:[5]

a. Issuing an Order for Specific Measures ("OSM");
b. Issuing Written Order ("WO"); and/or
c. Law enforcement measures.

OSM and WO contain the same type of instruction that the non-compliant party must adhere. A WO is typically issued when a non-compliant party fails to comply with an OSM, however it can also be issued without an OSM if deemed essential by a supervisor.

[3] Ibid
[4] Article 4 paragraph (1) of Financial Service Authority (OJK) Regulation No. 23/POJK.04/2021
[5] Article 5 of Financial Service Authority (OJK) Regulation No. 23/POJK.04/2021

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Following are the explanation on differences between OSM and WO:

A. Order for Specific Measures (OSM)

OSM is given as a part of supervisory action, if there is an indication of non-conformance of the implementation of principles stipulated in Article 4 of POJK No. 23/2021 and violation of the laws and regulations in the Capital Market sector. An OSM is the OJK's first response to breaches by capital-market participants is given before the issuance of WO and/or before and/or along with the process of law enforcement.

There are two issuance format for an OSM:[6]

a. In writing to non-compliant party

b. Through OJK Website, if there is any problem in delivering the OSM to the non-compliant party.

Within 5 working days of issuance of an OSM, the non-compliant party is required to submit:[7]

a. An action plan to resolve the relevant issues; and

b. A statement of commitment to resolve the issues by:

1. **The parties identified in an OSM;**
2. **Directors, commissioners, or management; or**
3. **Shareholders, controlling shareholders or controllers, if it involves their responsibilities.**

If a non-compliant party has not fully complied with an OSM by its expiry date, within 5 working days of expiry, they must submit:[8]

a. Progress report on implementation of its action plan;

b. An application for extension of the OSM.

[6] Article 7 paragraph (1) and (2) of Financial Service Authority (OJK) Regulation No. 23/POJK.04/2021
[7] Article 8 paragraph (1) of Financial Service Authority (OJK) Regulation No. 23/POJK.04/2021
[8] Article 8 paragraph (4) of Financial Service Authority (OJK) Regulation No. 23/POJK.04/2021

The OJK has the authority to extend the period of time or not extending the period of OSM by taking into account:[9]

a. The condition of the problem that is faced by the non-compliant party;
b. Period of time of the implementation of the action plan;
c. Impact to consumer protection;
d. Impact of the OSM to the condition of Capital Market industry and/or Financial Service industry;
e. Other considerations based on the assessment of OJK.

If OJK decides to extend the period of OSM, it can only be granted a maximum of 2 (two) extensions.[10] However, in the event that there are conditions beyond the ability of the non-compliant party to fulfil its obligations, the extension of the period may be granted more than 2 (two) times.[11] Moreover, in relation to the case that the non-compliant party does not fulfil the OSM, OJK then has the authority to carry out the inspection as referred to in Article 100 of Law No. 8 Year 1995 concerning the Capital Market and/or issue Written Order as a follow up measure.

B. Written Order (WO)

WO is given to the non-compliant party who fails to adhere to an OSM. If the non-compliant party had to carry out the WO, which should be evidenced by the improvement of condition and/or fulfilment of the WO, OJK has the authority to:[12]

a. Deliver written notifications directly to the non-compliant party that the party has complied with the Written Order and/or the OJK has no further response to the implementation of the Written Order; and/or

b. Make an announcement that a written order has been carried out by the non-compliant party.

In the event that the WO is not fulfilled, the OJK has the authority to proceed further to the investigation stage in accordance with the provisions of the OJK Law.

[9] Article 8 paragraph (6) of Financial Service Authority (OJK) Regulation No. 23/POJK.04/2021
[10] Article 8 paragraph (7) of Financial Service Authority (OJK) Regulation No. 23/POJK.04/2021
[11] Article 8 paragraph (8) of Financial Service Authority (OJK) Regulation No. 23/POJK.04/2021
[12] Article 15 of Financial Service Authority (OJK) Regulation No. 23/POJK.04/2021

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Enclosed, the Financial Service Authority (OJK) Regulation No. 23/POJK.04/2021 has been effective since 3 December 2021 and this regulation has set a clearer framework and filled the necessary gap within OJK Law. The regulation on Further Measures for Capital Market Supervision is expected to provide more comprehensive guidance regarding supervisory actions for both the Financial Services Authority and the Capital Market industry players.