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The Readiness of Indonesian Regulation on Capital Market in Dealing with Asean Economic Society

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Abstract: The presence of ASEAN Economic Community in the field of capital market requires synergistic regulation readiness. The Financial Services Authority issued several regulations relating to the Capital Market to face the turmoil of the Asean Economic Community, in order to create an orderly and good capital market trading so as to attract foreign investors to invest in Indonesia, however some regulations are considered to be problematic. Whereas the readiness of the regulation is important to ensure the disclosure of information, the provision of legal certainty and enforcement of legislation with the imposition of sanctions namely, administrative, criminal, and civil sanctions to perpetrators of violations in trading in the capital market. With good law enforcement and balanced with good regulation, it can create a securities trading in the capital market that is both efficient and open and gives legal certainty especially to investors in the capital market. Nowadays. Which is a problem in the capital market is about the proof of the existence of violation. In the event of a violation of market manipulation in particular, The Financial Services Authority supposedly searches for a list of the history of efficient transactions on the Securities Exchange - thus obtaining a description of who the perpetrators of the transactions in the securities trading, so that the law can be enforced properly, and does not interfere with the state economy, relating to the Capital Market.

Keywords: ASEAN Economic Community, Capital Market, Regulation

A. INTRODUCTION

There are four substances as focus of ASEAN Economic Community (AEC) 2015 which can be use as perfect momentum for Indonesia. First, these Southeast Asia countries are going to put into one massive unit of market and production basis. With the union of market and production basis, it will allow goods, services, investment and capital flow streaming in massive amount, then the movement of many skilled worklabours can be free or having no boundaries from one country to another inside Southeast Asia region.

Second, AEC will shape as economic region with high competency level that require policy that consist of competition policy, consumer protection, Intellectual Property Rights, taxation, and ECommerce. Therefore, it can create a fair competency climate; able to offer protection mode by making networking system from consumer protection agents, prevent violation of copyright, creating an integrated, safe and efficient transportation network; omitting double taxation system; and increasing many trading activities by electronic media via online. Third, AEC will also play a role as a region which has equal economic growth, by given top priority to microbusiness or Small and Medium Enterprises (SME). Competency and dynamic power of SME will be upgrade by facilitating their access to the latest information, market condition, human resources development in a form of skill, finance, and technology improvement. Fourth, AEC will be fully integrated to global economic, by building a system that elevate coordination toward ASEAN members. Also, participation of every country inside Southeast Asia region to global supply networking will be encourage by creating technical aid packages program for under development countries inside ASEAN. This program is held to increase industrial ability and productivity of those countries to elevate their participation in regional scale and also create initiative to be globally integrated with other countries inside ASEAN (Muhamad Rifai, 2016:53). The Association of Southeast Asian Nations is regarded as one of the most successful regional integration initiatives among the developing countries (Guido Benny, 2015: 86).

Facing the AEC, the Indonesian should be able to prepare all resources owned in each sector. Especially the economic sector. With AEC 2015 it is expected that ASEAN will have 4 main characteristics are as (1) single market and unity of production base, (2) competitive economic region, (3) equitable economic growth, and (4) enhancing ability to integrate with global economy. In accordance with the main pillar of the AEC, it will create a single market in the ASEAN region. This single market will bring about a free flow of trade in goods, services, capital and investment. One of them is the integration of all capital markets in ASEAN countries, whereby all issuers from ASEAN countries can conduct trading transactions in a single capital market. Sectors that are still the main concern of Indonesian Capital Market before entering the AEC. Namely the stock and mutual fund sectors (Paulina Yuritha, 2014: 2-3).

In the modern economy the existence of the capital market is a necessity. In countries with advanced economic conditions, the existence of capital markets as manifested in institutional stock exchanges plays an important role as well as banks (Inda Rahadian, 2014: 1). The capital market has a very important and strategic role in the national economic development, because the capital market is one source of financing for business and investment vehicle for the society (Abdul R. Saliman, 2015: 228). It also has two functions at once, namely economic and financial functions. Capital market is said to have an economic function because the market provides facilities or vehicles that bring together two interests ie those who have excess funds (investors) and parties that require funds (issuer) (Jogiyanto, 2000).

Capital market is one of the critical components of any economy. Therefore, investment decision of the investors in the capital market is very sensitive (Md. Ariful Islam, 2015: 1). As the economy grows, with the AEC's turmoil, Indonesia must be prepared to deal with it, especially in the field of regulation. Given the importance of the role of the capital market to the Indonesian economy, strict and clear legal instruments are needed to regulate it in order to avoid violations in the capital market. Due to the increasingly widespread violations in the capital market will affect the reputation of the stock market, especially in Indonesia in the eyes of the world. With the regulation relevant to the economic development, it can create a market climate with good economic fundamentals. Indonesia's regulatory readiness becomes very important, as

the growing economic growth makes Indonesia must be able to compete in the global market so that with good regulations it is expected to give positive effect to the economic growth of the country. Based on the background that has been described above, it can be drawn a formulation of the problem as follows: How Indonesian state readiness regulations in the field of capital markets to face AEC?

B. METHODOLOGY

This type of research is normative legal research. Using the approach of Legislation approach. Source and Type of Legal Material is the main legal material in the form of laws related to the Capital Market such as Law Number 8 of 1995 concerning Capital Market and Law Number 21 of 2011 concerning the Financial Services Authority (FSA/OJK); Secondary Legal Material in the form of legal material relating to the main source of raw material and related to the source of primary law, among others, books and journals related to the capital market.

C. LITERATURE REVIEW

Financial markets, regardless of bank-based or capital marketbased, is a crucial element in the development of a country. The importance of financial markets lies in their abilities to facilitate the flow of funds between surplus and deficit units. Without an efficient financial market, productive projects cannot be exploited due to inability to get funds. Thus, this may hinder or slow down the country's economic development (Sabariah Noerdin, 2016: 260). Poor operation of the financial market has been associated with an obstacle to economic growth (Acosta and Loza, 2005). The capital market in any economy is the swivel on which the fortune of that economy revolves. The importance of a well-functioning capital market in an economy cannot be over emphasized considering the fact that it provides the resources for its growth and developmental agenda and also serves as an indicator of the economy's general performance (Ibrahim B. Shaidu, 2014: 33).

In Amartya Sen view, economic science must comprise normative as well as descriptive elements in order to successfully explain human behavior. Human agents respond to many kinds of incentives and constraints that are normatively derived or inflected. However, normative and descriptive approaches sometimes conflict and give rise to contradictory ideas, as can be seen in Sen's work on agency and commitment (Ann E. Cudd, 2010:1-2). Amartya Sen is an outstanding economic theorist, a world authority on social choice and welfare economics; he is a leading gure in development economics, carry-ing out path-breaking work on appraising the effectiveness of investment in poor countries and, more recently, on the economic analysis of famines.

Now whether the rate of growth will be high or not will depend upon the extent to which entrepreneurial interests coincide with the requirements of economic growth (Jason Briggeman, 2013, 608).

D. ANALYSIS AND DISCUSSIONS

Preparation of Indonesia Capital Market to face AEC has actually been done for a long time. Currently from 10 ASEAN countries, five countries are classified as developed countries and the remaining five are not very advanced. Indonesia, Singapore, Malaysia, Thailand and the Philippines include the first category

and five other countries Laos, Cambodia, Myanmar, Brunei, Vietnam are groups whose capital market level is not as good as the first group. Indonesia actually has complied with ASEAN standards including the requirements of open company websites that have been widely met.

From the regulator side, readiness has been done by preparing a number of aspects, including infrastructure as well as supply and demand. To support the readiness of the capital market industry, OJK must play an active role in international programs and meetings. The following are some of the regulations issued by OJK in 2016. The first Financial Service Authority Draft Regulation (RPOJK) was on Securities Brokerage Agencies, the second RPOJK on integrated investment management systems. And the third RPOJK concerning the annual reports of issuers and public companies. Fourth- RPOJK about sharia real estate investment fund in the form of collective contract. Fifth RPOJK about board of directors and stock exchange commissioners. Sixth About the board of directors and the board of the clearing and guarantee institutions. And the seventh of the board of directors and the board of depository and settlement. The eighth, the draft Circular of the Financial Services Authority on the form and content of annual reports of issuers or public companies, the ninth draft on the provision of continuing education programs for representatives of underwriters and representatives of securities brokers, and the tenth draft provision on the providers of continuing education programs for investment managers (Business Finance, 2016) In the field of investment management, OJK provides regulations concerning RPOJK on mutual funds in the form of Collective Investment Contracts based on foreign securities, foreign mutual fund sales in Indonesia, financial services sector planners, Integrated and mutual funds guidelines. In addition, OJK is finalizing the rules on the management of securities portfolio for individual customers' interests, the preparation of a circular about the association of investment manager and RPOJK representatives on guidelines for investment managers A custodian bank that manages the Real Estate Investment Fund. Prepared regulations concerning transactions of securities institutions include the rules of securities marketing agents, securities broker licensing segmentation, licensing of securities companies conducting business as underwriters and securities brokers, and preparing changes to the rules of securities transactions. Meanwhile, the regulations in the process of issuing the related issuers include supervision of shares in the company's open share ownership program by employees, directors and commissioners, refinement of open corporate takeover rules, and guidelines on the form and content of prospectus in the framework of public offering. Then there is a refinement of the issuer's business incorporation rules, Indonesian securities custody certificates, annual report submissions and guidelines from the annual report contents. In the field of syariah capital market, the draft rules related to sharia products, sharia companies and the issuance of Sharia securities (Konlan investment 2016).

In the Indonesian state regulations governing the capital market are regulated in Law Number 8 of 1995 concerning the Capital Market. In accordance with the provisions of Article 55 of Law Number 21 Year 2011 regarding the Financial Services Authority, since 31 December 2012 the functions, duties and authority of regulating and overseeing the activities of financial services in the Capital Market sector, and the Capital Market Supervisory Agency have turned to the Financial Services Authority. In accordance with the provisions of Article 6 Sub-Article b of Law Number 21 Year 2011 regarding the Financial Services Authority, the Financial Services Authority performs the task of regulating and supervising the activities of financial services in the Capital Market sector.

Although the Financial Services Authority as an institution acting as the implementer, supervisor and supervisor of the Indonesian Capital Market always makes the regulations that can meet the needs of the

Capital Market, but adequate legal instruments are not a guarantee of protection and legal certainty, Legal certainty will be achieved if the legal device that has been made will be enforced by the Financial Services Authority. If it is not done, it is not possible Capital Market can provide maximum support for national economic development in general and the development of the financial sector in particular. The law regulates three types of criminal acts in the capital market namely fraud, market manipulation and insider trading. The 3 types of Capital Market crime are reflected on the characteristics or uniqueness of the Capital Market crime because it is known that the stolen goods are not real, do an information, besides the perpetrators are also intellectuals and the proof also tend to be difficult (Sihol Siagian, 2004: 327).

In trading in the legal capital market plays an important role, especially in combating the crimes that exist in the capital market. In trading in the capital market is still frequent manipulation of the market, so with the case, it affects the reputation of the Indonesia Stock Exchange in the international world, especially in ASEAN, especially in the current era of emerging AEC. The existence of such market manipulation activities can destabilize the country's economy as more and more things happen, so more investors also go and sell all or part of their assets for fear of market manipulation that makes stock prices rise dramatically and unnaturally.

In dealing with AEC especially related to capital market, the role of law greatly influences trading activity in capital market. Because of the firmness of a rule of law. It can create an order and equality so that the violations contained in the capital market, especially in stock trading such as market manipulation can be eradicated and the perpetrators are given strict sanctions, so as to create a clean stock trading without any manipulation and other violations that Can affect the ups and downs of a stock's price.

In the capital market legislation set from the stock market trading Up to the violations in the capital market as well as sanctions for the Customers. With this law is expected to create a clean capital market trading cycle well and in accordance with the prevailing provisions. But often the development of economic and technological systems more and more violations in trading in the capital market, such as examples of market manipulation.

Market manipulation has been less thoroughly examined in the academic literature but is a growing concern on many emerging stock markets. The possibility that the markets can be manipulated is an important issue for both the regulation of trading and the efficiency of the market. Security regulators generally prohibit market manipulations on the basis that they distort prices, hamper price discovery, and create dead weight losses. In particular, many Asian stock markets have securities that are thinly traded and therefore more susceptible to manipulation" (Yu Chuan Huang, 2). "Manipulation can occur in a variety of ways, from actions taken by insiders that influence the stock price (e.g., accounting and earnings manipulation such as in the Enron case) to the release of false information or rumors in Internet chat rooms. Moreover, it is well known that large block trades can influence prices. For example, by purchasing a large amount of stock, a trader can drive the price up. If the trader can then sell shares and if the price does not adjust to the sales, then the trader can profit Selling shares will depress the stock price, so that, on average, the trader buys at higher prices and sells at lower prices. This is the unraveling problem and would seem to rule out the possibility of tradebased manipulation" (Rajesh K. Aggarwal, 2006: 1916).

Market manipulation is among the oldest and most harmful practices in global share markets. It victimises individual investors, erodes public confidence in market integrity and undermines market efficiency.

By creating artificial, false or misleading stock prices, manipulators harm legitimate traders who are forced to transact at distorted levels that do not efficiently reflect corporate value. Manipulation harms market efficiency by disrupting with the process by which prices reflect the market forces of supply and demand (Diogini Gerace, 2014: 106).

Large uninformed traders with market power could manipulate prices to their advantage and generate profits at no risk. Profitable manipulators aimed to create 'price momentum' so that an increase in price caused by the manipulator's trade at one date tended to increase prices at future dates. Jarrow also showed that profitable manipulation is possible where the manipulator corners the market (Jarrow, R.A., 1992: 332). The manipulation activity is likely to be prevalent among other emerging markets. Numerous accounts of emerging markets today show similar concerns (Asim Ijaz Khwaja, 2005: 204).

In the case of market manipulation in stock trading in the general stock market. In fact the sanctions imposed only on securities companies and issuers, namely administrative sanctions in the form of written warnings, fines or obligations to pay a certain amount of money, and the freezing of business activities, in other words that securities firms are given sanctions in the form of freezing to conduct transactions or often referred to as suspend, in the presence of it, the customer in the securities company can not conduct a sale and purchase transactions of shares of an issuer within a certain period of time. Then sanctions for the issuer of the target of market manipulation practice are also given administrative sanction in the form of freezing of stock or stock transactions on the company, so that the shares of an issuer or company that is the target of the practice of market manipulation can not be transacted within a certain period of time, Investors who do not have time to sell the shares he has over a company. Should see it then need to be re-emphasized again about the provisions of sanctions, because it should get sanction is the perpetrator of market manipulation practice on stock trading in the capital market.

Not securities companies and issuers. Given this it certainly can harm other parties, especially investors in the same securities with the perpetrators of market manipulation of the practice of stock trading in the stock market.

In trading legal capital market the role of providing legal protection to the aggrieved investors due to unhealthy trading activities in the capital market, and also to create an orderly trade without any violations and if there are violations of the perpetrators can be given strict sanctions for trade In the capital market attracts investors both local investors and international investors.

Forms of legal protection in the capital market to investors, can be information disclosure, provision of legal certainty and enforcement of legislation with the imposition of sanctions namely, administrative, criminal, and civil sanctions. And expected with the existence of strict sanctions can provide a deterrent effect for the perpetrators so that the creation of a healthy trade.

Legal protection is given more by giving the latest information, correct, and accurate and accountable, with the existence of Law Number 8 of 1995 Concerning Capital Market, the government strives to take concrete steps to create legal protection for investors in the capital market. This is seen in the elaboration of the implementation rules. So, the issuer has an obligation to provide correct information and reviews regarding the company's condition in the form of a good prospectus, the issuer is also obliged to pay compensation to the investor if the investor fails to suffer losses, and the issuer must fulfill the promise he put in the prospectus to the investor who investing in his company.

The form of legal protection to investors in the event of manipulation practices market there are 2 (two) kinds, namely the form of preventive law protection or prevention and repressive forms of legal protection (in the event of market manipulation). The form of preventive protection is in the form of fostering, regulating and supervising daily activities of Capital Market conducted by Stock Exchange and Financial Services Authority. The Stock Exchange also monitors information on any Securities relating to Securities or Stock trades. Then the form of repressive legal protection in the event of market manipulation is in the form of Auto Rejection in the event that the stock price changes drastically, then with the occurrence of market manipulation practice the stock will enter the issuer in Unusual Market Activity, and give sanction in the form of stock trading freezing during the period of time. Regarding sanctions imposed to securities firms is in the form of fines and administrative sanctions in the form of freezing of business activities, while the sanction for issuers is in the form of freezing of stock trading activity or securities in capital market. In the case that stocks can not be traded in the regular market due to freezing of stock transactions due to market manipulation practices, investors can sell their shares through the negotiating market.

The Financial Services Authority has one of its duties is to enforce the protection of consumers of financial services in Indonesia. Consumer protection in the capital market is also called the protection of capital market investors because consumers in the capital market sector are investors or investors. Therefore, the protection aspect of the capital market investor becomes the authority of the Financial Services Authority. The subject of consumer protection is contained in Article 28, Article 29, and Article 30 of Law Number 21 Year 2011 concerning the Financial Services Authority which are the provisions explicitly regulating the protection of consumers and the public over the financial services industry. The form of legal protection by the Financial Services Authority of the consumer is prevention or preventive and sanctioning or repressive, given that the duty of the Financial Services Authority is to carry out the regulatory and supervisory functions of the financial services sector. Article 28 of the Law on the Financial Services Authority provides legal protection against the prevention of consumer and community losses by the Financial Services Authority as follows: 1). Provide information and education to the public on the characteristics of the financial services sector, services and products; 2). Ask the Financial Services Institution to stop its activities if such activities have the potential to harm the community; And 3). Other actions deemed necessary in accordance with the provisions of legislation in the financial services sector (Hilda Hamidah, 2014: 350).

Given the readiness of good regulation, it can improve the economic growth of the country. Because although the economic fundamentals of the country well without the basis of good regulations, it is equally meaningless, because if not offset it will sooner or later can affect the country's economic fundamentals.

E. CONCLUSION

In facing the AEC regulation readiness, especially in the field of capital market is considered good enough, especially related to securities trading transactions in the capital market. The Financial Services Authority issued several regulations relating to the Capital Market to face the turmoil of the Asean Economic Community, in order to create an orderly and good capital market trading so as to attract foreign investors to invest in Indonesia. In trading in the capital market the law provides legal protection to investors in the capital market, in the form of information disclosure. Provision of legal certainty and enforcement of legislation with the imposition of sanctions namely, administrative, criminal sanctions. And civil to the

perpetrators of violations in trading in the capital market. However, in the case of handling violation cases, especially regarding the case of the case. The Financial Services Authority and the Indonesia Stock Exchange, as the institution that supervises and conducts stock trading in the capital market, needs to tighten its supervision in order to avoid violations of stock trading in the capital market. In the event of a particular violation of market manipulation, the Financial Services Authority should seek a list of securities transaction history on the Stock Exchange, thus obtaining a description of who the perpetrator of the violation in the securities trading.

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