

The Abridged Prospectus Dissemination for Society in Capital Market Activity in Bali

Made Wiryani¹, Sudarsono², R. A. Retno Murni³, Sihabudin⁴

¹ Faculty of Law, Brawijaya University, Malang,

² Faculty of Law, Udayana University, Bali,
INDONESIA.

ABSTRACT

Abridged Prospectus was the center issue of this study. It focused on: 1) Why is the Abridged Prospectus announced firmly by the issuer - Chairman Decree BAPEPAM – LK KEP-122/BL/2009 ineffectively becoming the capital market as people investment? 2) How can the law reconstruction of Abridged Prospectus dissemination be effective in providing the information right for the people in the future? This study applied empirical studies by using socio legal approach and descriptive-qualitative and quantitative techniques. The relevant theories were Law system theory by Lawrence Friedman, Rule Making Institution theory by Robert B. Seidman, Information theory, and Human Right theory. The result showed the influenced factors of ineffective Abridged Prospectus and the most dominant factor was the law substance which had not been harmonized by either national or international rules, such as Human Right Act, UU-ITE, UU-KIP, Public Service Act, ICESCR, and President Decree 23 year 2011 of the Human Right National Action Plan. It was suggested: 1) A requirement to develop the quality of Abridged Prospectus dissemination by law reconstruction. 2) The reconstruction was conducted by harmonizing BAPEPAM-LK IX.A2 with other related regulations to reach the issuers and the people's equitability.

Keywords: Abridged prospectus, dissemination, law reconstruction

INTRODUCTION

The capital market found in every country conducts the economic and financial functions. As in economic functions, the capital market provides the facility to move the fund from lender to borrower by investing the excess fund lender and also expecting the reward of the fund equalization.

The first thing to realize the company desire to obtain the people fund is by doing public offering. The first sale of share done by public investor is *Initial Public Offering* (IPO).

Public offering is a corporate action which is necessary to have supervision from the government as the country's responsibility towards citizen rights fulfillment. The government, especially the Capital Market Supervisor Institution and Financial Institution (BAPEPAM-LK) which has been changed into Financial Service Authority since January 2013 based on Act number 21 year 2011 about the Financial Service Authority. This act aims to realize the equitable financial system and protect the people interest. It also conducts the obligation and the right based on the principles: The principle of openness, which is the principle that open up to the public's right to obtain correct information, honest and non-discriminatory by taking attention to the protection of personal rights. The principle of public interest, namely the principle that defends and protects the interests of consumers and society, moreover promote the society welfare, then integrity principle that is to keep up the moral values in every action and decision taken.

Under Article 78 of the Capital Market Law and Article 79 of the Capital Market Law that governs the content and announcements of Prospectus obviously that in the public offering, Prospectus dissemination through the mass media to the general public shall not contain false information, prospectus must contain the values of truth and honesty.

The relationship between the Prospectuses with the community is very significant because it is based on Article 71 of the Capital Market Law which calls:

None may sell stocks in the public offering, unless the buyer or the buyer stated on the order form that the buyer or the buyer has received or had the opportunity to read the Prospectus with respect to such stocks prior to or at the time the reservation is made.

Issuer issued and announced the Prospectus in order to make people want to buy the securities offered in the public offering. Prospectus published in the mass media shall not contain false information. Society as a buyer before ordering stocks should be stated in the order form has been received / had the opportunity to read the Prospectus. As a common law study, this began with the issue of law, and of the legal issues, this legal research is conducted to solve the legal issues arising. Legal issues are a paramount or central in legal research.

The description above shows the legal issues in the capital market. Legal issue is a gap between these implementing Capital Market Law regulations with the fact occurred in the Capital Market. This law aims as stated in the preamble to weigh are: Capital Markets as an investment facility for the community; BAPEPAM – LK IX.A2 stated: Abridged Prospectus shall be published in a national Indonesian newspaper and BAPEPAM - LK IX.A7 issued: Issuer shall ensure the stocks implementation is widely spread through the provision of means, Prospectus dissemination facility and adequate form.

The description above shows the problems of the Capital Market Law and its implementation. If the implementation was effective, the Indonesian Capital Market should be controlled by a local investor to build Indonesian welfare. However, Capital Market is dominated by foreign capitalists and their welfare.

Those problems reflected to the juridical basis:

1. Prospectus dissemination as constructed in Appendix 2 letter b BAPEPAM - LK IX.A.2 about Public Offering registration:

Abridged Prospectus shall be published in a national Indonesian newspaper at least two work days after BAPEPAM and LK IX.A.2 - 9 Appendix 9 issued.

2. The regulation of reading Prospectus before ordering stocks: Attachment 2 letter a.2). BAPEPAM - LK IX.A7 about reservation and stocks allotment:

Order form for Public Offering must have a statement signed by the applicant as whether the applicant has received or read the Prospectus.

BAPEPAM - LK IX.A7 have a highly relationship with BAPEPAM – LK IX.A.2.

However, Abridged Prospectus Announcement constructed in Appendix 2 letter b BAPEPAM- LK IX.A.2 as epistemology basis woefully inadequate practice, moreover to reach the wider community even the villagers. People will access Abridged Prospectus difficultly as Indonesian geographically is an archipelago.

Abridged Prospectus dissemination ineffectively as public information reviewed of the right fulfillment becomes a central issue in this study.

Further, to analyze the central issues, it is itemized into four sub-legal issues. First, analyzing the philosophical problematic as continuing analysis towards legal problematic, theory problematic and law-sociology problematic as follows:

1. Philosophical Problematic

D Runes divided three branches philosophy: (a) ontology, (b) epistemology (c) axiology.

a. Legal ontology

Conduct critical thinking, radical, comprehensive towards science.

Abridged Prospectus as essentially public information: Prospectus shall contain the truth values, based on Article 78 of Capital Market Law. Abridged Prospectus dissemination substantially across Indonesia based on BAPEPAM - LK IX.A.2: national newspaper.

However, the profit-oriented Issuer tends to ignore the truth values, honesty and openness that should be in Prospectus. It only contains the material fact that would make the other parties interested in buying the shares offered; moreover the data and information are manipulated.

When Abridged Prospectus contents do not have those principles and the dissemination disregard for public access equitability, thus it will be misleading and detrimental information to society, then the issuers and society clash.

b. Legal epistemology

Conduct critical thinking, radical, comprehensive towards obtaining science correctly.

Legal purpose at last is seen from the benefits. In this case to get the scientific truth about the implementation of Abridged Prospectus is by using the scientific method. It is the way to acquire the scientific knowledge.

Methodologically, the value enforced through society emphasis information policy is ensuring the evenly dissemination in the society.

BAPEPAM IX.A2 governs Abridged Prospectus dissemination through a national Indonesian newspaper in terms of legal epistemology, epistemology problem, the value clash of Abridged Prospectus dissemination constructed on BAPEPAM - LK IX.A2 with the real fact, because the dissemination is ineffectively spread to all society class. Synergizing of the legislations between dissemination is the best way.

When Abridged Prospectus is not equitable, it will cause the clash between the issuers and society.

c. Legal axiology

Conduct critical thinking, radical, comprehensive towards using the science.

Issuers utilize Abridged Prospectus, to attract the public interest buying the stocks offered in Public Offering by disseminating Abridged Prospectus in national newspapers, thus the Issuer will obtain funds from the public.

Communities utilize Abridged Prospectus as taking consideration to buy or not to buy shares offered in a public offering, thus the prospectus must be understood either the advantages or the risk. If the people would buy the stocks, they would have been the capital market investor.

In addition, Abridged Prospectus has benefit value for the issuers and the people.

2. Legal Theory Problematic

Theory is always associated with so-called reality.

Information is very urgent, because none does not require the information even the slightest one. 20th was the information technology era. Therefore, a paradigm emerged that whoever controls the information, he would rule the world. The era was marked by rapid advances in information technology, thus the term is known as *borderless world*. Abridged Prospectus is intended for public information and useful as a basis for making investment decisions. Based on Maxwell's taxonomic theory, the value enforced through society emphasis information policy is ensuring the evenly dissemination in the society, and support the open smooth creation without socio- political frontiers.

3. Legal Problematic

Law construction and legally relationship between BAPEPAM - LK IX.A.2 and BAPEPAM - LK IX.A7 is very significant as follows:

- a. Construction of Abridged Prospectus dissemination in BAPEPAM – LK IX.A.2.
- b. The regulation of reading Prospectus before ordering stocks: Attachment 2 letter a.2). BAPEPAM - LK IX.A7 about stocks reservation and allotment: Public Offering form must state a statement signed by the applicant whether the buyer has received read the Prospectus. On the other hand, there is Abridged Prospectus dissemination inconsistency towards the people ability to have it.

Other Capital Market legislations and BAPEPAM – LK IX.A.2 related to information aspects such as:

- a. Abridged Prospectus published in a national newspaper, is a means of public information.
- b. Act 14, 2008 on Public Information determines obtaining public information is Human Rights, thus it must have protection, enforcement, compliance and respect.
- c. Act 25, 2009 on Public Service, Article 5 states the scope of public service is communication and information. This act refers to speed, simplicity and affordability. Thus, Abridged Prospectus announcement regulated on BAPEPAM – LK should be revisited because it is not optimal and inadequate.

4. Legal Sociology Problematic

- a. Weak Legal Awareness

Communities have potential as domestic individual investors in capital market; however they mostly invest in unofficial institutions. If they do investment, their capital is not protected legally. It is because the legal awareness is low. Soerjono Soekanto argued that one of the indicators of public legal awareness is legal knowledge.

- b. Indonesian is still lack of reading interest and finding constructive information.

There are cases in which the capital market with the previously mentioned indications: overstated, Insider Trading, violations of mutual funds regulations, market manipulation and many people invest in an unofficial institution.

Judicial Commission states there are a lot of legal violation in 2012. This is because Indonesian legal culture cannot be abstract. "We've got a crucial point of legal culture, such as the corruption act, traffic, and banking. They were based on abstraction. Our legal culture

is concrete, and that is the problem". All illustrates the legal sociology problematic in capital market.

The philosophical, theoretical, legal and sociological problematic which cause Capital Market Law cannot realize the significance of making the Capital Markets as an investment facility for the community. Even though this act show the validity about 17 years, it has not been effective yet. This is in line with Satjipto Raharjo said that the atmosphere of the modern legal, the gap between what was stated in the act and practiced, can be termed as a normal occurrence, it is not about the effectiveness, however the common act ineffectiveness.

Legal Construction of Abridged Prospectus Dissemination in Public Offering

Related to respondent's perceptions of whether or not ever seen the Abridged Prospectus, there were 80 people (100%) reported to have never seen Abridged Prospectus. Besides, a newspaper announced Abridged Prospectus is obtained difficultly. This suggests that the national newspapers containing Abridged Prospectus announcement are never reached by the people, thus the public's right to obtain a Abridged Prospectus unmet public information. Whereas the function of a newspaper can play a role in changing the mindset of the people, when they read repeatedly and continuously received.

Interviewing the Issuer, PT. Waskita Karya Tbk shows the newspapers used to advertise Abridged Prospectus in Public Offering is *Investor Daily* and *Bisnis Indonesia*. The newspaper is printed media specialized in the economics field, not in public, limited circulation, thus it is not sufficient to be widely spread to rural areas.

Based on the statement above, the effectiveness of BAPEPAM - LK IX.A2 legal construction related to liabilities announcing Abridged Prospectus did not achieve the goal of Capital Market Law as an investment facility for the community effectively, moreover it is viewed from the economic development and the science advancement, the rapid technology and information growth in the globalization era, and it caused this provision no longer meets the needs of the development of law and society, especially with the increasing public demand of prompt service, legal certainty and demands for development of business in accordance with the principles of *good corporate governance* (GCG) . Thus, in the BAPEPAM - LK IX.A2 associated with the Abridged Prospectus announcement is not effective in the effort to make the capital market as an investment facility for the people.

By constructing the legal, the Abridged Prospectus dissemination is not fair to many people, because it is only accessible to the urban community or public investors, it may be fair to the issuer, as efficiency, but ineffective related to the legal purpose for the people welfare. The number of newspapers existed in Bali such as *Bali Post*, *Bisnis Bali*, etc are regional newspaper nationally without Abridged Prospectus.

In conclusion, by the factors influenced the effectiveness of the rules, there is an ineffective BAPEPAM regulation, thus it is necessary to solve this by reconstructing the legal.

Abridged Prospectus Dissemination Legal Reconstruction

The legal is constructed for the people interest. The existence of legal construction humanized humans is for the people welfare. In connection with this, it is important to establish the legal which accords with significant values and basically rooted in the society life. Because only the legal form in accordance with the culture and values of the community spirit will be able to work in the community in addition to adjusting to the obligations of international law as a consequence of international law ratification (ICSECR).

Related to optimize the legal operation in society, the legal construction perceived impartiality to the public would need reconstructing.

In the context of the right fulfillment of gaining information as a human right, the approach used to reconstruct the law as to realize a just law is to reconstruct a holistic substance which can provide a balance of information fulfillment, protection, and happiness for the issuers and society. Jeremy Bentham argued essentially, the legal purpose is for all people welfare.

In reconstructing the legal substance related to the information right fulfillment and equitable access of obtaining the prospectus, while proposing *the philanthropy for education* as well as the results of this study can be proposed this new thinking is to adopt the concept of campus agreement is widely applied by the Indonesian campuses as a leading alternative of Human Right protection in obtaining right information fulfillment. The *Licensed by government* is different from MOU (*Memorandum of Understanding*) cooperation which had previously been carried out between the government and private parties.

The government information dissemination rule raises a lot of problems in its implementation, because the information is not reached by many communities and unaffordable.

The rules are really only a formality which is considered to meet the requirements of the widespread advertising in a national newspaper. In fact, the issuers and underwriters already have potential investors who would buy their shares, approaching to the potential investors, fund raising, and never thought to be bought by the community, moreover fund raising is aimed to the large investors such as companies, and it is not intended to the rural areas.

It is such a controversial issue, because Capital Market Law which aspires for people investment facility, they just ignore it. In other words, the government affiliates with the Issuers. After some time of the registration procedures changing, specifically regarding to the prospectus dissemination had never been changed for the better for society.

CONCLUSION

Reflected from the analysis and discussion, it can be concluded as follows:

1. The legal substance constructed in Appendix 2 letter b (Chairman Decree of BAPEPAM - LK Kep-122/BL/2009 on Public Offering Registration Procedures (BAPEPAM - LK IX.A2) as the epistemology basis, is the most influential factor on the ineffectiveness of Abridged Prospectus announcement in order to realize the capital market as an investment facility for the wider community
2. Abridged Prospectus dissemination rule should be guided by *Pancasila* and *UUD 1945*, moreover absorb the international law ideology ratified by ICESCR, accommodate people who do legal culture in the realm of *legal structure* and *culture* (bureaucratic culture) as well as *legal substance* and *culture*. In the realm of *legal structure*, the legal enforcers not only focus on the procedural justice, but rather on the legal substantive fairness of enforcement conscience. Meanwhile, in the realm of *legal substance* and a *culture*, the Abridged Prospectus dissemination should be equally accessible and holistic equitable between the issuers and the public, thus the *balance of rights* concept will be realized.

In connection with the legal substance reconstruction towards the right to obtain the prospectus is very important for society as a consideration for investment decision in the capital market, may be filed two new legal concept that is *Philanthropy for education concept* (Prospectus conceptualized as a learning/ knowledge) to society through government policy, in the belief that the prospectus as a public information has the values of truth, honesty and kindness continuously and repeatedly informed to the people, it will be able to add insight and influence the mindset and change people's behavior in accordance with the

information received. The use of Abridged Prospectus as corporate social responsibility CSR is one of the corporate philanthropy dimension - based fund management prospectus for dissemination through the mass media and the dissemination methods. The legal reconstruction as follows:

Abridged Prospectus shall be published in a national Indonesian newspaper at least two work days after BAPEPAM and LK IX.A.2 - 9 Appendix 9 issued. Besides publishing in the newspaper, the Issuers may also announce in other mass media. The announcement proof must be submitted by the Issuer to BAPEPAM and LK later than 2 days after the announcement.

Reconstructed into

Prospectus must be published in at least two Indonesian daily national and local newspapers and electronic media as well as the use of information technology. In addition, the Issuer may also disseminate it using the communication infrastructure and other information in accordance with the tradition alive and thriving in the community to spread evenly and easily accessible to the general public. The announcement proof must be submitted by the Issuer to the Financial Service Authority at least two days after the announcement.

RECOMMENDATION

In conclusion, the solution proposed suggestions and ideas based on the concept fulfillment of the following information:

It is necessary to improve the quality of Abridged Prospectus Dissemination Regulations, in the Initial Public Offering (IPO) by legal reconstruction.

Financial Service Authority reconstructs the particular emphasis on the substantive elements rule, through the harmonization and synchronization of BAPEPAM - LK IX.A2 with legislation appeared related to the globalization demands. The regulations must have information values and human rights, equitable for the people and the Issuer, thus it is effective in making the capital market as a community investment facility in accordance with the objectives of the Capital Market Law and also reliable in increasing the future Indonesian prosperity.

ACKNOWLEDGEMENTS

This article is dedicated to civitas academica of Brawijaya University. They have already contributed significantly to this article.

REFERENCES

- [1] Abdulkadir, M. (2004). *Hukum dan Penelitian Hukum*. Bandung: Citra Aditya Bakti.
- [2] Artadi, (2010). *Filsafat Hukum*. Fakultas Hukum Universitas Udayana, Denpasar.
- [3] Dharmawan, Ni Ketut Supasti (2011). *Rekonstruksi Hukum Terhadap Perlindungan Program Komputer di Indonesia*. Semarang: Disertasi Universitas DIPonegoro, hlm.286
- [4] Ghony, M. D., & Almanshur, F. (2012). *Metode Penelitian Kualitatif*. Yogyakarta: Ar-Ruzz Media.
- [5] Hadin, M., & dan Nunuk, N. (2012). *Penelitian Hukum Indonesia Kontemporer*. Yogyakarta: Genta Publishing.

- [6] Ibrahim, J. (2006). *Teori & Metodologi Penelitian Hukum Normatif*. Malang: Bayu Media Publishing.
- [7] Irfan, I. (2001). *Pengantar Hukum Pasar Modal Bidang Kustodian*. Jakarta: Djambatan.
- [8] Lawrence, M. F. (1975). *The Legal System A Social Science Perspective*. New York: Russel Sage Foundation.
- [9] Lili, R. (2008). *Pembangunan Sistem Hukum Dalam Rangka Pembinaan Hukum Nasional*. Dalam Arief Sidharta. *Butir-Butir Pemikiran dalam Hukum*. Bandung: Refika Aditama.
- [10] Maxwell dalam Putu Laxman Pendit, (2006). "Ragam Teori Informasi". Pusat Dokumentasi dan Informasi Ilmiah Lembaga Ilmu Pengetahuan Indonesia, Jakarta 19 September 2006.
- [11] Pawit, M. (2009). Yusup, *Ilmu Informasi, Komunikasi dan Kepustakaan*. Jakarta: Bumi Aksara.
- [12] Rosewitha, I. (2006). *Pemanfaatan Teknologi Informasi di Pasar Modal, Sejauh mana Implementasinya*. Retrieved January 11, 2006, from www.google.com/ikht-fhui./tayang
- [13] Salman Otje, H. R., & Anton, F. (2004). Susanto, *Teori Hukum*. Bandung: Refika Aditama.
- [14] Satjipto, R. (1994). *Hukum: Perilaku Hukum dan Keluarga*. Suara Karya, Senin 12 September 1994, dalam Disertasi I Wayan Gde Wiryawan
- [15] Siapa menguasai informasi dialah menguasai dunia. Retrieved November 12, 2012, from <http://emhapedia-blogspot.com./2012/01/caution.html>
- [16] Soejono, S. (1983). *Filsafat Ilmu Pengetahuan*. Yogyakarta: Nurcahaya.
- [17] Soetandyo, W. (2008). *Bahan Bacaan Penulisan Disertasi*. Semarang: UNDIP.
- [18] Suad, H. (1993). *Dasar-Dasar Teori Portofolio dan Analisis Sekuritas, Edisi Kedua*. Yogyakarta: UPP AMP YKPN.
- [19] Supranto, (2003). *Metode Penelitian Hukum dan Statistik*. Jakarta: Rineka Cipta.
- [20] Supranto, (2003). *Metode Penelitian Hukum dan Statistik*. Jakarta: Rineka Cipta.
- [21] Undang-Undang Nomor 21 Tahun (2011). tentang Otoritas Jasa Keuangan, pada Kondideran Menimbang.
- [22] Yusuf, J. A. (2012). *Budaya Hukum Indonesia*, Retrieved December 23, 2012, from <http://news.detik.com/read/2012/12/22/102910/2125102/10/ky-budaya-hukum-indonesia-harus-diubah?9911012,cetak>