DEFAULT SETTLEMENT IN THE CAPITAL MARKET IN THE JATS SYSTEM (JAKARTA AUTOMATIC TRADING SYSTEM) ACCORDING TO LAW NUMBER 8 OF 1995 CONCERNING CAPITAL MARKETS

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Abstract: This research was conducted to find out How the Implementation of the Default Concept According to the Jakarta Automatic Trading System (JAT) in Law Number 8 of 1995 concerning Capital Markets and How to Resolve Default Protest in the Capital Market According to Law Number 8 of 1995 concerning Capital Markets. This research is normative juridical research, the approach method used in the research is the conceptual approach (conceptual approach), statutory approach (statute approach). Legal material collection techniques are carried out by means of documentation studies, and then will be analyzed using qualitative descriptive data analysis techniques. The implementation of securities transactions is distinguished between securities transactions in the primary market and the secondary market. In the primary market, transactions are carried out directly by the issuer's company, while in the secondary market transactions are carried out on the trading floor and are settled by institutions involved in the capital market. The legal consequences if after a transaction, one of the parties defaults and the settlement is the party that caused the loss must replace the loss in accordance with the rules of the Civil Law. Settlement of default disputes in the capital market in the perspective of Law Number 8 of 1995 concerning Capital Market, places criminal policies through criminal law against violations of capital market violations in Article 103 paragraph 2, namely violations of Article 23, Article 105, and article 109. Violations the capital market referred to in article 103 paragraph 2 are a violation of Article 32, namely “a person who conducts activities as a securities guarantor representative. Deputy securities broker or investment manager representative without obtaining BAPEPAM permission the threat to the perpetrator is a maximum of 1 (one) year imprisonment and a fine of Rp. 1000,000,000 (one billion rupiah).

Keywords: default, capital market

I. INTRODUCTION

In developed countries, the capital market has long been a very calculated institution for the country's economic development. Therefore, the state always feels concerned to participate in regulating the course of the capital market. Capital market activities are usually
carried out by institutions including securities trading centers or often referred to as stock markets, clearing institutions, and other financial institutions.

Relatively the capital market in Indonesia began to develop significantly in 1989, after the issuance of PAKDES 1987 (Policy Package 27 December 1987) and PAKTO 1988 (Policy Package 27 October 1988)¹. Even at that time the capital market experienced a boom, especially with the large amount of funds owned by the bank, so the bank became very light to disburse credit. Not a few investors and stock brokerage companies take advantage of this situation, so that stock trading becomes rampant.

Starting in early 1989, stock transactions on the stock exchange increased rapidly. Moreover, since the implementation of the trade automation process on the Jakarta Stock Exchange on May 22, 1995. This automation process is also called the Jakarta Automatic Trading System (JATS), which is a computer-based trading system. The use of this system aims to realize the liquidity, integrity and efficiency of the capital market.

A security trading using this automation process provides an opportunity to increase the number of transactions without limits. What can ultimately limit is the process after that, namely the settlement of the transaction. Settlement of transactions or settlement, namely the process of exchanging shares with money so that the transaction is completed.²

JATS which embodies the increasingly widespread stock trading does not rule out the possibility of risks that will be faced by both issuers, investors and securities companies, because in this transaction there are several parties involved, unlike in ordinary markets. The capital market in carrying out stock trading activities is not just to bring together sellers and buyers, but requires other capital market players who play an important role in it, where they will carry out transaction activities from the beginning to the completion stage (stock settlement).

The risks that occur in JATS are not much different from the risks posed in buying and selling activities in general, because they still range between rights and obligations. As an example of a risk, for example, a transaction agent cannot fulfill part / all payment obligations on settlement day. Another example is the release of shares or funds without being accompanied by fulfillment of obligations.

In every legal event, especially relating to the agreement, good faith is the main basis, because in good faith the legal subject can accept their respective rights. Without good faith from one of the parties, then there is a possibility that the other party will not get the counter-performance that is the right.

Transactions in the Capital Market are carried out in a virtual facility, there are offers, and there are requests. The meeting of bids and requests is only input data into the JATS system. So sellers and securities buyers even the WPE (Securities Trade Representative / Broker) have never met face to face. It is the computer that brings together the offer and purchase price agreements.

The agreement binds as a law for the parties involved. Securities transactions which are sale and purchase agreements without a deed also have legal consequences. This means that if one party defaults, a legal effort can be made to force the defaulting party to carry out its

performance. Meanwhile, if viewed from an economic perspective, the stock exchange is a very dynamic place of trade, so any effort taken by the parties to obtain their rights should not hinder the dynamics of the exchange.

As a legal event, JATS must have a legal basis. Moreover, in the future a new system will be used as an improvement in electronic securities transactions, namely Scripples Trading (transactions and settlement of securities transactions without certificates).

The existence of complete and clear rules in the implementation of capital markets in Indonesia will provide security for capital market players, which in turn will result in the capital market being able to carry out its functions as expected, namely as an alternative source of financing for national economic development. A legal vacuum will cause legal protection to the parties concerned to be minimal. Based on the description above, the author will discuss the following problems: How is the Implementation of Default Concepts According to Jakarta Automatic Trading System (JAT) in Law Number 8 of 1995 concerning Capital Markets and How to Resolve Defaults in the Capital Market According to Law Number 8 of 1995 concerning Capital Market.

This research is a normative juridical research method used in the research is Approach to the concept (conceptual approach), Legislation approach (statute approach). Legal material collection techniques are carried out by means of documentation studies. Data obtained from the study will then be analyzed using qualitative descriptive data analysis techniques.

II. RESULT AND DISCUSSION

2.1 Implementation of Default Concept According to Jakarta Automatic Trading System (JAT) in Law Number 8 of 1995 concerning Capital Markets

The Exchange is a trading organizer for its members in accordance with the provisions of Law Number 8 of 1995. Exchange members have the right to use the facilities provided for trading activities between them. The Exchange must maintain that securities transactions occur in a fair and healthy market. As an institution that has the authority to form its own rules (SRO; Self-Regulatory Organization), the exchange will form rules that will keep the market going fairly in terms of external influences (macro and micro economic situations and other issues) that occur are however, internal influence must be monitored, be it rumors/conditions regarding issuers and investor maneuvers on the exchange. This is important so that price fluctuations in securities take place normally. The price of securities will be determined by the strength of demand and supply carried out by market participants and exchange members. In exchange transaction activities, in general there is only two market capital, namely:

2.1.1 Primary Market / Initial Public Offering (IPO)

The primary market is a period of public offering for the first time to the public for 6 trading days. The price of securities offered is determined by the issuer with the underwriter. The price at the time of the initial offering is always above the nominal price, so this is where the company can get a fast, easy and inexpensive financing source. The primary market is not conducted on the trading floor but can take place wherever it has been determined by the issuer and underwriter. Investors who want to have shares offered are enough to fill in the order form. Prestige (derived from achievement) of issuers can be measured by the large number of requests in the primary market, although not always the
size. If the issuer is considered very potential, oversubscribed can occur where there is more demand than the securities offered by the issuer. In accordance with the provisions then be held allotment (allotment) in which small investors will take precedence. If the opposite happens, undersubscribed, the underwriters will be responsible because in the primary market the securities offered must be exhausted. For this reason the form of responsibility carried out by the underwriter is to buy out the securities sold.

2.1.2 Secondary market

The secondary market is also called the regular market. Investors who want to transact can only do so with securities trading brokers, commonly called brokers. Prices in this market are determined by the power of supply and demand, while those that affect the market situation are very complex, from the issues of achievement and managerial prestige of the company to issues about the political situation, even if the issues are just rumors or predictions or unproven expectations even though.

Transaction activities on the trading floor (secondary market) that are very active because of the maneuvers carried out by investors create a very specific variety of transactions. The conditions of such transactions are grouped separately:

1) Pasar non reguler

Peristiwanya tetap berlangsung di lantai bursa atau lingkup pasar sekunder, hanya saja ada hal-hal khusus yang membedakannya dengan transaksi yang biasa dilakukan oleh anggota bursa. Transaksi yang digolongkan sebagai pasar non reguler adalah:

a) *Block sale trading*; transaksi saham dalam jumlah besar (oleh satu investor). Efek yang ditransaksikan lebih dari 400 lot (200.000 lembar saham). *Tender offer* bisa digolongkan dalam *block sale trading* (karena batasan minimum saham yang dicatatkan/listing adalah 1.000.000 lembar). *Tender office* yang dimaksudkan sebagai akuisisi perusahaan oleh perusahaan lain melalui bursa dengan memborong saham perusahaan dengan target minimum 20%, harus dilakukan secara terbuka agar tidak bermutu menjadi *comering*, usaha penguasaan saham suatu perusahaan untuk mempermainkan/menguasai harga.

b) Perdagangan *Odd Lot*; transaksi saham kurang dari 1 lot/500 lembar, kelaziman yang berlaku adalah jual beli saham dinyatakan dalam satuan lot (1 lot = 500 lembar).

c) Transaksi Tutup Sendiri, transaksi jual dan transaksi beli oleh investor yang berbeda yang dieksekusi oleh suatu perusahaan perantara perdagangan efek yang sama (kedua investor menjadi klien PPE yang sama) dengan harga yang disepakati oleh kedua investor tersebut, jadi harga tidak mengikuti kurs yang berlaku.

a) Non-regular market

The event will still take place on the trading floor or the secondary market scope, except that there are special things that distinguish it from transactions commonly carried out by members of the exchange. Transactions classified as non-regular markets are:
1) Block sale trading; large number of stock transactions (by one investor). The securities traded are more than 400 lots (200,000 shares). Tender offers can be classified in block sale trading (because the minimum limit of listed shares / listings is 1,000,000 shares). A tender office intended as an acquisition of a company by another company through the stock exchange by buying shares of the company with a minimum target of 20%, must be done openly so as not to morph into cornering, the controlling business of a company to dominate the price.

2) Odd Lot trading; share transactions of less than 1 lot / 500 sheets, the prevailing prevalence is the sale and purchase of shares expressed in units of lots (1 lot = 500 sheets).

3) Transactions Close alone, selling transactions and buying transactions by different investors are executed by the same securities brokerage company (both investors are the same PPE clients) at prices agreed upon by the two investors, so prices do not follow the prevailing exchange rates.

b) Cash market/gray market

The term gray market in the world of capital markets is not included in the term “something illegal”. This cash market activity only occurs at the regular market level. This cash market is actually a breakthrough made by members of the exchange to avoid the “failure to deliver”. Provisions that apply in securities transactions are the seller must sell the securities that are sold in the T + 4 tempo, but it is no secret that sometimes there are members of the stock selling shares by means of short selling, if the scenario is not as expected then to avoid further risk of investors selling must prepare the shares it sells even though it does not have the intended effect, somehow. The selling investor was able to contact or look for parties that have the intended effect and buy them at prices in accordance with negotiations agreed by both parties and not based on the prevailing market rates. This purchase to a third party is called the cash market. Buying and selling does not follow the general rules that apply in the stock market. All achievements and counter-achievements occur directly or in cash (cash and carry).

At the regular market level, there is still another type of market. The specificity of this market is that the issuers are “different” so that the exchange has its own exchange. In Indonesia it was once known as the Indonesian Parallel Exchange which unfortunately has now been acquired by the Surabaya Stock Exchange.

c) Parallel Exchange/Third Market

Parallel stock is in principle not different from the secondary market which is the core activity of the capital market. The mechanism is ordinary exchange activities, as well as members of the exchange such as investors, PPE and other supporting professions. The main difference lies only in the issuer. Parallel / third market exchanges have lighter requirements compared to secondary exchanges / secondary markets. We can say that parallel exchanges are “class B exchanges” (if the regular exchanges are said to be “class A exchanges”) for “second class” companies (small and medium-sized), that is, companies that have received profits or capital are not as required in the stock exchange secondary. Terms that are not as stringent as secondary exchanges do not mean that the issuer is not qualified and has prospects, because the definition of a “second class” issuer / company does not mean that the issuer is in bankruptcy for two months.
Securities Transaction Process

In accordance with the definition and purpose of the stock exchange that wants to achieve regular, efficient and reasonable securities trading, trading / securities transactions on the trading floor are carried out with certain systems, unlike buying and selling on the market in general. Although there is the term “market mechanism” but this term merely indicates that the price / exchange rate of securities formed on the trading floor is carried out by the power of supply and demand, so that fraudulent efforts or manipulations and other forms of maneuvering affect the trading of the exchange so image or condition / rush of certain effects arises resulting in an unnatural sale and purchase action is a criminal act.

The system of buying and selling shares in the stock exchange is twofold, namely: 3

a. Call / Auction

Trading shares in this way is the same as the auction that we know. Trade is carried out by the head of call as an auctioneer. Interested people make offers through call leader. In this case it can happen that the Call Leader prioritizes the bidder who is bidding first. This system applies to stocks that are newly listed on the stock exchange, the first 2 days are traded, but this system has been abandoned and is no longer used.

b. Continues / continuous

The third day after the listing, the securities are traded during the exchange hours. Selling and buying offers continue. Trading is only carried out by exchange members who execute orders from investors. Market law will regulate the stock exchange rate, the bidder's strength and demand will determine the price.

Transactions differ according to the level of the market, the primary market and the secondary market, but what is certain is that transactions carried out by investors are preceded by orders to securities brokers. Another case is if the securities company is also qualified as a dealer, because as a dealer, the Securities Company also conducts transactions in its own name / without investor orders.

2.2 Implementation of Good Faith and Legal Effects of Default in Securities Trading Practices

The securities transaction settlement contract is intended to guarantee the smooth operation of securities transactions in the Stock Exchange. The contract between the customer and the Securities Company if there is a violation of law, the law can be present to resolve the problem that occurred. The contract applies as a law to the parties, thus the parties have obligations that must be carried out and guaranteed rights. However, disputes and defaults are things that cannot be avoided at all.

For the settlement of default, it will always be related to the contents of the agreement. In accordance with the principles in Civil Law; “Whoever postulates something he must prove it”. To accuse the other party of defaulting, the accusing party must prove that

3 Usman, Marzuki, dkk., ABC Pasar Modal Indonesia, LPPI/IBI, Jakarta, 2000, p. 131
the accused party has committed elements of the action classified as default. The civil provisions regarding default include:

a. Too late to implement the agreement.
b. Carry out the agreement but not according to the agreement.
c. Absolutely not implementing the agreement.

From the research that the author did in the Securities Trading Intermediary (PPE), it is known that as long as they conduct brokerage activities, there has never been a default by their clients, both investors sell and buy. This is due to the strict regulation of the capital market and the good faith of the investors who adhere to the rules of the game. In addition, in the practice of securities transactions, each step of the transaction settlement has been handled by each competent institution, starting from opening to settlement.

From the research, it was also known that the default carried out by PPE itself had never happened. This is because if a PPE ever defaults once, then forever the PPE will not be trusted by the client because it has a bad record. This is greatly avoided by PPE.

If there is a default related to a securities transaction, the first solution that can be done is to file a complaint with BAPEPAM as the capital market supervisor. Furthermore, BAPEPAM will complete the default. However, it does not rule out the possibility of a method of settlement through the judiciary. However, this method is usually avoided by capital market players because in addition to being impractical because the time is unpredictable, a further impact is that there is an unfavorable impression on corporate images that have been built for a long time (the results of interviews with one of the capital market players).

Basically the small possibility of default in the capital market is because in general in the securities industry, businesses in the capital market are trust businesses. All parties involved in this business must uphold this principle. In the world of capital markets there is a premise: my word is my bond (my words are my guarantee). Therefore, each transaction should be based on good faith.

As for the legal consequences if there are parties who default, the party that caused the loss is obliged to compensate for the loss in accordance with the rules of the Civil Law. Ethically the capital market, the consequences for parties who default are that the party will not be accepted again in the world capital market activities. This is a punishment that is more severe than just compensating for the party who loses it.

According to civil law, compensation that must be borne by the party who defaults can only be as much as the actual loss suffered by the injured party, compensation can also amount to a real loss coupled with the potential profit that the injured party fails to achieve. For example, due to default by one party, the aggrieved party suffered a loss of Rp. 1 billion. The loss occurs because the aggrieved party does not receive the money that should have been received due to the existence of a conflict by the opposing party. This is called a real loss suffered by the injured party. However, it turns out that the Rp. 1 billion in money will actually be bought by the company shares, which at that time if it is purchased; the affected party will get a profit of Rp. 2 billion. However, due to default, the injured party does not get the profit. Based on this fact, the compensation that can be demanded by the aggrieved party
in the form of a real loss of Rp. 1 billion plus the potential profit that should have been obtained in the amount of Rp. 2 billion, so the total amount was Rp. 3 billion.

From the description above, it can be seen that in the case of this compensation, civil law still applies to capital market players. If the action in question is also a violation of criminal law, for example there is an act of embezzlement, and then the aggrieved party can carry out joint prosecution, both civil and criminal. In the event of such a case, the penalty that can be received by the party who defaults can be in the form of a prison sentence and a sentence of compensation as much as required.

2.3 Default Settlement in the Capital Market in the Perspective of Law Number 8 of 1995

Default is included in the type of civil case, therefore the settlement of the case will be based on procedures for settling cases according to the civil procedure law. Civil procedure law is a series of legal regulations that regulate and determine the implementation of material civil law and determine what has been determined by legislation. The stages of proceedings are as follows:

a. Claims
b. Answers
c. Replic
d. Duplicate
e. Additional replication
f. Add duplicates
g. Examination of evidence
h. Conclusion
i. Vonnis

Crime in the capital market is a typical crime committed by capital market players in capital market activities. The issue of crime and violations in the capital market is assumed based on several reasons, including:

a. Errors of the offender
b. Weakness of the apparatus which includes integrity and professionalism
c. Weaknesses of regulation

BAPEPAM is obliged to always carry out legal research concerning the protection and enforcement of increasingly important law. It is important because capital market institutions are trust institutions, namely as an intermediary institution that connects the interests of fund users and fund owners. Thus the legislation governing the capital market is expected to be able to contribute positively to law enforcement in providing legal guarantees and certainty to capital market players.

Law Number 8 of 1995 concerning Capital Markets has regulated various forms of capital market violations and criminal acts along with sanctions for perpetrators. The prohibited acts include:

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a. Counterfeiting and Fraud

Fraud according to Law Number 8 of 1995 concerning Capital Market Article 90 letter c “makes false statements about material facts or does not disclose material facts so that statements made are not misleading or avoid losses for yourself or other parties to buy or sell securities.

The ban was addressed to all parties involved in securities trading, even participating in fraud also did not escape the snare. In the Criminal Code Article 378 concerning fraud, it is stated that fraud is an action to benefit oneself or others by:

a. Against the law
b. Using fake names and fake dignity
c. Craftiness
d. A series of lies
e. Persuade others to give something to him.

Regarding the definition of the Criminal Code concerning fraud, Law Number 8 of 1995 concerning Capital Market also provides several specifications regarding the definition of fraud, which is limited to securities trading activities which include bidding, buying and selling of securities that occur in the context of public offering securities or outside the stock exchange of the issuer or public company. Regarding the notion of deception or a series of lies as specified in the Criminal Code, Law Number 8 of 1995 concerning Capital Markets confirms that this includes making false statements about material facts or not disclosing material facts.

b. Market Manipulation

The act of market manipulation is a series of actions whose purpose is to create a misleading and misleading picture of the existence of active trading, market conditions or prices of one effect, buying and selling that does not result in changes in beneficiary owner benefits, or false transactions.

As the name suggests, market manipulation of this action occurs in the secondary market, that is, after the shares sold through a public offer are registered at one of the existing stock exchanges. This manipulation is especially easier to do in the stock exchange where the number of investors is relatively small. Because then between one investor and other investors can be interconnected to make certain agreements that mean to manipulate the market. Besides this market manipulation can also be done with transactions without the existence of shares or without the transfer of rights to shares.5

Law Number 8 of 1995 concerning Capital Market as well as the Criminal Code, also divides criminal acts in the capital market sector into two types, namely: Violation Crimes in the capital market sector

From the cases of violations of the legislation above, it is also explained when discussing capital market crimes, that so far there has not been a single case that has been resolved through a criminal policy route, but through administrative sanctions, the settlement of which is carried out by BAPEPAM. It was only in 2004 that there was one case of a large

5 Butje Tampi, Bentuk-Bentuk Kejahatan di Bursa Efek Serta Peran Baepem, Manado, Kementrian Pendidikan Nasional Universitas Sam Ratulangi, 2010, p. 15
capital market criminal offense that had arrived at the prosecutor's office, in other words the process of resolution would be through the criminal justice system.

Law Number 8 of 1995 concerning Capital Market, places criminal policies through criminal law against capital market violations in Article 103 paragraph 2, namely violations of Article 23, Article 105, and article 109. Capital market violations referred to in article 103 paragraph 2 is a violation of Article 32, namely “a person who conducts activities as a guarantor representative. Deputy securities broker or investment manager representative without obtaining BAPEPAM permission the threat to the perpetrator is a maximum of 1 (one) year imprisonment and a fine of Rp. 1000,000,000 (one billion rupiah)."

The violation referred to in Article 109 is the act of not complying with or obstructing the implementation of Article 100, which is related to the authority of BAPEPAM in carrying out checks on all parties, suspected of or involved in violating the Investment Law. Seeing the settlement of violation cases committed by BAPEPAM, BAPEPAM is more likely to resolve the issue by using a line outside the court, but if the BAPEPAM party will resolve the case to court. It can be said here that, BAPEPAM considers that the criminal law is the ultimate weapon in resolving cases of violations of legislation in the capital market.

Crimes and violations in the capital market include fraud, market manipulation and Insider Trading. Procedures for examining the capital market are explained in Government Regulation Number 46 of 1995. BAPEPAM will conduct an inspection if:

a. There are reports, notifications or complaints from parties regarding violations of capital market legislation
b. If the obligation is not fulfilled by the parties that get permission
c. There are indications of violations of legislation in the capital market sector.

III. CONCLUSION

From the discussion that has been conducted, the following conclusions can be taken. The implementation of a securities transaction is distinguished between securities transactions in the primary market and the secondary market. In the primary market, transactions are carried out directly by the issuer's company, while in the secondary market transactions are carried out on the trading floor and are settled by institutions involved in the capital market. The legal consequences if after a transaction, one of the parties defaults and the settlement is the party that caused the loss must replace the loss in accordance with the rules of the Civil Law. The implementation of good faith in the practice of securities trading systems is manifested in the premise that says my word is my bond (my words are my guarantee). This applies to all capital market players, because once they do not hold this, the capital market ethically, these parties will not be accepted again in the world capital market activities. This is a punishment that is more severe than just compensating for the party who loses it.

Settlement of defaults on the capital market in the perspective of Law Number 8 of 1995 concerning Capital Market, places criminal policies through criminal law against capital market violations in Article 103 paragraph 2, namely violations of Article 23, Article 105, and article 109. Market violations the capital referred to in article 103 paragraph 2 is a

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6 Article 32, Law Number 21 Year 2011
7 Government Regulation Number 46 of 1995
violation of Article 32, namely “a person who carries out activities as a deputy guarantor of securities. Deputy securities broker or investment manager representative without obtaining BAPEPAM permission the threat to the perpetrator is a maximum of 1 (one) year imprisonment and a fine of Rp. 1000,000,000 (one billion rupiah).

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