

Penggantian kerugian investor akibat pelanggaran peraturan perundang undangan di bidang pasar modal melalui mekanisme disgorgement dan disgorgement fund di indonesia = Compensation for investors loss due to violations of the capital markets laws and regulations by way of disgorgement and disgorgement fund

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Abstrak

As Otoritas Jasa Keuangan issued draft regulation for disgorgement and disgorgement fund in the capital markets in March 2019 (RPOJK Disgorgement), this thesis aims to understand how the United States (US) and United Kingdom (UK) regulate and implement compensation for investors` loss due to capital markets violations by way of disgorgement and disgorgement funds and how it should be regulated in Indonesia. The thesis uses juridical normative method, secondary data obtained through library studies and comparative approach between RPOJK Disgorgement and similar regulation and implementation in US and UK. In the US, the Securities and Exchange Commission (SEC) can apply for and distribute disgorgement through civil and administrative proceedings. Disgorgement was an equitable relief given based on inherent equity power of the court in addition to an injunction. Subsequently, US Supreme Court categorized disgorgement as penalty and disgorgement action must be carried out within five years since the claim accrued. FAIR funds provisions, enable penalty to become part of disgorgement, despite pros and cons of how to calculate disgorgement. In the UK, disgorgement can be applied for and distributed by a court order in a civil proceeding or an administrative action by Financial Conduct Authority (FCA). Disgorgement calculation in the administrative action should follow five steps in Decision Procedure and Penalties Manual and FCA will identify the amount of profit obtained from regulation violations. RPOJK Disgorgement should regulate how to calculate disgorgement transparently, penalties to be part of disgorgement fund, and violators to provide guaranty for disgorgement payment.