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Supervision Model of the Financial Services Authority (Otoritas Jasa Keuangan (OJK)) on the Indonesia Capital Market to Protect Investors

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Abstract.
The supervisory agency for the financial services sector in Indonesia is currently implemented by the Financial Services Authority whose existence is contained in the Financial Services Authority (Otoritas Jasa Keuangan/OJK) Law Number 21 the Year 2011. OJK oversees all financial institutions, including the capital market. The supervision model carried out by the OJK is a single model. Thus, OJK becomes a super body institution meaning that OJK is the only institution that has regulatory and supervisory authority over all financial service institutions. The effect of this model on investor protection is to be less than optimal. This study aimed to first find supervisory models for financial institutions, and second, to evaluate the model of capital market supervision to protect investors and propose a new model of supervision. This research uses juridical and normative methods. The juridical approach refers to statutory regulations, while the normative approach refers to legal principles and case studies also called library legal research. Research specifications use descriptive and prescriptive analysis. The data used is secondary data, which includes primary and secondary legal materials. All data collected was then processed and analyzed using qualitative methods. After analysis, the data is described and linked to each other systematically, and ultimately compiled or presented in the form of legal writing. The results showed that, first, there are several supervisory models for financial institutions, such as the Multi-supervisory Model, the Twin Peak Supervisory Model, the Functional model, and the Integrated (Single) Supervisory model. Second, the Single Supervisory model for investor protection is less than optimal. A partially integrated model is the recommendation of a new model of capital market supervision to protect investors.

Keywords: supervision, OJK, capital markets, protection, investors

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1. INTRODUCTION

The supervision of the financial services sector is currently carried out by the Financial Services Authority (FSA) or Otoritas Jasa Keuangan (OJK). The existence of the OJK is regulated by the Financial Services Authority Act No. 21 of 2011 (hereinafter referred to as the OJK Law. The law aims to address the global economic crisis of 2008 caused by cross-sectoral issues in the financial services sector, including moral hazard and weak financial sector supervision [1], as well as the financial system conglomerate in 2009 [2] [3].

As stated in Article 4 of the OJK Act the purpose of establishing the OJK is to ensure that all activities in the financial services sector: a) are conducted in an orderly, fair, transparent, and accountable manner; b) can achieve a sustainable and stable financial system; c) can protect the interests of consumers (investors) and the public.

The form or model of OJK supervision is an integrated or unified supervision model because the OJK oversees the entire financial services sector. Therefore, the OJK is the only institution (Single model) with regulatory and supervisory authority over all financial institutions in Indonesia. With an integrated supervision system, the OJK has extensive authority over the entire financial services sector [4].

One of the financial services institutions supervised by the OJK is the capital market sector. The legal basis for capital market activities is the Capital Market Law Number 8 of 1995 (hereinafter referred to as the Capital Market Law). According to the law, the capital market plays an important role [5]; [6]; [7]. Initially, the activities and transactions in the Indonesian Capital Market were supervised by the Capital Market Supervisory Agency (Bapepam-LK). This agency was not independent, as it was under the auspices of the Ministry of Finance of the Republic of Indonesia [8].

After the enactment of the OJK Law, the authority to supervise the capital market sector shifted from Bapepam-LK to OJK [9]; [10]. Currently, the capital market is supervised by an Executive Head of Capital Market Supervision who is a member of the Commissioner Board appointed by the President based on the OJK Law [11].

Supervision is key to investor protection in the capital market [12]; [13], and the potential and opportunities for investment are still widely open in the capital market [14]. Investing is not only vulnerable to investment risks [15] but also to violations and crimes [16].

Although the OJK's mission is to supervise, regulate, and safeguard investors, there are still many instances of market participants breaking legal restrictions in the capital market business. There are unethical and immoral cheating practices that hurt investors [17]. The Stock exchange scandals, according to Indra Safitri, are instances of deception that directly or indirectly undermine the interests of investors [16]; [18]; [19].

Considering that the capital market industry heavily relies on investor trust, and given the various cases, including mega scandals, it is necessary to evaluate the integrated supervision model of the OJK, which oversees all financial services, and then propose new model supervision, especially in the capital market, those related to investor protection.

Regarding the background of the research, the objectives of the study are as follows:

To understand the supervision models of the Financial Services Authority in Financial Institutions.

To evaluate the supervision model of the Financial Services Authority in the Capital Market sector and propose a new model of supervision to protect investors.

2. METHODS

2.1. Research Approach

To address the problem, research is conducted using a normative juridical approach. This approach starts from secondary data strengthened by primary data [20, p. 20]. In addition, a comparative method is used by comparing the financial sector supervision models in other countries, namely England and European countries.

2.2. Research Specifications

This research specification uses descriptive-analytical and prescriptive analytical methods. A descriptive-analytical research method is needed to describe, present, and explain the research object completely, clearly, and objectively, which is related to the problem [20, p. 38]. The prescriptive method is used because the results of this research are expected to offer a solution to the examined problem, considering that the integrated OJK supervision model has been implemented for more than a decade.

2.3. Data Collection Techniques

2.3.1. Library Research

In normative juridical research, the type of data used in this research is literature or secondary data. Secondary data is obtained from literature or literature, so the secondary data sources in this research can be divided into three groups: primary legal materials, secondary legal materials, and tertiary legal materials [20, p. 285].

2.3.2. Primary Data Collection

Primary data collection is done through interviews. The technique of determining the sample to be interviewed is done through purposive sampling, which is determining the sample according to the research objectives. Using the purposive sampling technique, interviews were conducted with the leaders of Regional Office 2 West Java OJK; Financial Services Authority Head Office; PT. Indonesia Stock Exchange (BEI) West Java Representative Office; and PT. Indonesia Stock Exchange (BEI).

2.4. Data Analysis Technique

The data analysis technique is descriptive qualitative, and the data analysis used is a qualitative approach to primary and secondary data. This descriptive analysis includes the content and structure of positive law, to determine the content or meaning of the rules that will be used as a reference in solving legal problems that are the object of study through comparison and legal construction (Yusuf, 2017).

2.5. Research Location

1) Regional Office 2 West Java OJK; 2) Financial Services Authority Head Office; 3) PT. Indonesia Stock Exchange (BEI) West Java Representative Office; 4) PT. Indonesia Stock Exchange (BEI), 5) Unisba Library.

2.6. Theoretical Framework

2.6.1. State of the art

In several previous studies, various aspects of OJK supervision have been discussed. However, there is a fundamental difference in the research conducted by the author, which is regarding the OJK supervision model. These researchers include Wisudawan, I. Gusti Agung, and others, analyzing “Optimization of Supervision by the Financial Services Authority in the Capital Market According to Positive Law in Indonesia,” in Ganec Swara 15.1 (2021): 798-804. Developmental Legal Theory, Progressive Legal Theory, and Responsive Legal Theory are all employed by the writers. They recommend updating the Capital Market Law (UUPM), highlighting OJK’s function as a regulator, supervisor, and enforcement of capital market legislation, and discontinuing the use of outmoded regulations linked with Bapepam-LK.

On the other side, Rizka Maulida wrote a doctoral dissertation entitled “Transfer of Authority from Bapepam-LK to the Financial Services Authority in the Supervision of Securities Transactions.” Brawijaya University’s Faculty of Law, 2015. Bapepam LK implements a supervisory theory with alerts. Alerts are a technology mechanism that can automatically send early warnings in the case of abnormal changes in prices and volumes in the market. Whereas OJK employs an integrated supervision theory.

Furthermore, Samuel Mawei, in 2016, conducted research on Capital Market Supervision in Indonesia After the Establishment of the Financial Services Authority, in the journal Lex Privatum, Vol. IV/No. 6/July/2016. The author uses comparative theory. The research compares the supervision of the capital market by Bapepam-LK and OJK.

2.6.2. Basic Theory

Bagir Manan views supervision or control as a function and a right, commonly referred to as control function or control right. Control encompasses the dimensions of supervision and control [21]. Effective supervision includes three areas: independence, adequate resources, and appropriate mandate. Quoting Cappeletti, supervision systems are commonly categorized into two systems: judicial review and political supervision [22].

Edward J. Kane asserts that financial institution supervisors have four main obligations to society: 1) A Duty of vision; 2) A Duty of Prompt Corrective Action; 3) A Duty of Efficient Operation; 4) A Duty of Conscientious Representation [23].

Regarding the understanding of the model, quoting Satjipto Rahardjo’s opinion in 1998, a model is synonymous with a paradigm [24]. Liek Wilardjo explains that a paradigm is a model used by scientists in their scientific activities to determine the types of problems that need to be addressed, the methods to be used, and the procedures to be followed in addressing those problems. This model is implicit in the basic assumptions that underlie the monumental-seminal works of (several) geniuses in a particular field [24].

As for the supervision model of financial institutions in each country, it is influenced by various factors such as the legal environment set by regulators, parliaments, or governments, and the legal traditions within their respective environments [25]. Some academics refer to the phrase “model” as an approach or system. The varied classifications of the supervision models will be explained below:

The institutional model/sectoral model focuses on each regulated legal entity, hence the assignment to a specific regulator.

The functional model focuses on the type of transaction or product being regulated, resulting in one company being subject to multiple regulators. Each regulator is then responsible for the safety, health, and business conduct of the company, as applicable to each type of product within their jurisdiction.

The integrated model is a unified approach where there is a single financial regulator responsible for safety, health, and business conduct considerations. This model combines stability and business conduct considerations and is used in Japan, Singapore, Germany, Indonesia, and previously in the UK.

The twin peaks model is a form of regulation based on objectives, where there is a separation of regulatory functions between two regulators: one focusing on prudential supervision and safety and the other focusing on business conduct supervision [26] [27] [28] [29].

Partially integrated models group responsibilities according to the objectives or sectors of supervision [29].

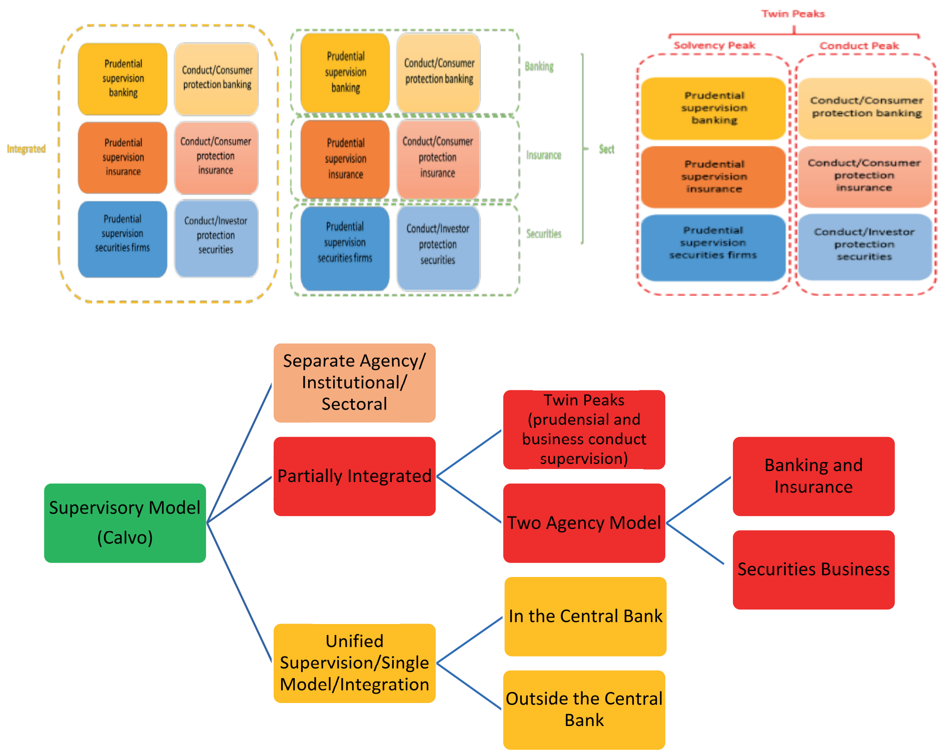

Figure 1: Combined Surveillance Model From Calvo.

The Following are Some Descriptions of the Supervisory Model:

3. RESULTS AND DISCUSSION

3.1. Supervision Models of the Financial Services Authority in Financial Institutions

According to Indra Safitri, a large and well-regarded capital market is not only determined or measured by transaction value or market capitalization but also by its strong protection of investor interests and the presence of legal frameworks supporting its development [16]. Moreover, currently, the Indonesian Stock Exchange (BEI) is dominated by young investors [30, p. 49].

Kane believes that regulations should be supported by supervision and law enforcement [23]. As stated in the OJK press release, strengthening capital market supervision is essential for enhancing investor protection [31]. Similarly, Anwar Nasution suggests that maintaining financial stability requires increased supervision and prudential regulation [1].

The occurrence of the global financial crisis sparked public debate about the efficiency and effectiveness of financial regulatory bodies [29]. This global economic crisis became an opportunity to evaluate the supervision models implemented by countries affected by the crisis [32], [33], [34], [35]. Many countries then reformed their financial regulatory models [36], including Indonesia, by establishing the Financial Services Authority (OJK) with an integrated supervision model based on the OJK Law. As for countries that had already undergone reforms before the crisis, they would reconsider their supervisory system architecture [33].

The following is a summary of research conducted by Michael Taylor and Richard K. Abrams on financial regulatory models implemented in 63 countries around the world in 2000, before the 2008 crisis. The supervision models are as follows [2]; [37]:

Table 1: The Financial Services Institution Supervision Model was Implemented Before the 2008 Financial Crisis.

Supervisory Model	Number of Countries
Separate agencies for each main sector	35
Combined securities and insurance regulators	3
Combined banking and securities regulators	9
Combined banking and insurance regulators	13
Unified supervision in the central bank	3
Unified supervision outside the central bank	10

Resource: Richard K Abrams and Michael W Taylor, Issues in the Unification of Financial Sector Supervision, page 4.

From the table above, the most widely used model is Separate agencies for each main sector, which is implemented by 35 countries. Meanwhile, the Unified supervision in the central bank model is implemented by only three (3) countries. Singapore is one of the countries that implements the unified supervision model within the central bank.

As a comparison, in the UK, integrated supervision began to be implemented in June 1998. Most of the banking supervision responsibilities in the UK were transferred from the Bank of England (BoE) to the newly formed Financial Services Authority (FSA), which oversees the entire financial system [33]. This new regime was based on the Financial Services and Markets Act 2000 (FSMA), which came into full effect at the end of 2001, when most of the remaining financial regulatory responsibilities were officially transferred to the FSA [28].

After 1998, the number of integrated supervision agencies grew rapidly. Europe has become the center of the integrated supervision model. In addition to the UK, four “old” EU member states - Austria (2002), Belgium (2004), Germany (2002), and Finland (2009) - assigned the task to a single authority outside the central bank to oversee the entire financial system [33]. Outside of Europe, integrated supervision institutions have been established in Colombia, Kazakhstan, Korea, Japan, Nicaragua, and Rwanda. Meanwhile, Switzerland and Finland adopted an integrated structure between 2008 and 2009 [33].

In June 2009, after the global financial crisis of 2008, in the UK, the FSA and Bank of England (BoE) signed an MOU to establish the Prudential Regulation Authority (PRA) in early 2013 under the BoE, and it would oversee Banks, Insurance & investment institutions, etc [38]. Later, the UK moved towards and adopted the “Twin Peaks” model [26]. The second wave of reforms in the financial supervision model introduced the Twin Peaks Model. This model was first introduced in Australia in 1997 [29].

The Twin Peaks model is part of a Partially integrated model, in general, can be identified in two types: (i) prudential supervision, which emphasizes prudence aspects, focusing on the solvency safety, and soundness of financial institutions, and (ii) conduct of business supervision, which emphasizes the implementation of business aspects, focusing on consumer protection [39].

The twin peaks model supervises the banking, insurance, and capital market industries prudentially and in equal proportions for each respective financial institution. This model does not specifically oversee the capital market industry separately. As a result, the desired focus on the capital market industry cannot be achieved when using the twin peaks supervision model.

After the crisis of 2008, Calvo's research reveals the classification of supervision models implemented by countries. The following table shows the various supervision models used by several countries [29]:

Table 2: Classification of Supervision Models and their Application in 83 Countries.

Sectoral 40 countries, among them:	Integrated in the Central Bank 9 countries	Integrated outside the Central Bank 14 countries	Twin Peaks 8 countries	Two Agency 9 countries	Not Classified 3 countries
Albania Angola Argentina Bahamas Bangladesh Brazil Ecuador Egypt, Turkey Hong Kong India, Vietnam Israel Kuwait Philippines Thailand	Bahrain CzechRepublic Hungary Ireland Uruguay Russia San Marino Singapore Slovakia	Austria Colombia Denmark Estonia Finland Germany Iceland Japan Korea Latvia Switzerland Norway Poland, Sweden	Australia Belgium Canada Guatemala Netherlands El Salvador New Zealand United-Kingdom	France Greece Italy Malaysia Paraguay Peru Trinidad and Tobago Saudi Arabia Serbia	Cyprus Kyrgyz Republic Timor-Leste

3.2. Supervision model of the Financial Services Authority in the Capital Market sector to Protect Investors

Based on the supervision models presented by Taylor, Indonesia currently implements model number six, which is Unified supervision outside the central bank. Integrated supervision outside the central bank is carried out by the Otoritas Jasa Keuangan (OJK) institution based on Law No. 21 of 2011. Unified supervision is the same as integrated supervision. Thus, the OJK is an independent supervisory institution with an integrated model, which has a separate position from the Central Bank. However, in carrying out its duties, the OJK coordinates with Bank Indonesia (BI) as the central bank.

OJK is an institution responsible for overseeing all the financial sectors, including the capital market. The establishment of similar institutions to OJK has been practiced in other countries [38]. For more than a decade, OJK has had a wide range of responsibilities, including regulating and supervising all financial institutions in an integrated manner, making it a superbody with significant responsibilities. However, this has led to suboptimal supervision, as evident from the numerous cases that have occurred in financial institutions, particularly the capital market, as discussed in the research background.

Therefore, if Indonesia's capital market aims to enhance investor protection, the OJK supervision model needs to be evaluated. Among the various supervision models discussed earlier, the proposed relevant supervision model for the Indonesian capital market is the partially integrated or Two-agency model. The Two-Agency model separates the supervision between banks and insurance, which are integrated within one supervisory institution, and the separate supervision of the capital market. The model will be shown below:

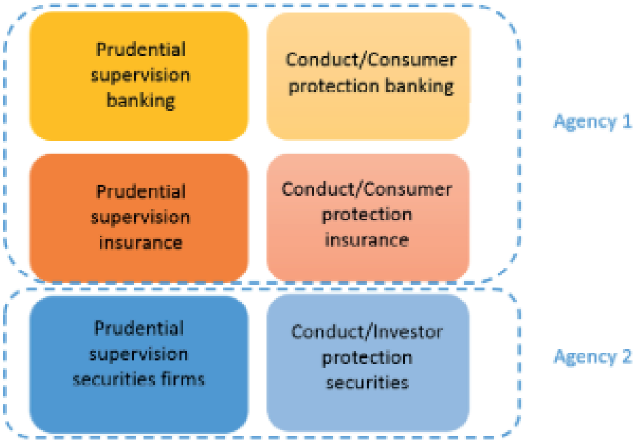

Figure 2: Model Two Agency.

Regarding the efforts to evaluate the capital market supervision model in Indonesia to enhance investor protection, the following table will display a comparison of the financial institution supervision models under the BI, Bapepam-LK, OJK regimes, and the proposed financial services institution supervision model in the capital market sector.

Table 3: Comparison and Proposed Capital Market Supervision Model.

	B.I	Bapepam-LK	OJK	A proposed model for capital market supervisors
Supervisory Model	Sectoral/ Institutional oversees the banking sector only Independent	Sectoral/ Institutional oversee the capital market Not Independent, under the Ministry of Finance	Integrated /Unified/ Outside of the Central Bank Independent	Partially Integrated (Two-Agensi _ Securities Business) Independent

In the proposed model: *Partially Integrated (Two Agency _ Securities Business)*, the integrated financial institutions are the banking and insurance sectors, which are supervised by the OJK, while the capital market sector is not included in the integration. For the supervision of the capital market, there will be a separate independent supervisory institution that specifically oversees the capital market independently. Therefore, it is expected that the supervision will be more focused and professional, resulting in better investor protection in the capital market sector.

4. CONCLUSION

According to the research findings, many models of financial institution supervision are used in diverse ways by various countries around the world, such as the integrated/unified model, Institutional/ sectoral model, Functional Model, Twin Peaks Model, and Partially Integrated Model. Moreover, to enhance investor protection in the Indonesian Capital Market, it is necessary to evaluate the implementation of the integrated supervision model. The proposed model to replace the integrated supervision model is the Partially Integrated (Two- Agency_Securities Business) as a new model. Under this supervision model, a specialized independent supervisory institution will be established to oversee the capital market business. Meanwhile, the OJK will continue to supervise other financial services sectors in an integrated manner, including insurance and banking institutions.

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