

Law and Regulation as Safeguards for Investors Against Crime in Capital Market Sector

Hukum dan Regulasi sebagai Pengaman bagi Investor dari Kejahatan di Sektor Pasar Modal

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ABSTRACT

As a country with potency in economic growth, Indonesia is supported by several essential sectors, and one of them is through the Capital Market. The capital market enables the growth acceleration for a company or country by providing the needed fund. At least, through this medium, there are reciprocal benefits obtained by both parties involved in the Capital Market: issuers with capital injections, and investors with dividends and price increases. Unfortunately, there are big risks that investors have to deal with in capital markets, and some of them are related to fraud, market manipulation and insider trading. The results of this research found that government has enacted regulations that protect investors' rights through the Capital Market Law and the Financial Services Authority Law. However, there are still weaknesses in this regulation, especially for types of crimes that are still not regulated in this regulation. Moreover, it is necessary to have sufficient prowess from the authorized institution, especially the Financial Services Authority (OJK), to resolve cases in accordance with the applicable law aiming to protect investors' rights.

Keyword: Capital Market, Legal Protection, Issuers, Investors

ABSTRAK

Sebagai negara yang memiliki potensi pertumbuhan ekonomi, Indonesia disokong oleh beberapa sektor esensial, dan satu diantaranya adalah Pasar Modal. Pasar modal memungkinkan percepatan pertumbuhan suatu perusahaan maupun negara dengan menyediakan medium permodalan. Setidaknya, melalui medium ini, ada timbal balik keuntungan yang didapatkan oleh kedua pihak yang terlibat dalam Pasar Modal: emiten dengan suntikan modalnya, dan investor dengan dividen maupun kenaikan harganya. Sayangnya, terdapat resiko besar yang harus dialami oleh investor di dunia pasar modal, dan beberapa diantaranya terkait dengan penipuan, manipulasi pasar dan *insider trading*. Hasil dari penelitian ini menemukan bahwa sebenarnya sudah terdapat regulasi yang melindungi hak-hak investor melalui UU Pasar Modal dan UU Otoritas Jasa Keuangan. Hanya saja, masih terdapat kelemahan dalam regulasi ini, terutama untuk jenis-jenis kejahatan yang masih belum teratur didalam regulasi ini. Terlebih, diperlukan adanya kemampuan yang mumpuni dari lembaga berwenang, dalam hal ini OJK, untuk menyelesaikan tindak-perkara sesuai dengan hukum yang berlaku dalam rangka melindungi hak-hak investor.

Keyword: Pasar Modal, Perlindungan Hukum, Emiten, Pemodal



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1. Introduction

Developing countries like Indonesia will always encounter challenges. The Indonesian capital market is one financial sector that experiences challenges but also provides great opportunities. One of the challenges that

must be faced is the existing macroeconomic conditions. If macroeconomic conditions run well, there will be good opportunities for the economy. However, if the conditions are adverse, the Indonesian economy will be in crisis.

The capital market plays an essential role in strengthening a country's position in the global economy with its two functions, namely, the economic function and the financial function. Through its economic function, the capital market holds a role in facilitating meetings between the two parties: investors (fund owners) and issuers (parties who need funds) (Rahmah, 2019). Through this medium, investors participate in turning excess funds into investments while also expecting the maximum return (profit) as a return. Reciprocally, this investor's expectation is then made possible by issuers through the company, but first, it has to be made into the company's operational fund. Through its finance function, the capital market offers reciprocity for fund owners, known as returns, whose results are determined by the characteristics of the investment itself.

Within its strategic position, the capital market also holds an important role in the national economy by facilitating companies and industries through investment modes. In fact, in today's modern economic world, the capital market is said to have become a financial nerve center (Salsiah, Salleh, & Hasan, 2008), which proves that the modern economy cannot survive without a qualified capital market shows resilience, competitiveness, and organization. The robust existence of this medium is supported by several instruments whose markets are favored by the public, such as (a) long-term instruments (more than one year): stocks, bonds, mutual funds, and warrants, as well as (b) derivative instruments: options, futures, and others. In Law Number 8 of 1995 concerning Capital Market, the Capital Market Law defines the capital market as follows: "The Capital Market is the activity of trading and Offering Securities to the Public, the activity of a Public Company concerning Securities it has issued, and the activities of Securities-related institutions and professions."

A country is also predicted to be able to develop if the evaluation of several indicators, one of which is the capital market, shows significant progress. Such progress can be made possible through the role of financial markets in mobilizing financial resources and capital inflows (Fatah, 2011). Besides companies, another party that benefits from a capital market is the government. Both government and companies use capital markets, especially financial instruments, to raise infrastructure funding for long-term project (Beneish, 2001). Through this funding, the government can issue bonds as a medium and accelerate development such as highways, public transportation, hospitals, airports, reservoirs/dams, and various other strategic infrastructures. Furthermore, the government can still carry out essential development while boosting domestic economic growth.

In addition to participating in the country's development, funding, in particular, also allows a company to develop in all sectors. It also eliminates one of the financing challenges in developing a company. There are options that a company can pursue to help its finances: internal and external funding. Internally, the company can provide capital through efficiency, such as eliminating dividend distribution to shareholders and retaining income through cost reduction and reserves. Another way, the external option, is made possible through loans from banks, relations, and owners, and even selling some of the existing shares (Goenawan & Wasistha, 2019).

As one of the external funding options above, selling shares can be done in two ways: public and limited offerings (private placement). Academically, private placement is an action where the stock offering is not offered using mass communication media and is only targeted to less than twenty people. Unlike private placements, public offerings pursue a wide range of people as buyers through the Capital Market, and this mode is known as 'go public.' As a company that has gone public, this business entity tends to put itself as an issuer in the capital market to offer or issue it to attract investors or financiers. From the two modes above, this journal will focus on capital offered to the public through the Capital Market.

The capital market plays a role that benefits both companies and the wider community. From the company side, the capital market is a medium where they can obtain as much funding as possible, as well as an alternative if other sources of financing are no longer an option. Meanwhile, for the public, the Capital Market can be used to allocate funds as passive income in the form of dividends or capital gains. This is certainly more profitable than putting the money in the banks as hoard funds with less profitable interest

offers. Unfortunately, there are also many violations occurring in the financial institutions' sector in Indonesia namely Money Laundering, Bank Fraud, Non-Compliance with Credit Regulations, and one of them is the Market Manipulation in the Capital Market (Daud & Jaya, 2022) (Sihite, Odelia, & Negoro, 2024).

As one of the systems that contribute to one state's finances, the capital market has a mechanism that regulates the course of its activities. For example, when a stock has been listed on the stock listing, the securities company (broker) becomes an intermediary for buying / selling, so issuers do not have to meet investors as in the traditional capital system. However, a supervisory system was formed to maintain both parties' rights, especially the investors' right to access information on the issuer's finances. It is crucial, considering that for an issuer, there is a gap in the composition of shares between one investor and another. It also has an impact on the imbalance of rights fulfillment. This monitoring system has also proven necessary, especially with evidence of extensive misuse of company resources, widely known as expropriation. In cases of expropriation, it was found that companies committed fraudulent acts such as trading assets non-transparently, manipulating profits, playing with pricing, appointing incompetent family members in the leadership ranks, and giving overcompensation to executives (Darmadji & Fakhruddin, 2012).

In addition to the cases above, there are other problematic cases, such as false reports, lost stocks, short selling, insider trading, rights issues, and IPOs. The cases described are some of the many cases that prove that the function of the Financial Services Authority (OJK) in the capital market is still unreliable, and this is the impact of inconsistencies in law enforcement, conflicts of norms, and regulations that have not been perfectly established. With these problems, it can be concluded that the government can still not protect the rights and interests of investors in the capital market. So, this background encourages the author to review the polemic of investors in the capital market further: How far is the protection of investors in the Capital Market if there is a violation that threatens the investors' rights?

2. Method

This article is based on normative juridical law research relying on a literature study. The data collection method involves conducting inquiries through documents such as books, previous research reports, seminar papers, works of experts, and journals related to the research subject. The data from the literature research was then analysed qualitatively. The results are presented descriptively with the aim of clearly describing legal protection for investors for violations that occur in the Capital Market.

3. Result and Discussion

3.1. Definition of Capital Market

Although the capital market shows tremendous significance in Indonesia's growth and development, the financial instrument is vulnerable to macroeconomic conditions and global capital and financial markets. It is because this financial instrument is composed of several components that support its sustainability, and several factors greatly influence these. One influencing factor is macroeconomics. Although this condition does not affect the company's performance quickly, it significantly affects its performance slowly yet continuously. Besides macroeconomics, stocks are the most affected financial instruments when specific issues exist. It happens as the main stock players are investors with strong characteristics in seeing future opportunities and impacts on the company. It can affect investors' decisions to trade, whether buying, selling, or holding shares (Muklis, 2016) (Husain, 2023). Thus, in macroeconomic changes, stocks are financial instruments that react more directly than companies.

In its journey, the Indonesia Stock Exchange (IDX), previously known as Indeks Harga Saham Gabungan (IHSG/composite stock price index), has a vital role in recording the development of the Indonesian capital market through its indicators. The IHSG movement was volatile following global and macroeconomic conditions, and other movements were still significant (Handika, Damajanti, & Rosyati, 2021). Some significant movements relate to state security and political conditions (Setiawan & Mulyani, 2020). So, related to the context above, the writing of this journal also covers the history, development, and projection of the challenges faced by the Indonesian capital market in the future.

3.2. Types of Crime in the Capital Market

Crime is one of the many issues governments have to deal with, both past and present. The changes in time, coupled with technological advances, have become one of the various causes of the increasingly varied

modes of crime. One of the various crimes that exist occurs in the capital market sector. Crime in this sector varies, but many of them are in the form of violations. Existing violations usually revolve around capital market regulation violations or capital market crime. Capital market crime can occur due to several reasons, such as the personal motives of perpetrators, officials who do not uphold integrity and professionalism, and even supervisory neglect. The lack of the apparatus to enforce supervision is seen as an opportunity for the perpetrators to commit violations. In addition to shortcomings in supervision, existing sanctions also do not create a deterrent. This is because sanctions are only in fines and corporal punishment. So, departing from this problem, ideal regulation is needed to deal with problems in the Capital Market (Daud & Jaya, 2022).

The regulations governing the Capital Market have been enacted through Law Number 8 of 1995 concerning the Capital Market, which stated (DPR, 1995):

1. Code of Conduct in Article 35, securities Companies and Investment Advisors are prohibited from: (a) influencing or pressuring clients to act in ways contrary to their interests; (b) disclosing a client's name or business, unless authorized in writing by the client or otherwise required by current law and regulations; (c) concealing material information from clients or making misrepresentations regarding their business capabilities or financial condition¹; (d) recommending that clients buy or sell Securities, without revealing that the Securities Company or Investment Advisor has an interest in such Securities; or (e) buying or holding in its name or in the name of an Affiliated Person, Securities of an over-subscribed Public Offering, concerning which the Securities Company is the Underwriter or selling agent until orders of Unaffiliated Persons are filled.
2. Fraud in Article 90, when buying and selling Securities, every Person is prohibited from directly or indirectly: (a) defrauding or deceiving another person, by any means or method; (b) participating in fraud or deception against another Person; and (c) falsely stating Material Information or failing to disclose Material Information so that statements are misleading with respect to conditions at the time, either with the intent to obtain a benefit or to avoid a loss, either for himself or for another person, or with the intent of influencing another person to buy or sell Securities.
3. Market Manipulation in Article 91 until 93:
 - a. Article 91: "Every person is prohibited from, directly or indirectly, taking any action that has the purpose of creating a false or misleading appearance of trading activity, market conditions or the price of Securities on a Securities Exchange."
 - b. Article 92: "Every person, either alone or with others, having the intent to influence others to buy, sell or hold Securities, is prohibited from making two or more Securities Transactions, that directly or indirectly cause the price of Securities on the Securities Exchange to rise, fall, or remain steady."
 - c. Article 93: "All persons are prohibited from making, by any means, a statement and giving Material Information that is false or misleading and that affects the price of Securities on a Securities Exchange, if at the time of making such statement or giving such information: (1) the person knows or should have known that such Material Information was false or misleading; or (2) the person has failed to exercise due care in determining the truth of such statement or information."
4. Insider Trading in Article 95 and Article 96:
 - a. Article 95: "An insider concerning an Issuer or Public Company, who has inside information, is prohibited from buying or selling Securities of: (1) the Issuer or Public Company; or (2) another Company engaged in transactions with the issuer of the company."
 - b. Article 96: "The insider referred to in Article 95 is prohibited from: (1) influencing a person to buy or sell the Securities in question; or (2) providing inside information to a person he has reason to believe may use such information to buy or sell the Securities in question."

In addition to the above violations, there are also violations still uncovered by the law, one of which is known as window dressing. This type of violation is indeed difficult to put into regulation as criminal acts in the Capital Market have distinctive characteristics, which are diverse investors and a large number of them. Thus, violation concerning the elimination of investors' shares is the most discussed and acted upon. Unfortunately, if this existing crime continues to repeat, then investors' trust in the capital market and the issuers in it will decrease. This could be worsened if this also affects the level of global trust in Indonesia as a safe and ideal investment destination, whose medium is known through the Capital Market (Darmadji & Fakhruddin, 2012).

One type of Capital Market crime that harms the public is cornering (Wijaya & Gunadi, 2022). It is an

offense executed by manipulating the market. This action is generally carried out by a group that conspires to determine the price of shares in an agreed period. Ideally, the stock price is determined by market demands for the stock quota, and this affects the supply quota and price. This condition is the ideal mechanism for shares traded in the capital market. The amount of interest in one issuer affecting the stock price is a result of a company's performance which is reflected in company information and transparent macroeconomic conditions. However, this condition can be “managed” by parties who want profits by manipulating the price of a stock, both by lowering the stock price or increasing it. They can control the price of this stock to the intended point from the start (Balqis, Suratman, & Affandi, 2023).

Besides window dressing and cornering crime schemes, it could be more complex if there is an advancement of technology that triggered the type evolution of capital market crimes. Such crimes in the area of Crypto Assets and ICOs, High-Frequency Trading (HFT) and Algorithmic Manipulations, Artificial Intelligence and Machine Learning, ESG (Environmental, Social, and Governance) Misrepresentation, Cyber security Breaches and Data Theft and Social Media and Market Manipulation, could emerge due to the technological advancement (Rani, Sugiarta, & Karma, 2021) (Seyfert, 2016) (Sihite et al., 2024). So, in addition to the enactment of the Capital Market Law that should be adjusted to the needs, law enforcement should be implemented very well, even reliably, in this country. The regulation of Crimes in those new areas is highly required to provide protection to the investors, ensuring the stability and the integrity of the market. If the implementation of regulations has gone hand in hand with law enforcement, it is certain that the essence of protection and law enforcement are increasingly evident, and that resulting in the reflection of legal norms in the Capital Market. When this condition is achieved, the Capital Market becomes a credible institution which is chosen to be an intermediary institution that accommodates both parties involved in share buying and selling transactions: fund users (issuers) and fund owners (investors).

3.3. Implementation of Legal Protection for Investors against Capital Market Crime

In order to create a state that protects the basic rights of its people, the government must ensure that legal protection is enforced by ensuring that aspects of law enforcement are in accordance with the existing legal protection needs. This should be pursued considering that good legal protection reflects stability in all aspects, especially in the legal and economic sectors. As a law enforcement tool, legal protection provided by the government has two properties, namely the nature of prevention (prohibited) and the nature of punishment (sanction) (Sidiq, 2023). One of the institutions actively involved in ensuring legal protection through supervision in the Capital Market is the Financial Services Authority (*Otoritas Jasa Keuangan*—“OJK”). It is enacted through the Law of the Republic of Indonesia Number 21 of 2011 on Financial Services Authority. The objectives of OJK activities are stated in Article 4 of Law of Financial Services Authority, which is “to ensure that all activities in the financial services sector run well: orderly, fair, accountable and transparent (DPR, 2011).” This is the goal so that the existing financial system can grow stably and even continuously, targeting the interests of consumers (investors in the Capital Market) is guaranteed. In Article 8 of this Law, the authorities of OJK are stated as follows (DPR, 2011): “(a) to establish the implementation of regulations for this Law; (b) to establish laws and regulations in the financial services sector; (c) to establish OJK regulation sand decisions; (d) to establish regulations on supervision in the financial services sector; (e) to determine policies regarding the implementation of OJK duties; and (f) to establish regulations on procedures for issuing a written order to the financial services institutions and certain parties.”

In the regulation, aspects of protection focus on investors, such as in Articles 28, 29 and 30. Explicitly, these articles contain consumer protection as well as the public in the financial services industry. The word 'consumer' in this regulation refers to financiers, or investors, who provide their capital to be invested in the capital market. In order to avoid criminal acts in the buying and selling process, OJK ensures protection by carrying out preventive functions as the first nature of legal protection and sanctions or repression as the second nature of legal protection. This can be done considering the function of OJK as an institution that carries out regulatory and supervisory functions in the financial services sector.

The Law of Financial Services Authority, in article 28, provides legal protection by implementing the nature of loss prevention of financial services consumers, including (DPR, 2011): (a) providing information and education about the characteristics of the financial services sector, services, and products to the public; (b) ordering the financial services institutions to stop their activities if such activities have potential to cause losses to public; and (c) other actions deemed necessary in accordance with the provisions of laws and

regulations in the financial services sectors.

In Article 29, The Law of Financial Services Authority states that “OJK provides financial service consumer complaints services which include (DPR, 2011): (a) preparing an adequate system and infrastructure for complaint services of consumers who suffer from losses committed by the perpetrator at the financial services institution; (b) making the complaints mechanism of Consumers who suffer from losses committed by perpetrators at the financial services institutions; and (c) facilitating complaints settlement of consumers who suffer from losses committed by the perpetrators at financial services institutions by laws and regulations in the financial services sector.”

Apart from providing protection in the form of prevention, OJK also ensures the implementation of other forms of legal protection that accommodate the second nature of legal protection, sanction. In cases involving financial services industry companies and investors, OJK carries out its role by providing legal defence for consumers and the public. Some of the things that the OJK has taken include ordering the companies involved to resolve complaints or file lawsuits to return property to consumers. This must be done considering the possibility that assets invested as additional capital for the issuer are controlled directly by certain parties with bad intentions (stated in Article 30 of The Law of Financial Services Authority). OJK protects customers who carry out transactions with the financial services sector, both bank and non-bank financial institutions such as the capital market. In an effort to improve this regulation, there is a process of unifying regulations so that law enforcement against perpetrators in financial institutions can be executed optimally (Saidin & Rangkuti, 2021). According to Article 9 point f (DPR, 2011), “the types of administrative sanctions that can be implemented by the Financial Services Authority based on these parties includes in revoking the: (a) business licenses; (b) individual licenses; (c) effective registration statement; (d) registered-license letter; (e) approval of business activities; (f) legalization; (g) approval or determination of liquidation; and (h) other confirmation.”

Characteristically, crimes in the capital market have unique characteristics, where one of the main elements is 'information' as an item processed by certain parties. This item (information) is then processed altogether with the ability to read market movements to obtain the maximum possible profit. When the results of this market movement analysis are executed in the buying and selling process on the stock market, other parties who do not have information, just like the party who received it, will experience losses, and this falls into the category of criminal law (Pradipto, Saptono, & Mahmudah, 2019). Crimes concerning fraud, market manipulation, and insider trading are stated starting from article 90 to article 99 in Capital Market Law (DPR, 1995). The following is the summary of the articles in this chapter:

1. Fraud occurs when there is a misrepresentation of information that enters the market quickly, resulting in changing share prices, yet the information is in fact, wrong;
2. Market manipulation is an action carried out by any party directly or indirectly with the intention of creating a false or misleading picture regarding trading, market conditions, or securities prices on the stock exchange; and
3. Insider trading is a practice where insiders (corporate insiders) carry out securities transactions using exclusive information that they own and that is not yet available to the public.

The activities listed in the points above can be categorized as actions that fall within the realm of criminal law. Therefore, every violation of the regulations will be sanctioned with prison sanctions. For investors who are disadvantaged by criminal acts as above, in accordance with Financial Services Authority Regulation Number 49/POJK.04/2016 concerning Investor Protection Funds and Financial Services Authority Regulation Number 65/POJK.04/2020 concerning Returning Unauthorized Profits and the Investor Loss Compensation Fund in the Capital Market Sector, these investors have alternatives. This alternative allows investors to obtain responsibility or return for losses caused by parties who violate the rules when investing in the capital market.

The accountability or return of capital discussed above is discussed in The Financial Services Authority (OJK) Regulation Number 49/POJK.04/2016 concerning Investor Protection Funds (OJK, 2016). The funds referred to in the Investor Protection Fund are a sum of money collected with the aim of protecting investors from the loss of Investor Assets, protected by the Indonesia Securities Investor Protection Fund (SIPF). The investor's assets mentioned are securities or other assets related to securities, as well as investor funds managed by the custodian. Eligible investors in this alternative are investors who meet the requirements as

stated in Article 21 POJK 49/2016, which include (OJK, 2016): “(1) investors entrust their assets and have Securities accounts with the Custodian; (2) investors will open a Securities Sub Account at the Depository and Settlement Institution by the Custodian; and (3) investors have a single investor identification number from the Depository and Settlement Institution.”

For the claim stage, the process begins after the OJK states that there are conditions (OJK, 2016): (1) there is a loss of investor assets; (2) custodians do not have the ability to return investors' lost assets; (3) custodians in the form of Securities Brokers who Administer Securities are declared unable to continue their business activities, and their business permits are considered to be revoked by the OJK; or (4) custodian Banks are declared unable to continue their business activities as Custodian Banks, and the OJK considers the approval of Commercial Banks as Custodians to be revoked. Within 3 (three) working days after receiving the determination from the OJK, the Board of Directors of the Investor Protection Fund Organizer must: (1) announce to the public through newspapers/other media if the event referred to above occurs and invite the relevant investors to submit claims to the Investor Protection Fund Administrator within no more than 30 (thirty) working days from the time the announcement is made; (2) propose the formation of a claims committee to OJK; (3) form a claims verification team; (4) verify; and (5) pay compensation.

With the enactment of the Law of the Republic of Indonesia Number 21 of 2011 On OJK, there are still several crimes that occur within the respective area, namely the Case of Benny Tjokrosaputro, president director of property developer PT Hanson International Tbk, was involved in a case related to fraudulent securities activities that included manipulation of share prices. The scandal also involved misuse of funds and falsification of documents (Binekasri, 2023) (PN Jakarta Pusat, 2020). This case is notable for its impact on retail investors and the broader Indonesian stock market. Another case was The Commodity Futures Trading Regulatory Agency, known as BAPPEBTI, took action against several Forex Trading firms for running fraudulent schemes. These companies were found to be illegally operating platforms that promised high returns but were essentially Ponzi schemes, leading to significant losses for Indonesian investors (JawaPos, 2023). Thus, the latest crimes of state-owned airline was involved in a scandal where it was found to have manipulated financial statements and failed to disclose material information to shareholders, affecting its stock prices (Ramadhan, 2024). This case highlighted the challenges of corporate governance within major Indonesian state-owned enterprises. These crimes are then studied from the perspective of OJK regulation.

4. Conclusion

To ensure legal protection in the financial sector, the Indonesian government has formed and authorized the OJK, carries out its functions based on two characteristics of legal protection, namely the implementation a preventive nature and a repressive nature. In implementing its preventive nature, OJK disseminates information and education about the characteristics, services and products of the financial services sector to the public. Meanwhile, in implementing its repressive nature, the OJK protects consumers, starting from legal defense to making demands against companies or issuers who cause losses. This feature is also equipped with an alternative mode, where investors who are victims can request accountability/refund of funds from the Indonesia Securities Investor Protection Fund for fraud crimes. However, when the crime is related to market manipulation and trading carried out by internal company parties, the administrator appointed by the OJK will carry out the resolution.

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