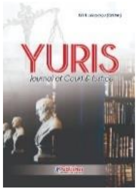

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Criminalization of Fraud Crimes in Capital Market Transactions

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ABSTRACT

As an economic instrument, capital market is not free from certain parties abuse to enrich themselves and it against the law. Crimes in the capital market sector are complex and difficult to prove, let alone being brought before a court, given the nature of the market which is very sensitive to material facts (news related to the course of judicial process) in the form of information related to the capital market. Crimes of capital market sector are complex and difficult to prove, especially being brought before a court, within the characteristic of the market which is very sensitive to material facts (related to the course of judicial process) in form of information related to the capital market. The objective of developing capital market as the basis for sustainable development plan is to increase economic growth and income distribution, to develop an economy that is globally oriented related to the advances in science and technology for the prosperity of the people. The purpose of this study is to find out how government's role as an effort to avoid fraud in the capital market is detrimental to investors. The research method used statutory approach and conceptual approach. Based on the results and discussion in the study, it can be concluded that, the adoption of the division of offenses into two types, namely capital market crime offenses and capital market offenses, shows that the Investment Law follows the provisions contained in the Criminal Code which are laws (general provisions).

Keywords: *Capital Market Crimes, Investment, Transactions*

INTRODUCTION

In a general context, capital market supports economic development through financing business activities.[1] This can be done by providing opportunities for the wider community to participate in national economic development through the capital market. Capital market can also be a measuring tool for economic development in the country and a reflection of the level of confidence of domestic and foreign investors in legal instruments and government performance.

The objective of developing the capital market as the basis for a sustainable development plan is to increase economic growth and income distribution, to develop an economy that is globally oriented in accordance with advances in science and technology for the welfare of the people. The Outlines of State Policy 1999-2994 state the urgency of privatizing State-Owned Enterprises through the capital market.[2] The state again emphasizes the important role of the capital market in structuring and improving the performance of SOEs. The aim of capital market development will be to expand and spread along with the development of capital market activities in Indonesia. Therefore, at a macro level, the objectives of capital market development can be explained as follows:

1. As Raising Funds Facilitator (Economic Aspect)
   The capital market has an important role as a source of financing for medium and small businesses to develop the business world and as an investment vehicle for investors.
2. Democratization of Capital Ownership (Social Political Aspect)
   The capital market has a function as a means of democratizing ownership of companies and expanding public participation in owning shares towards equal distribution of income. Community participation from year to year is increasingly showing an increase.[3] Socio-politically, a prosperous society will be more resistant to social crises and political problems, because it will be difficult to politicize issues.[4]

In carrying out its functions, every capital market participant is required to understand the legal system as the basis for the movement of capital market industry in Indonesia. In the rule of law, when viewed from the content, there will be orders, which inevitably must be carried out or obeyed, there are prohibitions and there are permissibility or permission, which are coercive, binding and some are complementary.

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[1] Yener Coşkun et al., "Capital Market and Economic Growth Nexus: Evidence from Turkey," *Central Bank Review* 17, no. 1 (March 2017): 19–29, https://doi.org/10.1016/j.cbrev.2017.02.003.
[2] S H M. Irsan Nasarudin, *Aspek Hukum Pasar Modal Indonesia* (Kencana, 2014), https://books.google.co.id/books?id=s8O9DwAAQBAJ.
[3] Wisnu Hendrianto, "Improving the Effectiveness of Community Participation in Village Fund Program," *Bappenas Working Papers* 2, no. 2 (May 6, 2019): 215–22, https://doi.org/10.47266/bwp.v2i2.41.
[4] M. Irsan Nasarudin, *Aspek Hukum Pasar Modal Indonesia*.

As an economic instrument, the capital market is not free from abuse by certain parties to enrich themselves against the law. Crimes in the capital market sector are complex and difficult to prove, let alone being brought before a court, given the nature of the market which is very sensitive to material facts (news related to the course of the judicial process) in the form of information related to the capital market. Generally, crimes that occur in the capital market are carried out professionally by white-collar criminals, so that the victims are not aware that they have been harmed by these crimes. One of the crimes related to the capital market is market manipulation.

The important role of the capital market in the Indonesian economy, a firm and clear legal instrument is needed to regulate it.[5] Currently, Indonesia has a special law that regulates the capital market, namely Law no. 8/1995 concerning the Capital Market. In the context of efforts to foster, regulate, and supervise the capital market, the Capital Market Supervisory Agency (Bapepam) was formed which is currently changing its name to the Financial Services Authority (OJK) whose existence, duties and authorities are regulated in article 3, article 4, and article 5 of Law No. 8/1995. With the existence of the OJK and its authority to examine, investigate and impose administrative sanctions, it is hoped that crimes that occur within the capital market can be eradicated, or at least can be prevented.

The capital market law has outlined the types of criminal acts in the capital market sector, such as; fraud, market manipulation and insider trading.[6] Besides, as the types of criminal acts in the capital market sector, the capital market law also stipulates criminal sanctions for perpetrators of criminal acts in the capital market sector. The purpose of this study is to find out how the government's role in an effort to avoid fraud in the capital market is detrimental to investors.

RESEARCH METHODOLOGY

This research employs a normative legal research methodology, beginning with an examination of relevant laws, regulations, and a statutory approach. Additionally, a conceptual approach is utilized, focusing on principles and concepts without relying solely on existing legal rules. This approach is necessitated by the absence of specific legal provisions addressing the issue under study.

RESULT AND DISCUSSION

Constitution Number 8/1995 concerning on the Capital Market (UUPM) has outlined the types of criminal acts in the capital market sector, such as fraud, market

[5] Achmad Ragil and Dion Kusuma, “Demutualization Of Indonesia Stock Exchange As A Strategic Measure And A Means To Improve Efficient Trading,” *Business Law Review* 1, no. 1 (2016): 61–74, https://law.uii.ac.id/wp-content/uploads/2016/12/blc-fhuii-v-01-08-andry-palingjais-lantara-y-ketentuan-hukum-bagi-pihak-yang-memainkan-kembali-lagu-orang-lain.pdf.
[6] N A Gisymar, *Insider Trading Dalam Transaksi Efek* (Citra Aditya Bakti, 1999), https://books.google.co.id/books?id=QuSTAAAACAAJ.

manipulation and insider trading. Beside, to stipulating the types of criminal acts in the capital market sector, the Capital Market Law also stipulates criminal sanctions for the perpetrators of these crimes, paying fines and imprisonment/imprisonment which varies between imprisonment for 1 year and a fine of Rp. 1,000,000,000 (one billion rupiah) up to 10 years in prison and a fine of Rp. 15,000,000,000 (fifteen billion rupiah).

Crimes in the capital market sector have distinctive characteristics, among other things, "goods" which are the object of a crime are information, besides that the perpetrators of these crimes do not rely on physical abilities such as theft or car robbery, but rely more on their abilities. to read the market situation and use it for personal gain. In addition to these two characteristics, there are other characteristics that distinguish it from other criminal acts, namely the proof tends to be difficult and the impact of violations can be fatal and widespread. To be able to understand more about criminal acts in the capital market sector, the following will describe in more detail the types of criminal acts known in the capital market world.

1. Fraud

   Committing fraud according to the Capital Market Law Article 90 (c) is making an untrue statement regarding material facts or not disclosing material facts so that the statements made are not misleading regarding the circumstances that occurred at the time the statement was made with the intention of benefiting or avoiding harm to oneself or other parties. others or with the purpose of influencing another party to buy or sell securities. This prohibition is aimed at all parties involved in securities trading, and even participating in fraud cannot be separated from the snares of this article. Certain groups who have the capability and technological facilities with which they can commit fraud cannot be separated from this article.

   Any perpetrator who is proven to have committed fraud in securities trading activities may be subject to a maximum imprisonment of 10 years and a maximum fine of Rp. 15,000,000,000 (fifteen billion rupiah). The threat of criminal penalties and heavy fines can be considered reasonable considering that securities trading activities involve a large number of investors and a very large amount of money. When compared with the Criminal Code (KUHP), Article 378 carries a maximum penalty of 4 years in prison for those found to have committed fraud. Meanwhile, in Article 390 of the Criminal Code, the maximum penalty is 2 years and 8 months in prison.

   Violations in capital market sector have their own characteristics that are different from other types of violations. Violations that occur can result in the loss of a very large amount of money in securities trading activities, the number of victims is quite large and varied. In the end, significant violations in terms of quantity and quality will undermine the credibility of the capital market. To anticipate this, the authorities in the capital market sector must prepare legal instruments, infrastructure facilities and most importantly human resources to deal with violations, Bapepam which has now turned into (OJK) along with Indonesia Stock Exchange as the regulator and manager of capital market trading activities, must be able to maintain the credibility of the Indonesian capital market.

Article 378 of the Criminal Code states that fraud is an act to benefit oneself or others by:

a. Against the law
b. Using a fake name or a fake address
c. Craftiness
d. Series of lies
e. Persuading others to hand over something to him, or to give debts or write off debts.

Article 90 of the Capital Market Law stipulates that in securities trading activities, each party is prohibited directly or indirectly from deceiving or deceiving other parties by using and or in any way, participating in deceiving or deceiving other parties and making false statements regarding material facts or not disclosing facts that material so that the statements made are not misleading regarding the conditions that occurred at the time the statement was made with the intention of benefiting or avoiding harm to oneself or another party or with the aim of influencing other parties to buy or sell securities.

By considering the provisions stipulated in the Criminal Code, the Capital Market Law provides several specifications regarding the definition of fraud, which is limited to securities trading activities which include offering, buying and or selling securities that occur in the context of a public offering, or occur in the stock market or outside the stock exchange. securities of the issuer or public company.

With regard to the notion of deception or a series of lies as specified in the Criminal Code, the Capital Market Law emphasizes that this includes making untrue statements regarding material facts or not disclosing material facts.[7] A fairly popular case is the case of the shares of the Canadian mining company Bre-X Minerals Ltd. In 1997.[8]

2. Market Manipulation

Market manipulation according to Article 91 of Capital Market Law is an action carried out by each party directly or indirectly with the

[7] Yozua Makes, “The Legal Practice of Corporate Takeover and Mandatory Tender Offer (MTO) in the Indonesian Capital Market,” *Indonesian Capital Market Review* 6, no. 2 (August 13, 2014), https://doi.org/10.21002/icmr.v6i2.3589.
[8] M. Irsan Nasarudin, *Aspek Hukum Pasar Modal Indonesia*.

intention of creating a false or misleading picture regarding trading, market conditions or prices on the stock exchange. Market manipulation is the illegal buying or selling of security to create the false impression that active trading exist in an effort to convince other people to buy more shares or sell the ones they own. Manipulation is done to influence prices so the person doing the manipulating can achieve a more advantageous market.[9] That false impression encourages other parties to take action to sell or buy a security at the price level desired by the manipulator.

Some patterns of market manipulation are:

a. Disseminate false information about issuers with the aim of influencing the price of the company's securities on the stock exchange (false information). For example, a party spreads a rumor that issuer A will soon be liquidated, the market responds which causes the price of its securities to fall sharply on the stock exchange.
b. Disseminate misleading or incomplete information (misinformation). For example, a party spreads a rumor that issuer A is not a company that will be liquidated by the government, even though issuer A was taken over by the government.

Transaction activities aimed at giving the impression that certain company securities are actively traded (wash trading). For example, the board of directors of issuer A orders someone to buy and sell simultaneously, therefore the company's securities are considered liquid. There will be no absolute change of ownership in this transaction, because the scenarios have been prepared by the parties involved. This pattern can be further used as a means to modify (usually increase) the price of securities at a certain level desired by the perpetrators with the existence of these articles. OJK can monitor and anticipate collusion between parties involved in securities trading to carry out trades that will cause very sharp fluctuations in securities prices in a short time.

Transactions that may give rise to a false image include, among others, securities transactions that result in a change in ownership or an offer to buy or sell securities at a certain price where that party has also conspired with other parties who made an offer to buy or sell the same securities at approximately the same price. The motive for market manipulation is to increase, decrease, or maintain the price of securities.[10]

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[9] M. Irsan Nasarudin.

[10] Meity Sri Anggarwati and Herbasuki Nurchayanto, "Analisis Kemampuan Pegawai, Motivasi Kerja Dan Iklim Organisasi Dengan Kinerja Pegawai Dinas Pendidikan, Kebudayaan, Dan Pemuda Olahraga Kabupaten Semarang," *Journal of Public Policy and Management Review* 9, no. 4 (2020): 1–15, https://doi.org/10.14710/jppmr.v9i4.28964.

In the practice of international securities trading, there are several activities that can be classified as market manipulation11, include:

a. Marking the close
   Marking the close, engineering the bid or supply price of securities at or near the closing of the trade with the aim of forming a higher securities price or opening price on the next trading day.
b. Painting the tape
   Painting the tape, is trading activities between one securities account and other securities accounts which are still in the control of one party or have a relationship in such a way as to create pseudo-trading. Basically painting the tape is similar to marking the close but can be done at any time.
c. Pricing related to a merger, consolidation, or acquisition
   In Article 55 of Law Number 1 of 1995 concerning Limited Liability Companies, it is determined that shareholders who do not approve of the proposed merger, consolidation or acquisition have the right to request the company to purchase shares at a reasonable price.
d. Cornering the market
   Cornering the market, providing securities in large quantities therefore they can dominate the market (corner the market). yaitu membeli efek dalam jumlah besar sehingga dapat menguasai pasar (menyudutkan pasar).
e. Pools
   Pools are the collection of large amounts of funds by a group of investors where the funds are managed by a broker or someone who understands market conditions. The manager of the pools buys shares of a company and sells them to members of the investor group to encourage the frequency of buying and selling securities so as to increase the price of these securities.
f. Wash sales
   Purchase orders and sell orders between association members are carried out at the same time where there is no change in the beneficial ownership of securities. These manipulations are carried out with the intention that they create a picture of market activity where there is no actual buying or selling.
g. Insider Trading
   Another form of crime in the capital market is insider trading. Technically, insider trading actors can be divided into two types, namely parties who carry the trust directly or indirectly from issuers or public companies or also referred to as parties in a fiduciary

position and parties who receive inside information from the first party (fiduciary position). otherwise known as Tippes.[11]

The Parties that belongs to the first group are commissioners, directors, or employees, major shareholders of issuers or public companies, individuals who because of their position or profession or because of their business relationship with the issuer or public company enable that person to obtain inside information, or parties who within the The last 6 months are no longer a party as previously mentioned. In UUPM this party is referred to as an "insider".

Articles 95,96 and 97 of the Capital Market Law stipulate that parties with inside information, whether they are insiders or not, are prohibited from buying or selling the securities of the issuer or public company in question or other companies conducting transactions with the issuer or public company concerned. In addition, it is also prohibited to influence other parties to make purchases or sales of the said securities or to provide inside information to any party who reasonably suspects that they may use the said information to purchase or sell securities.

It is further stipulated in Article 97 of the Capital Market Law that any party who deliberately tries to unlawfully obtain inside information is subject to the same prohibition as the provisions of Articles 95 and 96 above. Insider information is material information owned by insiders that are not yet available to the public and are still confidential.

The possibility of trading using inside information can be detected, among other things, from the presence or absence of insiders conducting transactions on the securities of the company in which the person concerned is an insider. In addition, it can also be detected from an increase in the price and trading volume of securities before the announcement of material information to the public and an increase or decrease in the price and volume of trading that is not fair. Insider trading contains several elements, such as:

a. There is securities trading
b. Done by people in the company
c. There is inside information
d. The information has not been disclosed and is open to the public
e. The trade was motivated by that information
f. The goal is to make a profit.

Insider trading cases are identified with theft cases. The difference is that in conventional theft the object is material belonging to another person, then in human trafficking the object of the theft remains the

[11] M. Irsan Nasarudin, *Aspek Hukum Pasar Modal Indonesia*.

property of another person, but by using information that should be public property, so that the perpetrator gains profit. In ordinary theft, the person who suffers losses is the owner of the goods, in the case of insider trading, the losses are so large and widespread, starting from the counterparty to the authority of the regulator and the credibility of the capital market. If credibility is gone, public confidence in the capital market will also decrease.

The opening of insider trading cases tends to be difficult, because it has a sophisticated and complex mode, because the perpetrators carry out financial engineering in such a way that it is impossible to find them directly. Not only the intellectuals of the perpetrators are high, but the economic level is also high. Therefore, the perpetrators are people who have high economic ability and social position.[12]

Criminalization of Criminals in the Capital Market Today

Issues regarding the occurrence of crimes and violations in the capital market are assumed to be based on several reasons, namely: the mistakes of the perpetrators, the weakness of the apparatus that includes integrity and professionalism, and the weakness of regulations. For this reason, Bapepam, which is currently transferring its duties and authorities to the Financial Services Authority (OJK), is obliged to conduct a legal review regarding legal protection and law enforcement which is increasingly important. It is said to be important because the Capital Market is an institution of trust, namely as an intermediary institution that connects the interests of the users of funds and the parties who own the funds.

Forms of Punishment in the Capital Market

There are 3 (three) kinds of sanctions applied by the Capital Market Law No. 8/1995, namely:

1. Administrative Sanctions

   Administrative sanctions are sanctions imposed by OJK on parties deemed to have violated the laws and regulations in the capital market sector. The parties that can be sanctioned are:

   a. The party that obtained the permit from OJK
   b. Parties that obtain approval from OJK
   c. The party who registers with OJK

   The types of administrative sanctions that can be imposed by OJK on the parties mentioned above are:

   a. Written warning
   b. Fines (obligation to pay a certain amount of money)

[12] Joko Sriwidodo, *Penegakan Hukum Terhadap Insider Trading Di Pasar Modal Dan Upaya Perlindungan Hukum Investor* (Yogyakarta: Penerbit Kepel Press, 2013), https://repo.jayabaya.ac.id/2029/3/hukum insider trading ok.pdf.

c. Restrictions on business activities
d. Freezing of business activities
e. Revocation of business license
f. Cancellation of approval; and
g. Cancellation of registration

Article 102 Paragraph 3 states that administrative sanctions are regulated by government regulations, namely PP no. 45 of 1995. The amount of fines varies as follows:

a. A fine of IDR 500,000 (five hundred thousand rupiah) per day with a maximum of IDR 500,000,000 (five hundred million rupiah);
b. A fine of IDR 100,000 (one hundred thousand rupiah) per day with a maximum of IDR 100,000,000 (one hundred million rupiah);
c. A maximum fine of IDR 500,000,000 (five hundred million rupiah) for parties who are not individuals;
d. The maximum fine of IDR 100,000,000 (one hundred million rupiah) for individuals.

2. Civil Sanctions

More civil sanctions are based on the Company Law, which issuers or public companies must comply with. The Company Law and the Capital Market Law provide provisions that allow shareholders to file a civil lawsuit against any manager or commissioner of a company whose actions or decisions cause losses to the company.

a. Lawsuit based on unlawful acts (Civil Code Article 1365)
Article 111 of the Capital Market Law states that each party individually or together with other parties submits a claim for compensation to the party responsible for violating the laws and regulations in the capital market sector. This article is in the same spirit as the Civil Code Article 1365 regarding unlawful acts. With the existence of Article 111 of the Capital Market Law, it is hoped that every party who manages the company and who carries out activities in the capital market sector will carry out their duties professionally and responsibly so that prudence is not neglected.
b. Lawsuit based on an act of wanprestasi (breach of contract) of an agreement. lawsuit based on default requires a violation of the articles of agreement that have been made by the parties (both verbally and in writing). What is meant by default are:
   1) Not doing what he is supposed to do
   2) Carry out what he promises, but not as promised
   3) Do what is promised, but it's too late
   4) Doing something that according to the agreement cannot be done

c. The lawsuit is based on Article 85 paragraph 2 of the Company Law for the board of directors and Article 98 for the commissioner of a public company.

In some cases, violations may be committed by the management of the company, namely the directors and commissioners. The Company Law adheres to a system of liability to the company because it is a legal entity, but if the loss is caused by the management of the company, then the responsibility cannot be transferred to the company, the directors and commissioners must be responsible. OJK imposes sanctions on directors and commissioners in the event that they are proven responsible for violations of laws and regulations in the capital market sector. With these sanctions, it is hoped that the control of shareholders over the company's management in carrying out their duties will work.

3. Criminal Sanctions

The Capital Market Law has explained its rules in Article 103 until Article 110 which threatens any party proven to have committed a criminal act in the capital market sector with varying imprisonment sentences, ranging from 1 (one) to 10 (ten) years in prison.

The Capital Market Law has a criminal policy through criminal law against capital market violations in Article 103 paragraph (2), namely violations of Article 23, Article 105, and Article 109. The violation of the capital market as referred to in Article 103 paragraph (2) is a violation of Article 32 namely: a person who carries out activities as a securities guarantor representative. Representatives of securities brokers or deputy investment managers without obtaining Bapepam's permission. The threat for the perpetrator is a maximum of 1 (one) year imprisonment and a fine of Rp. 1,000,000,000.00.-(one billion rupiah).

The capital market violation as referred to in Article 105 is a violation of Article 42 committed by the investment manager, or its affiliated parties, namely: receiving compensation (in any form), either directly or indirectly which can influence the investment manager to buy or sell securities for mutual funds. fund. The criminal threat is in the form of a maximum imprisonment of 1 (one) year in prison and a fine of Rp. 1,000,000,000 (one billion rupiah).

The violation referred to in Article 109 is an act of not complying with or hindering the implementation of Article 100, which relates to the authority of Bapepam in carrying out examinations of all parties suspected of or involved in violating the Investment Law.

The adoption of the division of offenses into two types, namely capital market crime offenses and capital market offenses, shows that the Investment Law follows the provisions contained in the Criminal Code which are laws (general provisions), on the one hand, but in terms of sanctions far different. In the Criminal Code for offenses, it is not threatened with cumulative punishment as in this Investment Law, but only imprisonment for a maximum of one year, while in the Investment Law it is also one year in prison but is accumulated with a large fine (1 billion).

Law Enforcement of Criminals in Capital Market Transactions

Crimes in the capital market sector can hamper the economic sector because the perpetrators of crime are conspiracies with the authorities (endaadse samenloop/concursus idealis and meerdadse samenloop/concursus realis) who are within the corporation (corporate crime) as well as individuals who have a very high status and level of ability. This is different from conventional crime and has a very negative impact on society, for example, one of the impacts of crimes in the capital market sector, namely insider trading and fraud on information for the public, is seen in the direct macro-economic effects because criminals usually belong to the group. community in the circle of financial activity.

Law enforcement against criminals in the capital market sector in the criminal justice system, especially in the framework of punishment which is categorized into 2 (two) types, namely crimes and violations in the capital market sector in the practice setting experienced various obstacles including none of the cases of violations of the market. capital is processed using the criminal system applicable in Indonesia. Perpetrators tend to be applied using administrative sanctions.

Capital market crimes have unique characteristics. These characteristics include: First, the object of a crime is information. Second, players do not rely on physical, but the ability to read the market situation and make maximum use of it. Capital market crimes referred to by the Capital Market Law are criminal acts of fraud and criminal acts of market manipulation and insider trading.

CONCLUSION

Law No. 8/1995 on the Capital Market has regulated various forms of violations and criminal acts of the capital market along with sanctions for the perpetrators. The prohibited acts include counterfeiting and fraud, market manipulation and insider trading.

Issues regarding the occurrence of crimes and violations in the capital market are assumed to be based on several reasons, namely: the mistakes of the perpetrators, the weakness of the apparatus that includes integrity and professionalism, and the weakness of regulations. For the forms of punishment in the capital market, there are 3 (three) types of sanctions applied by the Capital Market Law No. 8/1995, which are administrative, civil, and criminal sanctions.

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