



Juridical Study On Capital Market Crimes In The Indonesia Stock Exchange According To Law No. 8 Year 1995 About Capital Market

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ABSTRACT

The Capital Market has a very important role in the current era of economic modernization which is balanced with the Capital Market crimes that occur so that further discussion is needed. The problems raised in this thesis are the scope of capital market crimes and their legal basis, how to deal with capital market crimes and the parties authorized to handle them, and cases of violations in the Capital Market and how the legal force of verdicts is on the settlement of violation cases in the Capital Market. The research method used in writing this thesis is a normative research method, namely by studying literature by obtaining materials from books, laws and regulations, and electronic media. The results of this study indicate that there are four categories of capital market crimes that occur on the Indonesia Stock Exchange, namely fraud, market manipulation, insider trading and misleading information. All decisions of Bapepam based on Law No. 8 of 1995 are weak because they are only limited to administrative sanctions.

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1. Introduction

The capital market, like the market in general, can be interpreted as a meeting place for sellers and buyers. Here what is traded is capital or funds. So the Capital Market brings together sellers of capital/funds with buyers of capital/funds. Buyers of funds/capital are both individuals and institutions/business entities that are productive. While the seller of capital/funds is a company that requires funds or additional capital for its business needs. Furthermore, based on Law No. 8 of 1995 concerning the Capital Market, which was later abbreviated as UUPM, it is stated that the Capital Market is an activity related to public offerings and trading of securities or public companies related to the issued securities or professional institutions related to securities.

The Capital Market plays an important role for the Indonesian economy, which we can see as;

- a The Capital Market is one of the alternative means which the company can use to buy its funds.³ With the Capital Market, The company will easily obtain the funds needed to operate the company so that it can help in increasing development in the economic sector.
- b The Capital Market should be able to accelerate the process of community participation in share ownership towards equitable distribution of community income and increase public participation in the mobilization of funds and their productive use for financing national development. – other things, but because he does not have enough initial capital, his business cannot be carried out.⁵ Considering a very basic thing in the implementation of

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- development is the availability of capital.
- c. Because the Capital Market has the following functions :
 - 1) As a means to collect funds from the community to be channeled into productive activities.
 - 2) An easy, cheap, and fast source of financing for the world of national development businesses.
 - 3) Push creation chance try and at a time create job opportunities. To realize the principle of balance
 - d. According to Sunariyah, the five aspects of the Capital Market are:
 - 1) As a facility for interaction between buyers and sellers to determine the price of shares or securities being traded.
 - 2) Provide an opportunity for investors to determine the expected return.
 - 3) The Capital Market provides an opportunity for investors to resell their shares or other securities.
 - 4) Market Capital create chance on public for participate in the development of an economy. Capital Market reduces securities transaction costs.

The survival of the company is not always in accordance with what was originally expected, in the middle of the company's operations, disputes may not be avoided.¹² With the Capital Market, the savings function will be able to become a loan function. Where when a company will need money for the continuity of its business activities, it can borrow money in the Capital Market by becoming a member by registering the company as a go public company then by issuing securities on behalf of the company, it will get money from investors who buy its shares so that the money can be used for company activities.

In an institution, there is not everything that runs smoothly following the rules that are applied within the institution. Every human being is not free from mistakes. And every regulation always contains things that can be done and should not be done to bring order to society. But sometimes people see the ban as something that is very beneficial for themselves without thinking about the risks that will occur in the future. Only positive things are seen for personal gain or a group of people. Capital Market players, whether stock analysts or investment advisors, brokers and investors, especially potential investors or rational investors, can be carried away by psychological and emotional factors that affect stock prices.¹⁴ From these psychological factors, it will allow investors to violate the Capital Market Law by violating provisions applicable in the law.

The principle of openness is a core issue in the capital market and is the soul of the capital market. This principle is taken into consideration by investors so that they can rationally make decisions to buy or sell shares. ¹⁵ This title was chosen because it considers the role of the Capital Market which is very essential in economic life, especially in Indonesia, such as the practice of insider trading, market manipulation, and others that are not only detrimental to investors, but the wider community is also affected, especially the shareholders. And in order for the Capital Market to develop, it is necessary to have a solid legal basis to better guarantee legal certainty for parties conducting activities in the Capital Market and protect the interests of the investor community from harmful practices.

2. Method

This type of research is normative legal research, namely research that refers to various legal instruments related to activities in the Capital Market contained in various sources related to dispute resolution in the Capital Market sector. While the nature of the research using library research methods, namely collecting various important data and relating to the scope of research. The material is obtained from secondary data obtained from various library materials in the form of books, scientific journals, as well as by studying the sources of written material

that can be used as material in writing this thesis, both from mass media, print media and electronic media.

Data analysis in writing this thesis is a qualitative analysis. Data that has been obtained through literature study in the form of primary, secondary and tertiary legal materials relevant to this research are then analyzed and qualified with the aim of getting answers to the problems.

3. Analysis And Results

3.1 Handling Of Capital Market Crime Cases

a. Position Authority Service Finance (Ojk) In Handling Capital Market Crime Cases

With the issuance of Law No. 21 of 2011 concerning the Financial Services Authority or hereinafter abbreviated as OJK, which requires the centralization of the supervisory function of Indonesian financial institutions in one institution, namely the OJK which includes bank and non-bank financial institutions. In Law.

The OJK Law can be seen in the definition of the OJK itself, which is an independent institution and is free from interference from other parties, which has the functions, duties, and authorities of regulation, supervision, examination, and investigation as regulated in this OJK Law. So that the position of Bapepam has been expert and was replaced by OJK starting in January 2013.⁵³ The role of Bapepam in enforcing Capital Market law in Yulfasni's book consists of three functions, namely the rule making, adjudicatory, and investigative functions. With the replacement of Bapepam as the Financial Services Authority (OJK), the explanations for these functions are as follows:

- 1) The function of rule making or making the rules of the game for capital market players is also called quasi-legislative.
- 2) The adjudicatory function is a manifestation of the authority of the OJK as the supervisory authority.
- 3) The investigatory function is the embodiment of the special authority of the OJK as an investigator and investigator of violations that occur on the stock exchange.

b. Authorities To Handle Capital Market Crimes

- 1) Financial Services Authority (OJK)

Based on the Capital Market Law, when there is a violation of the Capital Market Law, then Bapepam (now OJK), when there is an allegation of a violation of the Capital Market Law, the OJK will conduct an examination. Based on article 100 number 1 UUPM which reads: "Bapepam may conduct an examination of any party suspected of committing or being involved in a violation of the Capital Market Law and or its Implementing Regulations."

- a) Courts, Other Law Enforcement Officials. The next authorized party to deal with Capital Market crimes is the court. It is different from the arbitration institution, namely BAPMI. In the process of resolving disputes over Capital Market crimes, OJK may recommend the disputing parties to resolve disputes non-litigation with the intermediary of an arbitration institution.
- 2) Capital Market Crime Case Handling Procedure
 - a) Inspection. The legal basis for conducting an examination is Article 100 of the UUPM. Where when OJK suspects that it has, is, or is trying to commit or instruct, participate in, persuade, or assist in violating the Capital Market Law or its implementing regulations, OJK can conduct an examination.
 - b) Reportin. At this stage, it can be seen from PP No. 46 of 1995 that there is an obligation of the examiner to make an audit report to be used as a basis to prove whether or not

there is a violation of the laws and regulations in the Capital Market sector and submitted to the OJK Board of Commissioners. And if initial evidence is found regarding the existence of a criminal act in the Capital Market sector, the examination will continue and the Examiner is obliged to make a report to the chief executive of the Capital Market Supervisor to be later reported to the OJK Board of Commissioners regarding the discovery of the initial evidence of the criminal act.

3) Investigation

Based on the report regarding the initial evidence of a criminal act, the Chairman of the OJK (Board of Commissioners) stated that he had determined the start of the investigation.⁷⁸ And the rejection statement as described in the examination section can be used as the basis for the start of the investigation.

4) Administrative Sanctions

In the Capital Market sector, the OJK has full authority so that the OJK Board of Commissioners (Chairman of OJK) can impose administrative sanctions on violations of the Capital Market Law or the so-called Capital Market Crimes discussed in this thesis that have obtained permits, approvals and registrations on the IDX.

5) Follow-up by the public prosecutor

If during the investigation it is found that there are criminal elements, then Bapepam (OJK) is obliged to submit it to be followed up by the public prosecutor.

3.2 Juridical Study Of Capital Market Crime Cases Occurring On The Indonesia Stock Exchange.

a. Cases of Capital Market Crimes on the Indonesia Stock Exchange

1) Capital Market Fraud

One of the capital market fraud cases that occurred on the IDX was a fraud case committed by PT Sarijaya Permana Sekuritas. This event was like a tsunami that rocked the Indonesian stock exchange. The embezzlement of funds by Sarijaya Sekuritas was unmitigated, with 8,700 customer accounts, of which 6,500 were from retail customers. The value that was misappropriated reached Rp245 billion. President Director of the Indonesia Stock Exchange (BEI) Erry Firmansyah explained the chronology of the embezzlement of funds allegedly committed by Sarijaya Sekuritas. Examination by the IDX has been carried out since a week before Christmas. "At that time, after the crisis, we tried to monitor and re-monitor the assets of stock exchange members to see if they were in good condition. However, we found indications of embezzlement of customer funds. So we carried out a deeper examination," explained Erry. . Furthermore, IDX asked Sarijaya Sekuritas whether it could solve the problem or not. "It turns out that as a result, without the MKBD (Net Adjusted Working Capital) error, we decided to suspend it," said Erry.

a) Penalty:

IDX has temporarily suspended Sarijaya Sekuritas' activities due to misuse of customer funds and improper reporting of MKBD. The Exchange Member with the trading code SP last reported the MKBD value of Rp29.32 billion. Erry added that Sarijaya used 17 fictitious accounts related to the misuse of customer funds. The customer's money is then deposited into the 17 fictitious accounts and then used to trade on the stock market. Is there a possibility that Sarijaya's membership as an Exchange Member will be revoked? "Of course, the worst possibility is that if they can't solve this problem,

their obligations then the seats of the Sarijaya Exchange Members will be revoked and auctioned off. But we are still reviewing it," concluded Erry.

- b) Withdraw funds
Realizing that their trusted securities company was in trouble, customers also wanted to withdraw their funds after the suspension of Sarijaya Sekuritas' activities. "We can't trade, we can't withdraw funds, we can't transfer money to other securities," said Thomas, a customer of Sarijaya Sekuritas. He said, in the presentation on the 3A floor, the management gave an explanation about the suspension.
- c) Confiscated
Meanwhile, Bapepam LK and BEI have frozen and confiscated Sarijaya Sekuritas' assets to be used as collateral to anticipate if the embezzled customer funds cannot be paid.
- d) Checked
As a result of the misappropriation of customer funds by Sarijaya Sekuritas, Bapepam LK summoned 49 securities companies to verify. "Brokers have been summoned for this thorough verification to anticipate early on other securities, there are 49 brokers who have been summoned besides Sarijaya," said Nurhaida, Head of Transaction Bureau of Securities Institutions Bapepam LK. Bapepam has also formed 17 joint verification teams with the Self Regulatory Organization (SRO).
- e) Penalty
Against the Board of Directors of PT. Lippo Tbk who served at the time of the Financial Statements of PT. Lippo Tbk as of September 30, 2002 published, was subject to administrative sanctions in the form of an obligation to deposit money into the state treasury in the amount of Rp. 2.5 billion, and management has an obligation to provide an explanation to shareholders on this matter. Public Accountant Drs. Ruchjat Kosasih as the pathner of KAP Prasetio, Sarwoko & Sandjaja is subject to administrative sanctions in the form of an obligation to deposit money into the State Treasury in the amount of Rp. 3,500,000 for negligence in the form of delays in submitting important information regarding the decline in the AYDA of PT. Lippo Tbk for 35 days.

b. Juridical Analysis of Capital Market Crime Cases

1) Fraud

Based on the fraud case committed by PT Sarijaya Permana Sekuritas which has been described above, it can be seen that the elements of capital market fraud have occurred. Where the elements in the form of:

- a) Each party is PT Sarijaya Permana Sekuritas.
- b) Where PT Sarijaya Permana Sekuritas cheated by saying that they had embezzled 8,700 customer funds and made it impossible for them to be paid and reporting on MKBD (Net Adjusted Working Capital) was not true.
- c) By using 17 fictitious accounts related to the misuse of customer funds. The customer's money is then deposited into the 17 fictitious accounts and then used to trade on the stock market.
- d) And the actions taken are not known by the IDX (material facts are not disclosed) and so that the MKBD report given seems to be true
- e) With a view to benefit PT Sarijaya Permana Sekuritas.

2) Market Manipulation

- a) The party that manipulated the market was PT Dharma Samudera Fishing Industries Tbk (DSFI) and several companies that participated in helping PT DSFI.
- b) Conduct securities trading transactions.
- c) Does not cause a change in the name of the ownership of the securities. This is one of the pseudo-images referred to in the Capital Market Law because they carry out

securities transactions but are not skilled in the ownership of the securities. It's the same thing as if there was no transaction. Also, the directors and employees of the Securities Company have underwritten the customer's shares without the knowledge and permission of the customer, which are used for the benefit of the Securities Company.

- d) In the case of PT DSFI, it is clear that the practice of market manipulation has taken place because it has fulfilled the elements in Article 92 of the Capital Market Law. PT DSFI should have replaced the ownership name for the shares that have been sold. And must ask permission first if you want to guarantee the securities of its customers. Do not secretly take advantage of the actions of PT DSFI. For the actions committed by PT DSFI, Bapepam has given administrative sanctions to PT DSFI and the companies that participated in helping to commit crimes against PT DSFI and the members involved.

3) Insider trading

PT PGN is said to be practicing insider trading because it has complied with the elements in the Capital Market Law, namely:

- a) The insiders referred to in this case are the Directors of PT PGN who served from July 2006 to March 2007 namely Adil Abas, Nursubagjo Prijono, WMP Simanjuntak, Widyatmiko Bapang, Iwan Heriawan, Djoko Saputro, Hari Pratoyo, Rosichin, Thohir Nur Ilhami.
- b) They have information about the postponement of the planned pipeline project carried out by PT PGN which has not been conveyed to the public.
- c) These insiders traded in the period from September 12, 2006 to January 11, 2007, 9 PGAS insiders traded PGAS shares.

4) Misleading Information

The elements of misleading information according to the Capital Market Law are related to the PT Bank Lippo Tbk case, namely:

- a) The elements of the parties involved in this case are PT Bank Lippo which in this case is the management;
- b) By way of publication of its financial statements in newspapers;
- c) Provide information and statements that are not true regarding the contents of the financial statements;
- d) Where the management of PT Lippo Tbk knows that the financial statements have not been audited but still provides a statement that the financial statements have been audited accompanied by the lack of care by the appraiser accountant in carrying out his assessment duties on the financial statements of PT Lippo;
- e) So that it affects the price of securities on the stock exchange.

4. Conclusion

The scope of what is said to be a Capital Market crime is as follows: first, fraud, as based on article 90 of the Capital Market Law. Second, Market Manipulation, as based on articles 91 and 92 of the Capital Market Law. Third, Insider Trading, whose legal basis can be seen in Articles 95 to 99 of the Capital Market Law. Fourth, misleading information, the legal basis of which can be seen in Articles 80,81,93 of the Capital Market Law.

The way to deal with Capital Market crimes is to go through processes such as: First, an examination carried out by the OJK by forming certain PNS (Civil Servants) within the OJK. Second, reporting, where the examiner will provide a report on the results of his examination to the Chief Executive of the Capital Market Supervisor and the Chief Executive of the Capital

Market Supervisor will submit the report to the OJK Board of Commissioners (FSA Chair). Third, investigation, if there is evidence of a criminal act in the Capital Market. Fourth, the provision of administrative sanctions, OJK has the authority to provide administrative sanctions for violators of the Capital Market Law and its implementing regulations.

The sanctions can be in the form of; written warnings, fines, namely the obligation to pay a certain amount of money, restrictions on business activities, freezing of business activities, revocation of business licenses, cancellation of approvals, and cancellation of registration. It can also grant and/or revoke: business license, individual license, effective registration statement, registered certificate, approval to conduct business activities, ratification, approval or determination of dissolution. Fifth, follow-up by the public prosecutor

Meanwhile, the parties authorized to deal with Capital Market crimes are: First, the Financial Services Authority (OJK) which, with the issuance of Law no. 21 of 2011 which has replaced Bapepam's position since January 2013. Second, the courts, other law enforcement officers

Several cases of Capital Market violations which are in the category of Capital Market crimes such as the Capital Market fraud case committed by PT Sarijaya Permana Sekuritas, the market manipulation case by PT Dharma Samudera Fishing Industries Tbk, the insider trading case by PT Gas Negara, the misleading information conducted by PT Bank Lippo Tbk. The verdicts on these cases were given with the intention of being a deterrent and to provide legal certainty over the Capital Market Law, Bapepam gave administrative sanctions, all of which were only administrative sanctions by Bapepam without any criminal sanctions. Due to the limited authority of Bapepam to impose criminal sanctions. Only the court is authorized to give criminal sanctions.

References

- Advendi Simangunsong, Elsi Kartika Sari, *Law in Economics*, PT Grasindo, Jakarta, 2007.
- Aminuddin, Ilmar, *Investment Law in Indonesia*, Jakarta: Prenada Media, 2004, p.1.
- Anoraga, Pandji, Piji Pakarti, *Introduction to Capital Markets*, Jakarta: Rineka Cipta, 2001.
- Atmasasmita, Romli, *Introduction to Business Crime Law*, Jakarta: Prenada Media, 2003.
- Main Materials of Law No. 21 of 2011 concerning the Financial Services Authority presented by the OJK Law Socialization Team.
- Chazawi, Adami, *Crime Against Counterfeiting*, Jakarta: Raja Gravindo Persada, 2000.
- Ministry of Finance RI, *Ins and outs of the capital market as quoted by Munir Fuady 1, Modern Capital Market Legal Review*, Bandung: PT, Citra Aditya Bakti, 1996.
- Fakruddin, M, M, Sopian Hardianto, *Tools and Models of Investment Analysis in the Capital Market*, Jakarta: Gramedia, 2001.
- Fuady, Munir, *Dirty Business: Anatomy of the Crime of White Apes*, Bandung: Pt, Citra Aditya Bekasi, 2004.
- Ginting, Budiman, *Investment Law*, Medan: Pustaka Bangsa Press, 2007. Hamzah, Andi, *Criminal Law Terminology*, Sinar Graphic, 2008.
- Megarita, *Legal Protection of Pawned Shares*, Medan : USU Press, 2007.
- Nasution, Bismar, *Openness in the Capital Market*, University of Indonesia Faculty of Law Postgraduate Program, 2001.

-----, SH, MH, Directorate of Capital Market Law, 2005.

Nasution, Asmin, Transparency in Investment, Medan: Pustaka Bangsa Press, 2008.

Sari, Elsi Kartika, Advendi Simangunsong, Law in Economics, Jakarta : PT. Grasindo, 2007.

Sumantoro, Legal Aspects and Potential Capital Markets in Indonesia, Jakarta: Ghalia Indonesia, 1987.

-----, *Introduction About Market Capital in Indonesia*, Jakarta : Ghalia Indonesia, 1990.

Sunariyah, Introduction to Capital Market Knowledge Fifth Edition, Yogyakarta: School of Management Science YPKN formerly AMP YPKN, 2006.

Susanto, IS, Criminology, Yogyakarta: Genta Publishing, 2011.

Sutiarnota, Challenges and Opportunities for Foreign Investment in Indonesia, Medan: Pustaka Bangsa Press, 2008.

Sutrisno, Budi, Salim HS, Investment Law in Indonesia, Jakarta: PT Raja Grafindo Persada, 2007.

Untung, Budi, Hendrik, Investment Law, Jakarta: Sinar Graphic, 2010.

Yulfasni, Capital Market Law, Jakarta: Iblam Publishing Agency, 2005.

Widjaja, Gunawan, Series on Legal Aspects in Business, Jakarta; Prenada Media, 2004.

-----, Transplantation Trust, Jakarta : PT Raja Grafindo Persada, 2007.

Republic of Indonesia, Law No. 8 of 1995 concerning the Capital Market. Decision of the Chairman of Bapepam Number: Kep- 86/PM/1996 and Regulation No X,K1, regarding Information Disclosure That Must Be Announced Immediately.

Republic of Indonesia, Law no. 21 of 2011 concerning the Financial Services Authority. PP No. 46 of 1995 concerning Procedures for Examination in the Capital Market Sector.

Republic of Indonesia, Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

<http://saifuddinumar.blogspot.com/2012/04/makalah-about-kejahan-di-market.html>, FinalIDX Newsletter.pdf, KBBI Online on line

http://centerlanguage.kemdiknas.go.id/kbbi/http://www.bapepam.go.id/old/old/news/Des2002/PR_27_12_2002.PDF,

<http://www.bapmi.org/in/faq.php>,

<http://fitrianalestari.blogspot.com/2011/10/kejahatan-pelaksanaan-di-field-market.html>.

M, Umar Saifuddin, Crime in the Capital Market: Analysis of Mutual Fund Cases *Pt.Sarijayawher Security*
<http://saifuddinumar.blogspot.com/2012/04/makalah-about-kejahan-di-market.html>,

<http://id.shvoong.com/business-management/investing/2184154-definisi-initial-public-offering-ipo/#ixzz2PDQWK0WO>.

<http://id.scribd.com/doc/43944074/Fiduciary-Duty>,

Jaringnews.com is credible and spreads optimism. Modren's Crime Threatens the Economy and State Structure Tuesday, 11 December 2012 14:08 WIB.

<http://www.bapmi.org/in/faq.php>. <http://djonyedward.blogspot.com/2009/01/sarijaya-sekuritas-jadi-episentrum.html>. [http://law.uui.ac.id/images/stories/dmdocuments/FH-UI-Insider_Trading-Stock-Transactions-By-Pt-State-Gas Companies-Tbk.pdf](http://law.uui.ac.id/images/stories/dmdocuments/FH-UI-Insider_Trading-Stock-Transactions-By-Pt-State-Gas-Companies-Tbk.pdf).

<http://apbusinessethic.blogspot.com/2009/04/register-telaah-case-disini.html> anonymous paper.

[http://business.news.viva.co.id/news/read/28745bapepam beberkan kronologis kas us sarijaya](http://business.news.viva.co.id/news/read/28745bapepam-beberkan-kronologis-kas-us-sarijaya).