Investor Protection: A Juridical Review Of Capital Market Manipulation

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Abstract.
Market manipulation is a phenomenon that harms market integrity and investor confidence, so a comprehensive legal protection mechanism is needed. The study aims to analyze legal arrangements related to the practice of market manipulation and identify the forms of legal protection available to investors who become victims of manipulation. Using the normative legal research method, this study relies on the analysis of primary, secondary, and tertiary legal materials to examine the formal juridical aspects of the problem. The results show that market manipulation is an act of creating a false picture of trading activity or securities prices on the exchange, which is carried out by certain parties to influence securities prices or disseminate inaccurate and misleading information. Legal protection of investors can be pursued through two main approaches: preventive protection in the form of investor education and transaction supervision by the Financial Services Authority (OJK), and repressive protection which includes litigation, non-litigation dispute resolution mechanisms, and the application of sanctions against market manipulation perpetrators.

Keywords:*Market Manipulation; Capital Market and Investors.*

1. INTRODUCTION

The capital market acts as a strategic platform for various entities, especially public companies, to raise capital through the sale of shares and bonds for business development. Financial instruments traded on the stock exchange have their own legal characteristics with varying provisions, which in capital market terminology are known as securities.1

Given the high intensity of trading activities in the capital market, an adequate legal framework is needed to ensure that transactions take place fairly, orderly, and fairly for all parties. This need gave birth to the Capital Market Law which regulates all aspects related to the capital market, including protection for investors from various risks of loss. Investors, as parties who invest their capital in companies that issue securities, require comprehensive legal protection. Before making an investment, investors generally conduct an in-depth analysis of the company's profitability and the issuer's prospects to maximize profits and minimize risks.[2]

Unlike traders who are oriented towards short-term profits, investors tend to invest their capital to obtain long-term surpluses.

Capital market regulation in Indonesia is regulated through several legal instruments, including Law No. 8 of 1995, PP No. 45 of 1995 concerning the Implementation of Activities in the Capital Market Sector, PP No. 46 of 1995 concerning Inspections in the Capital Market Sector, as well as various decisions of the Minister of Finance and provisions from Bapepam (now OJK).[3]However, along with the development of capital market activities, there has been an increase in illegal practices which have resulted in the capital market no longer merely functioning as a medium for collecting capital, but also becoming a means of accumulating wealth through unethical actions by certain individuals.4

One significant form of crime in the capital market is market manipulation, which involves price distortion in securities transactions.

This practice has been explicitly regulated in Law No. 8 of 1995 concerning Capital Markets, specifically in Chapter XI Fraud, Market Manipulation, and Human Trafficking in Article 91 which is continued in Article 92. The regulation prohibits transactions in two or more securities, either directly or indirectly, which can affect the dynamics of securities prices and encourage other parties to purchase, sell, or hold securities.

Based on the complexity of this problem, this study attempts to analyze the control of the prohibition of capital market manipulation practices that have an impact on investors and identify forms of legal protection for investors who suffer losses due to market manipulation practices.

II. RESEARCH METHODS

This study implements the normative legal research method as the main approach. This method is a form of scientific analysis that focuses on solving legal problems through a systematic study of applicable legal norms. Normative legal science is basically a problem-solving process that aims to describe legal problems comprehensively.[5]

This study uses an analysis of written laws sourced from various literature and reference materials, by integrating the statute approach and the conceptual approach. Data sources are obtained from three categories of legal materials, namely primary, secondary, and tertiary legal materials that are relevant to the topic of study. To collect the necessary data, the author conducted a literature study that included a search of the Civil Code and various regulations that are related to the Capital Market and Market Manipulation Practices. In addition, sources of information were also obtained from scientific publications such as books, journals, and other written sources, both in print and digital formats, that are relevant to the subject matter of the research.

The collected legal materials are then analyzed using qualitative and interpretive techniques. The application of qualitative methods in this context refers to the process of selecting legal materials that have substance that can answer research problems appropriately. The results of the study are presented descriptively with a systematic arrangement, thus allowing conclusions to be drawn that meet standards.

III. RESULTS AND DISCUSSION

Capital Market Dynamics and the Urgency of Investor Protection

Today, the capital market has become an investment instrument that is in demand by various levels of society, including the millennial generation. The adage "high risk, high return" attached to stock market investment reflects the fundamental characteristics of trading activities on the stock exchange. The existence of the capital market provides significant benefits for the government and corporations, because various available financial instruments can be utilized for long-term project funding.

For companies, the capital market functions as a vehicle for obtaining capital by transferring ownership rights through public offerings to the public.

However, along with the increase in transaction volume and complexity of fund flows in the capital market, negative consequences arise in the form of a proliferation of crimes committed by market players themselves. The characteristics of capital market crimes that are complicated and difficult to prove in court become a gap that is exploited, especially considering the market's sensitivity to material facts and information. This situation requires a comprehensive regulatory framework and effective supervisory mechanism to provide optimal protection for investors.

Regulation of Capital Market Manipulation Practices

The Financial Services Authority (OJK) was established as an institution tasked with overseeing financial services activities so that they are carried out fairly, orderly, accountable, and transparently. This institution is expected to contribute to the development of a stable, sustainable financial system and be able to provide protection for consumers.

In line with technological developments and the increasing sophistication of techniques used to commit fraud in the capital market, Law Number 8 of 1995 concerning Capital Markets (UUPM) classifies three main types of crimes in the capital market: market manipulation, fraud, and insider trading. In addition to these three types of crimes, there are several other crimes in the capital market that need to be observed, including Unregistered Brokers, Unregistered Securities, Unfair Trading, Churning, Margin Accounts, and Price Manipulation. Market manipulation itself is defined as an action carried out by a certain party, either directly or indirectly, with the aim of creating a false or misleading picture of trading activities, market conditions, or prices of securities on the stock exchange.

Market manipulation patterns are generally manifested in the form of spreading false information aimed at influencing the price of securities on the stock exchange, as well as spreading misleading or incomplete information (misinformation). Legal provisions governing the prohibition of market manipulation practices are explicitly stated in Articles 91, 92, and 93 of the UUPM.

In practice, there are various manipulation techniques used in the capital market, including Pump and Dump (pushing prices up to then sell shares at a large profit), Faking Demand/Supply (creating the impression of false demand or supply), Layering (placing large orders and then canceling them), Wash Trade (fake buy-sell transactions), Pre-Arrange Trade and Alternate Trade (pre-arranged transactions), and Pooling Interest (combining interests for price manipulation).

In the capital market ecosystem, there are two categories of investors: institutional investors (such as banks, non-bank financial institutions, insurance companies, and securities companies) and individual investors. This study pays special attention to individual investors, considering that they generally only own a limited number of shares and are proportionally more vulnerable to market manipulation practices.

Investor Protection Mechanism from Market Manipulation Practices

To support sustainable capital market development, regulations are needed that guarantee legal protection for all parties involved in capital market activities from various forms of fraud. Legal protection is intended to create a comfortable, safe situation and guarantee legal certainty for individuals and legal entities. When a pseudo transaction is identified, it has the potential to trigger an indication of unusual market activity (unnatural trading activity) which can result in the imposition of sanctions by the Indonesia Stock Exchange (IDX) on issuers. These sanctions can be in the form of a maximum fine of IDR 500 million, a written warning, a written warning, suspension (temporary suspension of trading), to delisting (removal of listing).

There is a controversial phenomenon in the capital market in the form of price stabilization practices, where securities are purchased with the aim of preventing price declines in the open market. For example, the purchase of securities in the primary market by a bank syndicate which are then sold to the public at a higher price. Judging from the mechanism used in price stabilization, this action has the potential to be categorized as market manipulation.

As a legal basis for investor protection, OJK has issued OJK Regulation Number 65 of 2020 concerning the Return of Illegal Profits and Investor Loss Compensation Funds in the Capital Market Sector, as well as OJK Circular Letter Number 17 of 2021. One of the instruments implemented by OJK is the disgorgement fund, which aims to prevent perpetrators from enjoying profits from their illegal actions through a mechanism for returning profits obtained illegally.

OJK consistently strives to anticipate the possibility of manipulation practices by parties with adequate capacity and authority, which can cause the public to receive incorrect information and believe it as the truth.

Dimensions of Legal Protection for Investors Who Are Victims of Market Manipulation

Legal protection is a fundamental aspect based on the premise that law is an instrument that can accommodate consumer interests and rights comprehensively. Law has authority that has been officially recognized by the state and can have a permanent impact. In the context of protecting investors who suffer losses due to market manipulation practices, there are two categories of legal protection: preventive and repressive.

Preventive legal protection is implemented to prevent the occurrence of deviation practices in the capital market that can harm investors. Meanwhile, repressive legal protection operates when there is a dispute between financial service providers and consumers, where the OJK has the authority to provide legal defense for the community. The aspect of consumer protection is legally regulated in Articles 28, 29, and 30 of the OJK Law, which contain provisions regarding the protection of the community as consumers of financial services.[6]

Within the framework of preventive legal protection, there are several instruments implemented: (1) Regulation, through the issuance of OJK regulations; (2) Education, as regulated in the OJK Law; (3) Supervision by the OJK which has the authority to take action to prevent investor losses; (4) Guidance through services and settlement of investor complaints by considering risk management; (5) Socialization as an effort to increase economic literacy in the community; and (6) Warnings given by the OJK to companies suspected of committing irregularities. In addition, investor protection is also realized through supervision of trading activities as regulated in Article 3 paragraph (1) and Article 7 paragraph (2) of the UUPM.

Repressive legal protection, OJK prioritizes the rights of the community as consumers. Its implementation is carried out through instructions to financial services companies to resolve complaints filed by investors who have suffered losses.[7]Repressive legal protection also includes the imposition of sanctions for perpetrators of market manipulation, which are divided into three categories: administrative, criminal, and civil sanctions. The existence of these sanctions is a manifestation of legal protection for investors in dealing with market manipulation practices.

UUPM No. 8 of 1995 stipulates legal consequences for any party that violates applicable provisions. Administrative sanctions include written warnings, fines or obligations 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. Meanwhile, criminal sanctions are regulated in Article 104, which stipulates that violators of the provisions in Articles 90 to 98 can be subject to a maximum imprisonment of ten years and a maximum fine of IDR 15 billion. Civil sanctions are explained in Article 111 of UUPM, which states that parties who suffer losses due to violations of laws and regulations can claim compensation, either individually or collectively, from the party that committed the violation.

Repressive legal protection is also reflected in Article 29 of the OJK Law, which includes the provision of consumer complaint service devices, the establishment of a consumer complaint system, and facilitation of dispute resolution between consumers and financial services institutions. Furthermore, Article 30 of the OJK Law regulates legal defense which requires the OJK to take action against financial services institutions to resolve consumer complaints and lawsuits to obtain compensation for losses experienced. In its implementation, the OJK provides an opportunity for financial services companies to implement Internal Dispute Resolution (IDR), which allows for direct dispute resolution between consumers and related financial services institutions. In addition, the OJK also has the authority to file a lawsuit with the aim of recovering the assets that have been harmed.

IV. CONCLUSION

The practice of market manipulation in the Indonesian capital market system is a prohibited act that has been comprehensively regulated in the national legal framework. Law Number 8 of 1995 concerning Capital Markets (UUPM) explicitly stipulates a prohibition on market manipulation practices, specifically through the provisions of Articles 91, 92, and 93. The three articles clearly define that any form of intervention carried out either directly or indirectly with the aim of influencing the price of securities on the stock exchange is a violation of the law that can be subject to sanctions.

To protect investors from losses due to market manipulation practices, Indonesian regulations apply two main approaches. The first approach is preventive, which is realized through ongoing public education programs and strict supervision by the Financial Services Authority (OJK) of all capital market player activities. This supervision system is designed to prevent violations and provide early protection to investors before losses occur.

Meanwhile, the second approach is repressive, which can be taken through litigation or non-litigation. This repressive legal protection is equipped with various sanctions that can be imposed on perpetrators of market manipulation, including administrative sanctions, criminal sanctions, and civil sanctions. This mechanism allows investors who have suffered losses to obtain compensation and legal justice.

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