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NORMATIVE STUDY OF LAW ENFORCEMENT OF CAPITAL MARKET CRIMES IN THE INDONESIAN LEGAL SYSTEM

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Abstract:
This research aims to identify the qualifications of capital market criminal acts and analyze their legal enforcement within the framework of the Indonesian legal system. The type of research used in this research is normative legal research using statutory and conceptual approaches. The research results show that: 1) The qualification of criminal acts in the Capital Markets Law includes three main forms, namely criminal acts of fraud, market manipulation and insider trading. These three types of criminal acts have special characteristics because they focus on the misuse of strategic information, not on material objects, so the process of proof requires in-depth precision because the formulation of the offense is still abstract and not fully in line with the development of capital market crime modes which are increasingly complex and technology-based. 2) Law enforcement in the Indonesian capital markets sector still faces various obstacles, both from authority and technical aspects. Even though OJK has Polri and PPNS investigators, the effectiveness of investigations is still limited due to dependence on the KUHAP mechanism, inadequate technical capabilities of investigators, and sub-optimal inter-agency coordination. This condition makes case handling less responsive, so it is necessary to strengthen regulations and institutional capacity.
Keywords: Law Enforcement, Crime, Capital Markets

Abstrak:
Penelitian ini bertujuan untuk mengidentifikasi kualifikasi bentuk tindak pidana pasar modal dan menganalisis penegakan hukumnya dalam kerangka sistem hukum Indonesia. Jenis penelitian yang digunakan dalam penelitian ini yaitu penelitian hukum normatif dengan menggunakan pendekatan perundang-undangan dan konseptual. Hasil penelitian menunjukan bahwa: 1) Kualifikasi tindak pidana dalam Undang-undang Pasar Modal mencakup tiga bentuk utama, yaitu tindak pidana penipuan, manipulasi pasar, dan perdagangan orang dalam. Ketiga jenis tindak pidana tersebut memiliki karakteristik khusus karena berfokus pada penyalahgunaan informasi yang bersifat strategis, bukan pada objek material, sehingga proses pembuktiannya menuntut ketelitian yang mendalam dikarenakan dalam rumusan deliknya masih bersifat abstrak dan belum sepenuhnya selaras dengan perkembangan modus kejahatan pasar modal yang semakin kompleks dan berbasis teknologi. 2) Penegakan hukum di sektor pasar modal Indonesia masih menghadapi berbagai hambatan, baik dari aspek kewenangan maupun teknis. Walaupun OJK memiliki penyidik Polri dan PPNS, efektivitas penyidikan masih terbatas karena ketergantungan pada mekanisme KUHAP, kemampuan teknis penyidik yang belum memadai, serta koordinasi antar-lembaga yang belum optimal. Kondisi ini membuat penanganan perkara kurang responsif sehingga diperlukan penguatan regulasi dan kapasitas institusional.
Kata kunci: Penegakan Hukum, Tindak Pidana, Pasar Modal

A. Introduction

The capital market is a mechanism for transactions between sellers and buyers or investors (clients), where the objects traded are information, records, documents, or other instruments, both physical and digital, that have value, utility, and economic relevance and can be actualised as a reference or evidence for either the long term (extended) or short term.[1] As a form of external financing, capital markets facilitate businesses in accessing the funds needed to support their operations and entities. However, on the investor side, capital markets act as a medium for allocating and distributing capital to productive sectors that have the capability to generate economic added value.[2] The existence and operation of the capital market significantly supports economic fluctuations in a positive direction, as it serves as the primary medium for meeting the financial needs of various economic actors, including private corporations, individuals, and government institutions.[3]

Fundamentally, the existence of the capital market is intended to encourage the implementation of sustainable national development through the escalation of equitable distribution of development outcomes, acceleration of economic growth, and strengthening of national economic stability in order to achieve extensive public welfare.[4] Activities that occur in the capital market are not limited to interactions between sellers and buyers of securities, but also involve various entities that play crucial roles in the capital market community. These include public companies or issuers, regulatory authorities, managers, auditors and supervisors, namely the Financial Services Authority (OJK), formerly known as the Capital Market Supervisory Agency (Bapepam), as well as stock exchanges, professions and supporting institutions such as depository and settlement institutions, clearing houses, securities administration bureaus, investment advisors, securities rating agencies, trustees, and other institutions that support the smooth running and credibility of the capital market.[5]

The increasingly complex development of the Indonesian capital market is not matched by the ability of regulations and law enforcement to respond to the dynamics of technology-based crime, particularly in relation to market manipulation, insider trading, and misuse of digital information. The criminal provisions in Law No. 8 of 1995 on Capital Markets are only textual in nature, and therefore unable to capture modern crimes that are fast-paced, hidden, and cross-jurisdictional. The mismatch between legal norms and criminal practices creates legal uncertainty for investors, which is a vital aspect for the sustainability of business and investment activities.[6] However, these legal instruments, which are considered sufficiently acceptable, cannot yet guarantee legal protection and certainty for investors, because legal protection and certainty can only be

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[1] Rumawi, Ambar Sri Lestari, Ronald Saija, et all, *Hukum Pasar Modal.* Bandung: Widina Bhakti Persada. 2021. hlm. 13.
[2] M Irsan Nasarudin, dkk, Aspek Hukum Pasar Modal Indonesia, Jakarta: Kencana Prenada Media Grup, 2004, hlm. 10.
[3] Baehaki Syakbani, "Penegakan Hukum di Pasar Modal dalam Produk Hukum Ekonomi di Indonesia", Jurnal Valid Vol. 11 No. 2, April 2014: 89 – 96, https://stieamm.ac.id/wp-content/uploads/2017/11/11-Baehaki-Syakbani.pdf
[4] Vicky Prayitno, "Studi Kasus Tindak Pidana Pasar Modal Pada PT Reliance Securities, Tbk dan PT Magnus Capital", DHARMASISYA, Jurnal Program Magister Hukum, Fakultas Hukum, Universitas Indonesia, Vol. 2 N0. 2 (Juni 2022). https://scholarhub.ui.ac.id/cgi/viewcontent.cgi?article=1213&context=dharmasisya
[5] Ismayani dan Zetria Erma, "Bentuk Kejahatan dan Pelanggaran yang terjadi di Bidang Pasar Modal dalam Investasi", Marwah Hukum, Vol. 2 No. 2, Juli 2024, 10-23, DOI: https://doi.org/10.32502/mh.v2i2.8289
[6] Fadilah Haidar, "Perlindungan Hukum Bagi Investor Terhadap Praktik Kejahatan Insider Trading Pada Pasar Modal di Indonesia", Jurnal Cita Hukum, Vol. 3 No. 1, (2015), pp.133-152. DOI: 10.15408/jch.v2i1.2311

realised if the legal instruments that have been created are implemented by the OJK.[7] Given these circumstances, this research is important to assess the adequacy of criminal regulations in Indonesian capital market law and to examine the effectiveness of law enforcement in the context of capital market developments that are increasingly digital, integrated, and high-risk.

The Law serves as the fundamental legal basis for providing protection for various activities in the Indonesian capital market sector. Legal protection is manifested through a systematic operationalisation of the law, which includes the imposition of administrative, criminal, and civil sanctions for violations. This began with the enactment of Law No. 21 of 2011 on the Financial Services Authority (OJK), whereby the authority, duties, and functions previously exercised by the Capital Market Supervisory Agency (BAPEPAM) were legally transferred to the OJK. Institutional transformation was carried out with the aim of intensifying the efficiency of law implementation in the capital market in an optimal, integrated, and organised manner.[8]

If adequate regulation and supervision systems are not implemented in a sustainable and consistent manner, the capital market will not be able to function optimally in promoting global national economic development. One of the important issues that represents this weakness is the practice of insider trading, which is prone to destructive risks to market integrity and causes a decline in investor credibility. The Capital Market Law has normatively regulated three main types of criminal offences in this sector, namely market manipulation, fraud and insider trading. These three classifications explain the typology of criminal acts in the capital market, where the object of potential crime is not in the form of material objects, but rather strategic information. In addition, the perpetrators of these crimes generally come from professional and intellectual circles, which makes the process of proving them in a legal context significantly more complex than conventional crimes.[9]

In the capital market system, there is a relationship between corporations as issuers of securities and investors as parties who invest capital, which takes place through the stock exchange mechanism with the support of intermediary institutions that serve to minimise the risk of loss due to the illiquidity of investment assets. In this mechanism, transactions are carried out on securities issued by issuers, both in the form of shares and bonds, and the purchase of securities by investors indicates a transfer of ownership rights over part of the value of the issuing company. The complexity of capital market activities requires legal instruments that are capable of effectively regulating these interactions, thereby

[7] Monica Kolompoy, "Penegakan Hukum Tindak Pidana dalam kegiatan Penyelenggaraan Pasar Modal di Indonesia", Lex Privatum, Volume IV Nomor 2 Februari 2016. https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/11347

[8] Nathan Christy Noah Rantetandung dan I Dewa Gede Dana Sugama, "Penegakan Hukum dalam Tindak Pidana Pasar Modal, Pencucian Uang dan Korupsi: Studi Kasus Jiwasraya", Jurnal Kertha Negara Vol. 9 No. 10 Tahun 2021, hlm. 879-893, https://ojs.unud.ac.id/index.php/kerthanegara/article/download/74024/40961

[9] Sihol Siagian, *Misleading Information, Manipulation and Insider Trading, Prosiding: Transaksi di Pasar Modal*, Jakarta: Obligasi, 2004, hlm. 327.

creating a regulated, fair and efficient market. It is based on this need that legal provisions governing the capital market have developed.[10]

Referring to the background above, the purpose of this article is to understand the qualifications of capital market crimes in Indonesia and to determine the implementation of capital market crime laws in the Indonesian legal system. The state of the art of this research includes:

First, Baehaki Syakbani: "Penegakan Hukum di Pasar Modal dalam Produk Hukum Ekonomi di Indonesia".[11] The objective of the study was to analyse the role of legal and regulatory institutions in supporting law enforcement in the capital market and its relationship with economic development. The results showed that various institutions such as the House of Representatives, the police, the attorney general's office, the courts, and related departments play an important role in capital market law enforcement. The study emphasised that the law must be adaptive in order to support synergy between law and the economy and not hinder the development process.

Second, Nathan Christy Noah Rantetandung and I Dewa Gede Dana Sugama: "Penegakan Hukum dalam Tindak Pidana Pasar Modal, Pencucian Uang dan Korupsi: Studi Kasus Jiwasraya".[12] The purpose of the research was to classify the criminal acts involved in the PT. Asuransi Jiwasraya case and to examine the implementation of laws on corruption, money laundering, and capital market crimes. The results of the research: The Jiwasraya case involves violations of laws related to the capital market, money laundering, and corruption, with the main modes being a Ponzi scheme, window dressing of financial reports, and affiliated stock transactions. Law enforcement was carried out through an audit by the Supreme Audit Agency (BPK), an independent investigation, and a ruling by the Central Jakarta District Court, which found the defendant legally guilty of corruption and money laundering.

Third, Komang Sri Ayu Kumala, Alpi Sahari and Onny Medaline: "Analisa Penegakkan Hukum Terhadap Tindak Pidana Pasar Modal ditinjau dari Undang-Undang Nomor 8 Tahun 1995 Tentang Pasar Modal".[13] The purpose of the research is to examine the criminal law aspects of issuing cheques without sufficient funds and to analyse the legal considerations in Supreme Court Decision Number: 1006 K/Pid/2017. The results of the research: Issuing a cheque without sufficient funds can be punished as fraud under Article 378 of the Criminal Code if it is done with malicious intent from the outset. Supreme Court Decision Number 1006 K/Pid/2017 confirms that issuers who knowingly issue cheques without funds fulfil the elements of a criminal offence, not merely a breach of contract.

[10] Juli Asril, "Kejahatan dalam bidang Pasar Modal di Era Globalisasi dan Model Hukum untuk menghadapinya", Jurnal Ilmiah MEA (Manajemen, Ekonomi, & Akuntansi), Volume 3 No. 1 Januari-April 2019, https://journal.stiemb.ac.id/index.php/mea/article/download/819/351/
[11] Baehaki Syakbani, Op., Cit.
[12] Nathan Christy Noah Rantetandung dan I Dewa Gede Dana Sugama, Op., Cit.
[13] Komang Sri Ayu Kumala, Alpi Sahari dan Onny Medaline: "Analisa Penegakkan Hukum Terhadap Tindak Pidana Pasar Modal ditinjau dari Undang-Undang Nomor 8 Tahun 1995 Tentang Pasar Modal", IURIS STUDIA: Jurnal Kajian Hukum, Volume 6 Nomor 2, Jun 2025 – Sep 2025: Page 279-292. https://jurnal.bundamediagrup.co.id/index.php/iuris/article/view/926

Based on the three studies above, it appears that there are aspects that have not been adequately examined in relation to normative studies that comprehensively link legal regulations, criminal qualifications, and the implementation of capital market criminal law within the framework of the regulatory system in Indonesia. This is what makes this study novel. The author not only examines the norms in Law No. 8 of 1995 and its derivative regulations, but also conducts an in-depth analysis of the classification of capital market crimes and their characteristics, as well as their legal application in the national legislative system.

Although previous studies have reviewed aspects of regulation and law enforcement in the capital market, these studies have not specifically highlighted the adequacy of criminal provisions in Law No. 8 of 1995 in addressing the increasingly dynamic developments in capital market crimes. The criminal provisions in Law No. 8 of 1995 are still unable to respond to contemporary regulatory and law enforcement challenges. The practices of market manipulation, insider trading, and digital information abuse demonstrate a discrepancy between market dynamics and normative provisions that are textual and limited in nature. This condition emphasises the importance of academic studies that not only describe the provisions of the law but also evaluate the adequacy of regulations, the effectiveness of law enforcement, and the need for normative reformulation to strengthen the integrity of the capital market. Therefore, this research is relevant because it aims to fill the gap in studies that connect normative aspects, criminal characteristics, and law enforcement implementation in the Indonesian legal system more comprehensively.

B. Research Methods

The research method applied in this study is normative legal research. Normative legal research is often referred to as doctrinal legal research namely research that examines legislation related to the issues being studied, particularly regarding capital market crimes. [14] The approach applied in this study is a legislative approach and the methodology used is a conceptual approach, with primary legal materials as the type and source of legal materials, including the Criminal Code, Law No. 8 of 1995 on Capital Markets, and others, secondary legal materials (books, journals and other scientific works on law enforcement, capital market crimes, the Indonesian legal system, etc.), tertiary legal materials (the Great Dictionary of the Indonesian Language, legal dictionaries, English dictionaries, etc.). This study uses techniques and instruments for collecting legal materials through literature studies, namely a method of collecting legal materials by conducting literature studies on legal materials, including primary, secondary, and tertiary legal materials. This study applies an analysis technique in the form of interpretation of the legal materials used as references. The interpretation used is normative legal analysis that uses reference materials as research data.

C. Results and Discussion

1. Qualification of Capital Market Criminal Offences in Indonesia

Law No. 8 of 1995 on Capital Markets clearly and explicitly regulates the classification of transactions that are prohibited in capital market activities, including fraud, market

[14] Amiruddin dan Zaenal Asikin, *Pengantar Metode Penelitian Hukum, Edisi Revisi,* Depok: Rajawali Pers, 2020, hlm. 118.

manipulation, and trading practices by parties with insider information (insider trading). The regulation also stipulates the implementation of sanctions, both criminal and administrative. The distinctive feature of criminal acts in the capital market is that the object of the potential crime is not a material object, but rather strategic information. Not only that, the perpetrators of these crimes do not rely solely on physical strength, but rather on their ability to analyse market conditions and exploit available opportunities for personal gain. The types of transactions that are not permitted in the capital market can be described as follows:[15]

a. Fraud

Fraud as described in Article 90 letter c of Law No. 8 of 1995 on Capital Markets is making false statements about material facts or not disclosing material facts so that the statements made are not misleading about the circumstances at the time the statements were made with the aim of benefiting or avoiding losses for oneself or others or with the intention of influencing others to buy or sell securities.

Fraud (in points 1 and 2) as described in Article 90 can in fact be viewed as similar to fraud in the context of general criminal acts, as stipulated in the Criminal Code (KUHP) in Articles 378, 390, 391, and 392, categorised as legal violations that also apply in the capital market. However, given that fraud occurring in the capital market has the potential for more significant implications, such as causing serious obstacles to national economic stability and creating public distrust in the economic system, the Capital Market Law stipulates special treatment for such acts. This treatment includes the application of heavier criminal sanctions, with the threat of imprisonment of up to ten years and a maximum fine of fifteen billion rupiah, as a form of effort to provide a deterrent effect and protect the integrity of the capital market.[16]

Article 3 of Section 90, which regulates the prohibition of conveying information/statements that are not in accordance with the facts or the failure to disclose material facts, aims not only to prevent the spread of unfounded issues (rumours) that often occur in the capital market, but also to ensure that all data, information and material facts disclosed to the public are valid, accurate and not misleading. This obligation is not solely borne by issuers, but is created to provide a clear basis for investors in making investment decisions, whether in terms of buying, trading or holding securities, as these decisions always depend on the reliability of information related to the securities. In stock exchange trading practices, the spread of false/unfounded statements can originate from various parties, including stock exchange members, investors, and even internal actors within the issuer itself.[17]

b. Market Manipulation

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[15] Asril Sitompul, *Pasar Modal: Penawaran Umum dan Permasalahannya*, Bandung: Citra Aditya Bakti, 2004, hlm. 53-54.
[16] Hamud M. Balfas, "Tindak Pidana Pasar Modal dan Pengawasan Perdagangan di Bursa", Jurnal Hukum dan Pembangunan, Vol. 28, No. 1-3. hlm. 52-53. https://media.neliti.com/media/publications/84074-ID-tindak-pidana-pasar-modal-dan-pengawasan.pdf
[17] Ibid., hlm. 53.

Market manipulation can be defined as an act carried out by an entity, either explicitly or implicitly, in conducting securities transactions with the aim of creating a representation that deviates from the actual conditions or to influence fluctuations in securities prices in the capital market. This method is carried out so that the price of these securities remains stable or undergoes certain changes in order to influence the decisions and behaviour of other market participants.[18] In order to examine this practice, it is necessary to master five important aspects, namely:[19]

1) Every legal subject, whether individually or in cooperation with other entities.
2) Simultaneous transactions on two or more securities instruments are not permitted.
3) Can be implemented either explicitly or implicitly.
4) Causing changes in securities prices in the capital market, which may take the form of stability, escalation, or decline.
5) With the aim of influencing other parties' decisions to purchase, trade, or retain securities.

A number of classifications of market manipulation offences include the following actions:[20]

1) Marking the close refers to the practice of controlling bid prices or manipulating the value of securities during the closing period of trading, with the aim of creating a closing price that does not reflect actual conditions.
2) Painting The Tape refers to the application of a sequence of small-scale transactions intended to create the impression of trading activity, when in fact no substantive activity has taken place, with the aim of influencing market perception.
3) Setting prices is closely related to mechanisms associated with mergers, consolidations and acquisitions.
4) Cornering the market refers to the tactic of accumulating large volumes of shares with the aim of dominating or controlling market mechanisms.
5) Pump and dump manipulation is a practice carried out by a number of investors with sufficient capabilities in market dynamics/changes, through the aggregation of large amounts of funds to drive the price of securities to unreasonable levels through excessive promotion, then releasing them at high prices before the value experiences significant deflation.
6) Wash sales are commercial securities transactions conducted simultaneously between parties belonging to an association, where such transactions do not imply any change in beneficial ownership of the securities traded.
7) Matching orders refer to a condition where purchase and sale instructions for securities executed by stakeholders within an association are carried out simultaneously without causing any change in the beneficial ownership of the securities. The purpose of this practice is to create the perception of market activity that does not actually reflect real sales and purchase transactions. This type of transaction is categorised as a fictitious transaction, namely a mechanism for buying or selling shares that does not result in a substantive or factual transfer of ownership.

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[18] Rusdinah, dkk, "Perlindungan Hukum terhadap Investor dari Praktik Manipulasi di Pasar Modal", Jurnal Hukum Justice, Vol. 1, No. 2, Februari 2024. hlm. 123. https://ejournal.ust.ac.id/index.php/JHJ/article/download/3571/2782

[19] Ibid., hlm. 123.

[20] Budi Firmana Firdaus dkk, "Perlindungan Hukum Terhadap Investor Akibat Praktik Manipulasi Transaksi di Pasar Modal", Journal Legal of Research, Vol.3 No. 6 (2021): 7. DOI: https://doi.org/10.15408/jlr.v3i6.18070

8) Free riding is a practice that occurs in initial public offerings (IPOs), where participants place orders for shares with the intention of reselling them at a higher price, but then cancel the transaction if the allocation of shares received based on accumulation is deemed not to provide the expected benefit.
9) Special allotments are a practice carried out by underwriters in initial public offerings (IPOs), whereby securities are deliberately distributed to certain parties, such as business partners or close relatives. This practice is carried out in order to create the impression of higher market demand than is actually the case, thereby artificially driving up the price of the securities.
10) Churning is a practice whereby a broker engages in excessive trading on a client's discretionary account, with the primary aim of maximising commissions or service fees, without considering the investment needs of the client.

Its correlation with market manipulation activities based on the provisions of Article 91 of Law Number 8 of 1995 concerning Capital Markets is that it is not permissible for any party to take actions, either directly or indirectly, with the intention of creating a false or misleading picture of business activities, market conditions, or the price of securities on the Stock Exchange. Securities transactions are one type of transaction that can cause a false impression. Because securities transactions can occur under two conditions, which result in a change of ownership or not, while a false impression occurs if the securities transaction does not result in an alteration of ownership or the offer to buy and sell securities at a predetermined/agreed price, because the parties involved collude and make similar offers to buy and sell securities at prices that are not significantly different.

The motives behind market manipulation include increasing, decreasing or maintaining the price of securities. Some patterns of manipulation include:

1) Spreading negative information about issuers that has not been proven to be true with the intention of impacting the price of the company's securities on the stock exchange.
2) Disseminating misleading information or data, or information or data that is not presented in its entirety.

The value of a security in the capital market is highly reactive to various events and information that are correlated, either directly or indirectly, with the security in question. Information/disclosures are used as a basis for investors in making investment decisions on a security. If such information is not protected by law as legal/valid information, the continuity of trading activities in the capital market will face significant obstacles.

b. InsiderTrading

The Capital Market Law stipulates other categories of criminal offences, including insider trading. Based on the provisions of Articles 95, 96, and 97, any party who has access to insider information, whether or not that party is classified as an insider, is prohibited from conducting transactions involving the sale or purchase of securities belonging to the issuer or related public company, or securities of other corporations that have a transactional correlation with the issuer or public corporation in question. This prohibition includes activities that influence other parties to buy or sell related securities, as well as disclosing insider information to any party who can reasonably be assumed to use such information to carry out securities trading transactions. The components of insider trading include the following:[21]

1) The existence of ongoing securities trading
2) Perpetrated by internal parties within the company
3) The existence of confidential information
4) This information has not been published and is not yet accessible to the public
5) Trading activity has not yet been driven by this information
6) Focused on achieving benefits/profits and anticipating losses

For clarity, there are three fundamental aspects to insider trading practices, including: [22]

1) The existence of an insider or subject who attempts to obtain information from a corporate insider.
2) Having clear knowledge of various non-public information held internally by the corporation.
3) Taking actions aimed at influencing other parties, with or without the use of non-public information, to purchase or sell securities or stocks.

From a capital market law perspective, insider trading activities are often equated in principle with criminal theft. The fundamental distinction lies in the object: in conventional theft, the object taken is a concrete item belonging to another party, whereas in insider trading, the object exploited remains the property of another party but takes the form of non-public material information which, normatively, is the common property of the public to access. The unauthorised use of such information results in the perpetrator gaining benefits or avoiding losses.[23]

Based on the provisions of Article 104 of the Capital Market Law, individuals who engage in insider trading are subject to criminal penalties in the form of imprisonment and fines, while companies that engage in insider trading are subject to administrative sanctions. In this regard, the sanctions are cumulative in nature, combining imprisonment with fines. The implications of administrative sanctions against companies are regulated in Article 102 of the Capital Market Law in conjunction with Article 61 of Government Regulation No. 45 of 1995 concerning the Implementation of Activities in the Capital Market. Furthermore, subjects who are legally and convincingly proven to have committed fraud in securities trading may be subject to criminal sanctions of imprisonment for a maximum of 10 (ten) years and a maximum fine of IDR 15,000,000,000.00 (fifteen billion rupiah), as stipulated in Article 104 of the Capital Market Law.[24]

From the perspective of criminal offences, based on the three types of criminal offences described above, all acts regulated in Article 90 (fraud), Article 91 (market manipulation), and Articles 95–97 (insider trading) of the Capital Market Law are essentially classified as crimes, not violations. This is evident from the very high penalties of imprisonment and fines, as well as the systemic impact of such acts on the integrity of the capital market. The category of violations in the context of the capital market is more related to

[21] Ibid., hlm. 269.
[22] Op., Cit. Rusdinah, dkk,
[23] Ibid., hlm. 269.
[24] Fael Hendra Imanuel Ratu, "Tindak Pidana Penipuan, Manipulasi Pasar, Perdagangan Orang Dalam, Berdasarkan UU No. 8 Tahun 1995," Lex Crimen VIII, No. 8 (2019): 20, https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/26789

administrative sanctions that are under the authority of the OJK, such as written warnings, administrative fines, or licence suspensions. Thus, these three types of criminal offences are conceptually and normatively classified as crimes, not violations.

The criminal provisions in Law No. 8 of 1995 on Capital Markets clearly regulate the classification of crimes, but according to the author's analysis, there are still structural and juridical weaknesses that cause the regulations to be less than fully responsive to developments in modern market instruments and modes of crime. The formulation of offences such as market manipulation and insider trading still relies on a textual, rule-based approach, which is inadequate for addressing contemporary modes such as market manipulation, insider trading, misleading information and wash sales.[25] Broad interpretations, such as the elements of "influencing securities prices" or "inside information," also pose difficulties in terms of evidence. In addition, the Capital Market Law does not yet regulate a strong coordination mechanism between the OJK, the Attorney General's Office, and the Police, even though the nature of capital market crimes, especially in terms of jurisdiction, is also a major obstacle in investigating cross-border cybercrime.[26]

Normatively, criminal provisions in the Capital Market Law show a tendency towards primum remedium because the formulation of offences is explicit and the criminal penalties are very severe, especially for market manipulation, fraud, and insider trading, which have the potential to threaten the stability of the financial system. However, in practice, law enforcement prioritises administrative mechanisms, such as issuing warnings, freezing licences, revoking licences, and imposing fines. These four forms of sanctions reflect the commitment of the New Criminal Code (KUHP) to tackle crimes involving corporations more firmly and comprehensively.[27] Thus, criminal law functions as an ultimum remedium (last resort), indicating that it is only applied when other legal instruments are deemed inadequate to resolve a violation.[28]

Although the Capital Market Law regulates three main offences, namely fraud, market manipulation, and insider trading, according to the author's analysis, this coverage does not fully reflect the complexity of crimes that may arise in capital market activities. In practice, securities transactions are often linked to other criminal offences such as money laundering, corruption, and asset embezzlement, and can be used to conceal illegal cash flows through various transaction schemes. The absence of explicit regulations regarding the connection between the capital market and cross-sector criminal acts indicates that the existing normative framework is still partial and does not sufficiently anticipate increasingly integrated patterns of financial crime. Therefore, more comprehensive regulations are needed so that capital market law reforms can effectively respond to other forms of criminality.

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[25] Abudzar Al Gifari dan Rehnalemkem Ginting, "Analisis Fenomena Pump and Dump diera digital dalam Hukum pidana Pasar Modal", Jurnal Hukum dan Pembangunan Ekonomi, Volume 12, Nomor 1, 2024, hlm. 29. DOI: https://doi.org/10.20961/hpe.v12i1.88070

[26] Kiki Kristanto dan Rakhmat Baihaki, *Tindak Pidana Siber di Indonesia (Regulasi, Tantangan, dan Penegakan Hukum)*, Medan: PT Media Penerbit Indonesia, 2025. hlm. 121.

[27] Thea Farina, dkk. "Tindak Pidana Korporasi", Medan: PT Media Penerbit Indonesia, 2025. hlm. 75.

[28] Noor Rohmat, "Hukum Pidana dan Perkembangan IT", Jakarta: Kencana, 2025. hlm. 7.

From the perspective of legal certainty according to the author's analysis, the regulation of criminal acts of fraud, market manipulation, and insider trading in the Capital Market Law still faces a number of normative and implementational issues. The formulation of fraud offences in Article 90 of the Capital Market Law still contains abstract phrases, such as "material facts" and "misleading information", which opens up room for inconsistent interpretation between regulators and law enforcement officials. The ambiguity of these elements results in a failure to fulfil the principle of lex certa, which means that laws must be sufficiently clear as a requirement for legal certainty in criminal law. Similarly, Article 91 on market manipulation is not responsive to modern technology-based modes of crime, thereby reducing the degree of certainty in the application of norms for market participants. Meanwhile, in the case of insider trading offences, the ambiguity of the parameter of "material non-public information" hinders the burden of proof and opens up opportunities for differences in interpretation among law enforcement officials.

2. Law Enforcement Against Capital Market Crimes in Indonesia

In Indonesia's positive legal system, the authority to enforce the law against capital market crimes lies squarely with the Financial Services Authority (OJK), as stipulated in Law No. 21 of 2011 on the Financial Services Authority (OJK), which took over all the functions, duties and authorities of the Capital Market and Financial Institution Supervisory Agency (Bapepam-LK). With this transfer of authority, Bapepam-LK no longer has enforcement authority. In the context of capital market criminal enforcement, OJK has the authority to supervise, examine, investigate, and submit case files to the Attorney General's Office for prosecution. Meanwhile, administrative enforcement such as written warnings, administrative fines, freezing of assets, and revocation of licences are also part of the OJK's authority as a preventive and repressive supervisory instrument. Thus, both structurally and normatively, law enforcement authority in the capital market sector rests entirely with the OJK.[29]

Within the framework of Indonesian capital market law, not all criminal acts, whether classified as crimes or violations, fall under the full authority of the OJK. The OJK only has authority over criminal acts that are specifically regulated in the Capital Market Law, including investigative authority as granted by Law No. 21 of 2011. Other criminal offences that are of a general nature or intersect with different legal systems, such as money laundering, corruption, or banking crimes, do not fall within the direct jurisdiction of the OJK, but rather fall under the jurisdiction of general law enforcement agencies such as the Police, the Attorney General's Office, or the Corruption Eradication Commission (KPK), depending on the scope of the criminal offence. The OJK's authority is limited and sectoral, covering only capital market crimes and administrative violations in the financial services sector.

In the context of enforcing capital market crimes, OJK civil servant investigators carry out investigations based on the provisions of general criminal procedure law as stipulated in the Criminal Procedure Code, because the Capital Market Law does not provide for specific criminal procedure mechanisms. Investigations within the OJK may be

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[29] Fungsi dan Tugas Pokok Otoritas Jasa Keuangan (OJK), Diakses pada https://ojk.go.id/id/kanal/pasar-modal/tentang-pasar-modal/pages/tugas.aspx

conducted by members of the Indonesian National Police assigned as investigators to the OJK or by civil servant investigators working at the OJK who are granted special authority to carry out investigative functions. These investigators have the authority to take investigative measures based on the provisions of the KUHAP, the OJK Law, and other relevant laws and regulations.[30] The absence of specific procedural laws in the enforcement of capital market law means that investigations into capital market crimes continue to rely on general procedures, ranging from seizure, summons, search, to the submission of case files to the public prosecutor. However, according to the author's analysis, the use of the Criminal Procedure Code as the sole procedural reference is often considered inconsistent with the complex nature of capital market crimes, which involve transaction technology, financial data analysis, and digital crime patterns. This situation demonstrates that the applicable procedural framework does not fully accommodate the technical requirements of modern capital market investigations.

In practice, OJK PPNS investigators face a number of substantive and technical obstacles in handling criminal acts of fraud, market manipulation, and insider trading. In criminal acts of fraud, difficulties often arise because the cases intersect with civil matters such as default or investment losses, so that the separation between criminal and civil aspects in the evidence process is not always clear. For market manipulation, the main challenge lies in the need for highly technical transaction analysis involving algorithmic patterns, while the facilities supporting financial forensic examination are not yet fully adequate. In insider trading crimes, obstacles mainly arise in proving the relationship between material non-public information and the perpetrator's transaction decisions.[31] According to the author's analysis, these various obstacles indicate that investigations by PPNS OJK still require technological support, analytical methods, and clearer regulations in order for law enforcement to be effective. Therefore, the need for such reinforcement must be viewed in the broader context of how law enforcement is carried out and optimised within a legal system.

Law enforcement is a process to ensure that existing laws are obeyed and implemented properly and optimally in society. This is carried out to realise the ideals of the law, namely the ideas of the legislators as enshrined in legal regulations, so that they are actualised.[32] The success of law enforcement is due to a number of objective factors, so that both positive and negative implications are determined by the substance of these factors. These factors include:[33] 1) Legal factor (undang-undang); 2) Law enforcement factors; 3) Factors relating to resources or facilities that encourage the implementation of the law; 4) Social factors, namely where the law is applied; 5) culture factors.

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[30] Gede Angga Wirabhuwana Ramaputraa dan I Putu Rasmadi Arsha Putra, "Eksistensi Penyidik Pegawai Negeri Sipil pada Otoritas Jasa Keuangan dalam Sistem Hukum Acara Pidana di Indonesia", Ethics and Law Journal: Business and Notary (ELJBN), Vol. 2. No. 3. 2024. hlm. 84. https://journals.ldpb.org/index.php/eljbn/article/view/216/176

[31] Praktik Manipulasi Pasar dalam Lingkup Pasar Modal: Menilik Peran Lembaga Pengawas Keuangan Otoritas Jasa Keuangan (OJK) di Indonesia. Diakses pada https://kliklegal.com/praktik-manipulasi-pasar-dalam-lingkup-pasar-modal-menilik-peran-lembaga-pengawas-keuangan-otoritas-jasa-keuangan-ojk-di-indonesia/

[32] Satjipto Rahardjo, *Masalah Penegakan Hukum*, Bandung: Sinar Baru, 2017. hlm. 24.

[33] Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, Jakarta: PT. Raja Grafindo Persada, 1983. hlm. 5.

The existence of the Indonesian capital market has a significant impact on the development of the Indonesian economy. Therefore, in order to ensure that it is well organised, it is specifically regulated in Law No. 8 of 1995 concerning the Capital Market and several regulations issued by the Financial Services Authority (OJK). These specific regulations were established to maintain the stability of processes and activities within the Capital Market, ensure compliance with principles by all capital market participants, and prevent violations and criminal acts. Thus, the main objective of establishing the capital market can be achieved. In this context, the Financial Services Authority (OJK) not only acts as a protector of the interests of the public and business actors, but also has a mandate to carry out regulatory and supervisory functions over activities in the financial services sector, which includes banking, capital markets, insurance, pension funds, financing institutions, and other financial services institutions.[34]

In exercising its authority as the body responsible for supervising the capital market, the Financial Services Authority often resolves and addresses issues related to capital market crimes, with insider trading being one example. The Financial Services Authority (OJK) has the authority to impose sanctions on issuers and internal parties in the capital market who are proven to have committed violations, as stipulated in the relevant provisions, namely Article 95 of Law Number 8 of 1995 concerning the Capital Market, which defines insiders as, among others:[35] a) Members of the board of commissioners, directors, or employees of issuers or public companies; b) Parties holding shares/controlling interests/majority interests in issuers or public companies; c) Individuals who, due to their position, profession, or business relationship with the issuer or public company, have access to material non-public information (inside information)

The Capital Market and Financial Institution Supervisory Agency (Bapepam) acts as the regulatory and supervisory authority in the capital market sector. Its organisational structure consists of a chairperson as the leader, accompanied by a secretary and seven bureau chiefs. In the event of a violation of capital market laws and regulations or other related provisions, Bapepam has the authority to investigate parties suspected of committing violations. If the results of the investigation show that a violation has been proven, Bapepam may impose administrative sanctions on the perpetrator. The decision to impose sanctions is made by the chairperson of Bapepam based on the results of an evaluation by the investigation and examination unit. If the party subject to sanctions accepts the decision, they are obliged to comply with all provisions set by Bapepam in accordance with the applicable procedures.

The Capital Market Supervisory Agency (Bapepam) has the authority to conduct inspections if it receives notifications, reports or denunciations from relevant parties regarding alleged violations of laws and regulations in the capital market. Based on Law No. 8 of 1995 on Capital Markets, the supervisory functions supported by Bapepam include guidance, regulation and supervision of the activities of economic actors within the scope of the capital market. In exercising this authority, Bapepam has several essential functions, including formulating and establishing regulations in the capital market sector,

[34] Undang-undang Nomor 21 Tahun 2011 Tentang Otoritas Jasa Keuangan, Lembaran Negara Nomor 111 Tahun 2011, Tambahan Lembaran Negara Nomor 5253, Pasal 6.
[35] Undang-undang Nomor 8 Tahun 1995 tentang Pasar Modal, Lembaran Negara Tahun 1995 Nomor 64, Tambahan Lembaran Negara Nomor 64, Pasal 95.

providing guidance and empowerment, and supervising parties that have obtained permits, acceptance, or registration from Bapepam, as well as other entities operating in the capital market sector. In addition, Bapepam also contributes to resolving issues related to objections raised by parties subject to sanctions by the Stock Exchange, clearing and guarantee institutions, and depository and settlement institutions, along with other relevant tasks in the context of law enforcement in the capital market.[36]

The implementation of laws on capital market crimes in Indonesia is a crucial element in maintaining the integrity of the national financial system. In this context, the law is not merely understood as a norm, but as a means of social engineering that aims to create certainty, justice, and protection for investors. Law No. 8 of 1995 on Capital Markets is the basic legal foundation that regulates the mechanisms for preventing and prosecuting violations in this sector, with a focus on protecting material information and maintaining market transparency. The effectiveness of law enforcement is greatly influenced by the quality of the implementing institutions.

The OJK, as the highest authority in the financial services sector, has a dual mandate: to regulate and supervise. The OJK's authority is not only administrative in nature, but also includes sanctions that can prevent and repress violations. On the other hand, Bapepam's historical role in responding to violations also shows that capital market law enforcement does not depend on a single approach, but requires coordination between regulatory, supervisory and enforcement elements. However, law enforcement in this area still faces structural and technical challenges. The complexity of transactions, the speed of information flow, and the involvement of economic actors with large resources often make legal proof difficult. Therefore, strengthening institutional capacity and technology-based supervision are absolute requirements so that the law is not merely a symbol but serves as an effective and enforceable control mechanism.

D. Conclusion

The classification of criminal offences in the capital market sector in Indonesia, as stipulated in the Capital Market Law, has established three main categories of criminal offences, namely fraud, market manipulation, and insider trading. These three categories of criminal offences have specific characteristics that are oriented towards the misuse of strategic information rather than material objects, thus requiring more complex evidence. Furthermore, the formulation of the elements of these criminal offences still leaves room for legal uncertainty due to the use of abstract terms and does not fully reflect the increasingly modern nature of crime.

Law enforcement in Indonesia's capital market sector still faces several obstacles, both in terms of authority and technical implementation. Although the OJK has investigative authority through Police Investigators assigned to the OJK and OJK PPNS, its effectiveness is not yet optimal because it still depends on the Criminal Procedure Code mechanism. The limited technical capacity of investigators and the lack of coordination with other law enforcement agencies often result in slow and unresponsive handling of capital market cases, which are complex due to modern financial crimes. Therefore,

[36] Indra Rahadiyan, *Hukum Pasar Modal di Indonesia*, Yogyakarta: UII Press, 2014, hlm. 19.

regulatory strengthening and institutional capacity building are needed to make law enforcement more effective.

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