

CHAPTER I

INTRODUCTION

1.1 Background

The capital market is one of the current economic instruments that is experiencing very rapid development. The capital market is also an indicator of economic progress in a country. The occurrence of capital movement universally is not only occur because of the impact of a declining exchange rate or high inflation and low interest rates in a country, but because of the unavailability of profitable investment alternatives in a country, or at the same time, promising portfolio investment in others countries' stock exchanges with much higher profits. In the capital market, there are several variables that can affect stock prices as reflected in the Composite Stock Price Index (IHSG), including the inflation rate, the interest rate for Bank Indonesia Certificates (SBI) and the rupiah exchange rate against the dollar. The existence of the capital market in the modern economy is inevitable for all countries in the world, including Indonesia. The high demand for goods and services as a result of the increasing number of people in the world makes companies, both those engaged in services and trade, must be able to meet all the needs that the world community wants globally. Indonesia is a country that is included in the category of developing countries. The increasing numbers of new companies that have risen up in Indonesia, both domestic and foreign act as evidence of the potential market share in Indonesia.

The operation of the capital market can be done, as many individuals, organizations or entities trust their money in this platform through a specific type of investment in the capital market world. Therefore, in the world of capital markets, many interests are significantly connected to financial management and protection for the investor, financial funding and the company. As there are many people who are directly involved as the main characters in the investment transactions process.

Those in charge are certainly those who are entrusted to educate and provide guidelines to each individual that decide to start investing and also protect them through the regulations that are enacted in a country. The involvement of many people in the capital market creates a lot of thoughts and opinions that continue to create a movement dynamically in the capital market. This creates a system in the capital market, which is so complex and must be controlled. So, these platforms are regulated by Capital Market Law to protect and organize the rights of everyone that are involved in it. The existence of the Indonesian capital market holds a very important role in the development of Indonesian economy system, so it is regulated under a special rule, namely Law Number 8 of 1995 concerning the Capital Market (Capital Market Law) and various regulations of the Capital Market and Financial Institution Supervisory Agency (BAPEPAM-LK) is currently the Financial Services Authority (hereinafter referred to as OJK)¹. This special arrangement aims to ensure that activities in the capital market participants and certainly protect each individual from any violations and

¹ Darmadji, Tjiptono; Hendy, M, Fakhrudin, *Pasar Modal di Indonesia*, (Indonesia: Salemba Empat, 2001), hal 8.

criminal acts, which help to objectives the establishing of the capital market, can be realized.

Law of the Republic of Indonesia Number 8 of 1995 concerning the Capital Market is a legal protection for the existence and implementation of the capital market in Indonesia. The capital market aims to support the implementation of national development in order to increase equity, growth and stability of the national economy in the direction of increasing people's welfare. The capital market has a strategic role, as a source of financing for the business world, on the other hand the capital market is also a means of investment for the community, including lower and middle class investors². Capital market activities are so comprehensive and complicated, therefore there is a need for a legal instrument that could regulate and maintain the market to be in order and fair for all parties. On the basis of all that, the Capital Market law was born. Capital market law is the legal norms or legal rules that regulate all aspects related to the capital market.

The capital market is like a market that has the characteristics of actors, including sellers, buyers, and suppliers of goods, the capital market also consists of many parties, each of which has an important role. One of them is the capital market supporting profession which has the task of assisting issuers in realizing the role of the principle of capital market openness which includes public

² Citra Puspa Permata, Muhammad Abdul Ghoni, "Peranan Pasar Modal Dalam Perekonomian Negara Indonesia"., *Jurnal AkunStie* Vol.5 (2), (2009), hal. 56-58

accountants, legal consultants, appraisers, notaries and professions stipulated by Government Regulation Article 64 paragraph (1) of the Capital Market Law.

The capital market has established a securities trading transactions mechanism that must be obeyed by all parties. Every security trading transaction starts from the supply and demand mechanism, and the stock exchange is responsible for the settlement of all securities transactions in the capital market, The legal instrument that regulates the capital market in Indonesia is the Capital Market Law. In the context of the government's efforts to develop, regulate and supervise the capital market, the OJK was established based on Law Number 21 of 2011 concerning the Financial Services Authority.³ OJK functions to examine investigate and impose administrative, criminal and civil sanctions, so that crimes in the capital market can be prevented and eradicated.

Guidelines for conducting activities in the capital market sector are regulated in the Capital Market Law, which is accompanied by Government Regulation no. 45 of 1995 concerning the implementation of Capital Market Activities and Government Regulation no. 46 of 1995 concerning Audits in the Capital Market Sector as well as the decisions of the minister of finance and regulation issued by BAPEPAM (now known as OJK) the occurrence of crimes and violations in the capital market is assumed to be based on several reasons, namely the mistakes of the perpetrators, the weaknesses of the apparatus that include integrity and professionalism, and weakness regulation. Therefore, OJK is

³ Otoritas Jasa Keuangan, " Otoritas Jasa Keuangan, Gedung Soemitro Djojohadikusumo Jalan Lapangan Banteng Timur 2-4 Jakarta 10710 Indonesia", <https://www.ojk.go.id/id/Pages/FAQ-otoritas-jasa-keuangan.aspx>, Retrieved on 30 July 2021.

obliged to always conduct legal studies concerning legal protection and law enforcement, which are increasingly important. Capital market institutions are known as a body that holds integrity and trust, namely as intermediary institutions that connect the interests of fund users and fund owners.

Market manipulation is one of the problems that need to be handled by OJK as this act can be detrimental in many ways. This illegal practice in securities transactions on the stock exchange certainly causes losses for capital market participants and also the bigger problem is affecting the economy of a country. Violation regulations regarding matters relating to market manipulation in the capital market sectors are stated specifically in articles 95,96, and 97 of the Capital Market Law and include as a unique type of crime. This uniqueness can be seen both from the type of violation, from the perspective of the perpetrators who are educated and have a scheming working mode. As an economic instrument, the capital market is not free from abuse by these parties to enrich themselves against the law. The capital market, both in Indonesia and in other countries, is very vulnerable to these illegal actions that can take the form of manipulation of the securities trading itself, manipulation of prices and the most known illegal action is insider trading. This act is an effort carried out through the intermediary of stock exchange members, either individually or jointly, which can give a false or misleading picture that the securities transactions or prices that occur are in accordance with market forces. Those who have inside information, whether they are insiders or not, are prohibited from buying or selling the securities of the issuer or public company in question or other companies that conduct transactions

with the issuer of the public company concerned. In addition, it is also prohibited to influence other parties to make purchases or sales of the securities in question or to provide inside information to any party who reasonably suspects that they may use many strategies to manipulate the market. The possibility of manipulation in the market can be detected, among other things, from the presence or absence of insider conducting transactions on the securities of the company in which the person concerned is an insider, which is also stated as insider trading. In addition, it can also be detected from an increase in the price and trading volume of securities before the announcement of the material information to the public and an increase or decrease in price and trading volume that is not fair. Insider trading is one real example of a real case of market manipulation that still often happens to this day.

The head of the Capital Market and Financial Institution Supervisory Agency (OJK) stated that it is still difficult to prove the crime of insider trading in Indonesia capital market.⁴ The Capital Market Law itself is a sufficient basis for OJK to ensnare criminals but due to the difficulty of revealing physical evidence that is done in a digital platform, it is still difficult to disclose this case at the court. Moreover, in the online platform, it is easier for perpetrators to hide evidence, which causes it to be more difficult to prove in the court. Based on the case of alleged insider trading that has occurred in the Indonesian Capital Market, such as the case of PT. Bumi Resources Tbk (BUMI), PT Semen Gresik Tbk

⁴ Hukum Online, “Bapepam Akui Sulit Buktikan Insider Trading”. <https://www.hukumonline.com/berita/baca/lt4dc46f2e0b77c/bapepam-akui-sulit-buktikan-insider-trading?page=1>, diakses pada 30 July 2021, hal.1

(SMGR) and the case of PT. Indosat Tbk (ISAT) shows that OJK did not hold an assertive position to disclose this crime in Indonesia as they could not bring this problem to the court to be sentenced.

China is a country with one of the largest exchanges in the world called The Shanghai Stock Exchange (SSE). Since 1997 the regulation of the Stock Exchange in China has gradually become centralized. This happens because many cases regarding insider trading arise in China. The CSRC (China Security Regulatory Commission) is specifically responsible for regulations relating to the Stock Exchange in China. The function of CSRC is officially stated in Article 7 of the China Securities Law. Not only that, the authority of the CSRC to become law enforcement is written in article 179 of the China Securities Law. After the implementation of the law since 1997, a total of 11 cases have been handled by the CSRC.

According to article 184 of the Chinese Securities Act, the handling of Insider Trading cases is carried out by the CSRC. The results of the investigation regarding the Insider Trading cases must be published to the public. The CSRC published the results of the investigation in the CSRC bulletin (*Zhongguo Zhengquan Jian du Wi yuan hui Gonggao*). In June 2004, CSRC has disclosed 9 cases of Insider Trading including:

1. Xiangfan Shenzhen case
2. Baoan Shanghai, Baoan Huayang, dan Shenzhen case
3. Zhangjiajie Tourism case
4. Nanfang Securities dan Beida Che hang case

5. Qing Qi Group case
6. Dai Li Hui case
7. Wang Chuan case
8. Yu Mengwen case
9. Gao Fashan case

Through the strictness of the CSRC who was entrusted as law enforcement regarding this case, we can see that this authority has deterred illegal actors in the stock market world.

This research is important because the practice of market manipulation in securities transactions on the stock exchange can certainly cause losses for capital market participants. Market manipulation can take the form of manipulation of the securities trades or manipulation of prices. This act of market manipulation is an effort carried out through the intermediary of members of the stock exchange, either individually or jointly which can give a false or misleading picture that the securities transactions or prices that occur are in accordance with market forces. Market manipulation can be carried out by means of a series of transactions or using an intention of manipulating. Not only that, receiving information through several parties first, often used as an opportunity to take personal advantage. This can be a key point to the individuals who use the information fraudulently cause fraud and market manipulation.

The problem that exists in Indonesia capital market is that there are still many illegal players that cause disadvantages occur in this platform. This act should receive a strict penalty such as administrative, criminal and civil sanctions

so the capital market environment can be prevented and eradicated from any crimes. The parties who are harmed by the case, especially investors, are of course entitled to legal protection by the relevant authorities, namely the OJK in Indonesia according to the provisions of the Capital Market Law. As the authorities in Indonesia still lack strictness and enactment of law regarding this act. The problems that exist in the Indonesia capital market, such as many fraudulent entrepreneurs who can take advantage of the weaknesses of the authority of OJK still threaten the capital market itself. The author decided to compare the authority of China, CSRC and the authority of Indonesia, OJK as China has solved and published many problems regarding insider trading. Market manipulation in the capital market needs to be carried out further research with the title **“Comparative Study on Legal Protection between China and Indonesia by Authorize Body for Investors on The Practice of Insider Trading in Capital Market”**.

1.2 Formulation of Issues

1. What is the comparative study on the prohibition of insider trading in the capital market between Indonesia and China?
2. What are the legal consequences for each party that is involved against insider trading in order to provide legal protection for investors?

1.3 Research Purposes

In accordance with the problems in the research objectives, the objectives to be achieved in this legal research are as follows:

1. To develop new insights and improve the quality of enactment of obligations by the authority.
2. To solve the problems and carry out the development of legal knowledge in the future.

1.4 Research Benefits

1.4.1 Theoretical Benefits

Theoretically, the Author hopes that this research will give an insight for the readers who claim to be much on the disadvantageous sides regarding the action of manipulation on the capital market. From the discrepancies, the Author hopes that this research will successfully point out the things that need to be corrected to create certainty through the Capital Market Law point of view. All in all, the Author hopes that this research will provide further knowledge on Indonesian law, especially in the field of capital market, along with the hierarchy and binding power of laws and regulations.

1.4.2 Practical Benefits

Practically, the Author hopes that this research can provide an input for the parties to understand more the consequences that are binding with the law by the actions of manipulation on the capital market, which could cause damages to the parties in the market. This research also aims to elaborate more for the investor to help them to be more cautious in the capital market. Other than that, the author also hopes that the authorities could use their obligations more on exposing and penalizing the perpetrators.

1.5 Framework of Writing

The systematics used in this paper is a brief outline of the materials contained in chapter by chapter with the following details:

1) CHAPTER I INTRODUCTION

In this section, the author describes the background that causes the author's interest to study further on the legal protection by the authorized body on the practice of market manipulation between Indonesia and China.

This section is also equipped with the formulation of the problem, research objectives, research benefits, and writing systematics.

2) CHAPTER II THEORY AND CONCEPTUAL BASIS

This section describes the literature review carried out by the author in normative theory related to theories, expert doctrine, and matters related to the capital market, market manipulation and capital market law. This is intended for the authors to contribute a framework of thought to examine the legal consequences of manipulation actions carried out by individuals in the stock market.

3) CHAPTER III RESEARCH METHODS

This section describes matters relating to research methods, types of research, problem approaches, types of research data, data acquisition procedures and the nature of analysis used by the author in conducting research.

4) CHAPTER IV ANALYSIS AND DISCUSSION

This section will discuss, examine, analyze and compare the legal consequences of manipulation in the stock market and the sanctions obtained by these individuals through the obligations that are held by the OJK and CSRC.

5) CHAPTER V CLOSING

The closing section is the last part of writing this paper, which will contain conclusions and suggestions. The conclusion is drawn by analyzing the existing practices in the field which have been discussed in the previous chapter with reference to the existing regulations, as well as the theoretical and conceptual foundations that have been described previously, then with the existing conclusions the author also provides author suggestions regarding matters relating to the problem.