



NOVICE INVESTORS AND PROTECTION FROM *SHORT SELLING* CARRIED OUT BY SECURITIES BROKERS

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Abstract

Domestic investors in the capital market until the end of July 2023 reached 11.4 million, and the increase in investors is seen as a positive development. However, on the other hand, Verdi Ikhwan, Head of the Research Division at the Indonesia Stock Exchange (IDX), stated that the level of capital market literacy has decreased from 4.92% to 4.11%. Meanwhile, inclusion has increased from 1.55% to 5.19%. It was also found that the Indonesia Stock Exchange (IDX) imposed sanctions on two securities for conducting short selling transactions without the exchange's approval. These two securities are PT Reliance Sekuritas Indonesia Tbk. (RELI) and PT Valbury Sekuritas Indonesia. The literacy level significantly influences the choices of novice investors in their activities in the capital market, particularly those who use brokers in stock trading. In this research, two problem formulations are posed: "What are the Capital Market Crimes in Indonesia?" and "How is the Protection for Novice Investors Against Short Selling Conducted by Securities Brokers?" The research utilizes normative and descriptive-analytical research methods. The study concludes that prohibited capital market crimes according to the Capital Market Law (UUPM) include market manipulation, insider trading, front running, and short selling. The UUPM regulates prohibitions in the practice of capital market trading. It is essential to remember that these regulations align with the law's purpose of safeguarding public order established by official bodies. Protection for novice investors is stipulated in the UUPM, emphasizing the Indonesia Financial Services Authority (Bapepam-LK) as the institution responsible for guiding and supervising the capital market. The lack of literacy among novice investors makes short selling, conducted by securities brokers, a risky endeavor. Protection is incumbent upon the state.

Keywords: Investor, Short Selling, Protection

A. Introduction

The rapid development of internet technology has an effect on the investment sector in financial digitalization. The ease of

online investment makes it easier for people to invest. However, with the advancement of technology, criminals have emerged who harm others through the use of technology.



One example is investing through online-based illegal securities companies, which promise huge profits and attract public interest. Investment is an investment, either in the form of money or other assets, in the hope of earning profits after a certain period. Knowledge about the types and aspects of investment is generally still limited in Indonesian society. There are different types of investments, including stock investments, which are a form of ownership of a company's value or proof of capital participation. That is, by buying shares of a company, a person owns part of the ownership of the company.¹

The capital market, as one of the places of transaction for business people, has different characteristics compared to other forms of markets. Initially, activities in the

capital market were conventional with the use of warkat (stock sheets), which made proof relatively easy. However, over time, transactions in the capital market have shifted to the use of advanced technology. Although this has a positive impact on the transaction process with tremendous speed and ease, it also creates new challenges related to evidence, especially in crimes in the capital market.²

Regulation III.A.10 Annex to the Decree of the Chairman of Bapepam No. Kep-42/PM/1997 dated December 26, 1997 (known as "Regulation III.10"), Stock Exchange Regulation No. II A dated February 27, 2009, KPEI Regulation, and KSEI regulation regulate securities transactions in the capital market. Stock trading transactions on the stock exchange

¹ Verens Valentio, LEGALITY OF SHORT SELLING IN CAPITAL MARKET PRACTICE IN INDONESIA, *Journal of Education and development*, Vol 8 No 1, 2020, p 159

² Sultan Syahril A kh, CHARACTERISTICS OF CAPITAL MARKET CRIME, *Journal of Business Law*, Vol 5 No 1, 2021, p 512



can be carried out through three markets, namely the regular market, the negotiation market, and the cash market.

In the regular market, an agreement is reached through an auction mechanism that begins with the giving of selling instructions from the selling investor, through the seller's broker, or giving buy instructions through the buyer's broker. In capital market transactions, the existence of securities trader intermediaries is important because they represent the interests of customers in making buying or selling transactions.

Capital market law includes rules that can be divided into *institutional regulations* and functional *regulations*. Institutional rules relate to the structure and organization of the capital market, while functional rules cover activities, procedures, licensing, and other

aspects on which the capital market runs. The purpose of capital market law is to ensure that the capital market operates in an orderly manner.³

Michael James Watson Q.C. explained that one of the principles that need to be considered in capital market law is the principle of fairness in *the market*. This principle aims to ensure the leveling of information, opportunities, and investment risks among all investors. Thus, capital market law aims to create a fair market environment and ensure that all participants have equal access to information and investment opportunities, as well as minimize risks.⁴

In relation to the capital market, the Indonesia Stock Exchange (IDX) in 2023 from the previous 10.23 million. Meanwhile,

³ I Gusti Ayu Andara Yadnya Sangaswary et.al, LEGAL PROTECTION FOR INVESTORS IN STOCK BUYING AND SELLING TRANSACTIONS THROUGH ONLINE-BASED

ILLEGAL SECURITIES COMPANIES, Journal of Legal Construction, Vol 3 No 1, 2022, p 148

⁴ Ibid



the number of domestic investors in the capital market until the end of July 2023 reached 11.4 million.⁵ The author sees this as a positive thing, but on the other hand, Head of IDX Research Division Verdi Ikhwan said the current capital market literacy rate has dropped from 4.92% to 4.11%. Meanwhile, inclusion rose from 1.55% to 5.19%.⁶ It was also found that the Indonesia Stock Exchange sanctioned two securities for conducting short selling transactions without Exchange approval. The two securities are PT Reliance Sekuritas Indonesia Tbk. (RELI) and PT Valbury Sekuritas Indonesia.⁷ This level of literacy will affect the choice of novice investors towards trading in the capital market, where novice investors lack

depth and understanding of capital market literacy, especially investors who use brokers in their stock trading.

However, to prevent negative impacts that may arise from transactions in the capital market, the role of the Financial Services Authority (OJK) and the Stock Exchange in supervising the capital market needs to be improved. It aims to create an orderly, fair, and efficient capital market. With stricter supervision measures, it is expected to create an environment in the Indonesian capital market that provides comfort for investors, especially novice investors in investing.

B. Problem Statement

With the background of the research, it can be formulated as follows:

⁵Romys Bineksari, Many Capital Market Investors Just Try, <https://www.cnbcindonesia.com/market/20230915164745-17-472870/banyak-investor-pasar-modal-cuma-coba-coba>, accessed November 9, 2023

⁶ Ibid

⁷ Annisa Kurniasari Saumi, Resolute! Exchange Sanctions Two Securities Due to Short Selling

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1. What is Capital Market Crime in Indonesia?

2. What is the protection of novice investors against *short selling* carried out by securities brokers?

C. Research Objectives

The objectives of this study are:

1. To Know Capital Market Crime in Indonesia
2. To know the protection of novice investors against *short selling* carried out by securities brokers.

D. Research Methods

The type of legal research used is normative legal research, which is "legal research carried out by examining library materials or mere secondary data."⁸ So here

the author will examine secondary data that researchers obtain that are related to the problems that researchers raise. By its nature it is descriptive analytical.⁹

E. Research Results and Discussion

1. Capital Market Crime in Indonesia

The sustainability of very complex capital market transactions is often inseparable from the occurrence of crimes committed by capital market participants themselves. Some of the reasons assumed to be related to the occurrence of crimes and violations in the capital market involve mistakes from perpetrators, weaknesses in the apparatus that include aspects of integrity and professionalism, and weaknesses in regulations.¹⁰

⁸ E. Elviandri, and A. I. shaleh, "Protection of Indonesian Migrant Workers in the New Habit Adaptation Period in Central Java Province," Indonesian Journal of *Legal Development*, vol. 4, no. 2, pp. 245-255, May. 2022. <https://doi.org/10.14710/jphi.v4i2.%p>

⁹Satjipto Rahardjo, *Sociology of Law Method Development and Problem Choice*, (Surakarta:

Muhammadiyah Publishers, 2004), p. 1. Compare also in Satjipto Rahardjo Ilmu Hukum, (Bandung: Citra Aditya Bakti Publisher, 2000)), p. 70.

¹⁰ Mikail Cesario A, Yudho Taruno Muryanto, THE EFFECTIVENESS OF CAPITAL MARKET LAW ON INVESTOR LEGAL PROTECTION IN MARKET MANIPULATION IN THE



Mistakes made by capital market participants can involve various factors, including negligence, manipulative actions, or ethical violations in transaction activities. Weaknesses in the apparatus, such as lack of integrity and professionalism, can also provide an opening for crime in the capital market. In addition, weaknesses in regulations or non-compliance with fast-evolving market dynamics can be a trigger for violations.

To mitigate the risk of crime and violations in the capital market, continuous efforts are needed to improve the integrity of market participants, improve the professionalism of supervisory officials, and review and update capital market regulations in order to accommodate changes and growing complexity.

Violations and activities in the capital market are increasingly complex, one of which is influenced by the increasing complexity of techniques used by certain parties in committing crimes in the capital market. The Capital Market Law (UUPM) regulates prohibited matters in the capital market which will be explained as follows:

a. Market Manipulation

Market manipulation is one of the crimes in the capital market prohibited by the Capital Market Law (UUPM), because such actions can damage the market and are carried out in an unfair manner. The importance of information about trading activities, market conditions, and stock prices on the Stock Exchange is needed by the investor community.¹¹ This information is reflected in the strength of

INDONESIAN CAPITAL MARKET, Journal of Private Law, Vol 10 No 2, 2022, p 275

¹¹ Ibid



selling offers and offers to buy securities, and becomes the basis for making investment decisions, which is regulated as long as 92 of the Capital Market Law (UUPM) also expressly prohibits price manipulation. The article states, "Each Party, either individually or jointly with other Parties, is prohibited from carrying out 2 (two) or more securities transactions, either directly or indirectly, so as to cause the price of securities on the Stock Exchange to remain, rise, or fall with the aim of influencing the other Party to buy, sell, or hold securities."

The act of price manipulation involves a series of securities transactions conducted by one Party or several conspiring parties, thus creating a security price that does not reflect the actual strength of demand for

the sale or purchase of securities. The purpose of this manipulation is to benefit oneself or the other party. This prohibition against price manipulation aims to maintain the integrity of the capital market, ensure that the price of securities reflects actual market conditions, and prevent practices that can harm investors and undermine confidence in the capital market.¹² The case of PT Bank Pikko Tbk's stock transaction involving Benny Tjokrosaputro in 1997 is one example of a market manipulation case that occurred. In this case, Benny Tjokrosaputro conducted stock transactions using 13 different names, which resulted in Bank Pikko's share price rising by 20%. This action then allows the stock to be sold at a high price,

¹² M. Irsan Nasarudin and Indra Surya, *Legal Aspects of the Indonesian Capital Market*, Ctk. Keenam, First Edition, Kencana, Jakarta, 2010, p. 10.



even though that price does not reflect the true value of the stock.

The impact of this manipulation is the occurrence of distortions in stock prices, which do not reflect the real state of the market and can harm other investors. For this action, Benny Tjokrosaputro was sentenced to pay the profits obtained from the manipulation and a fine of 1 billion rupiah to the state treasury. The penalty aims as a sanction and as an effort to prevent market manipulation practices that can harm the integrity of the capital market and investor confidence.

b. *Insider Trading*

Insider trading is a practice in which a person who has access to or proximity to a company trades stocks using information that has not been disclosed to

the public. This practice involves individuals having access to information that is not yet known to the general public, and that information has a significant material impact on the value of a company's stock.

In insider trading, the person involved uses the information for personal gain by conducting stock transactions before the information is officially announced to the public. These actions can hurt other investors who do not have access to such information, as well as undermine the integrity of capital markets. Therefore, insider trading is usually prohibited by law to maintain fairness and transparency in stock trading.¹³

Munir Fuady's description of insider trading includes stock trading conducted

¹³ Rondonuwu, Jelita G. "STUDY OF INSIDER TRADING ACTIONS AS A FORM OF VIOLATION OF BUSINESS TRANSACTIONS IN THE

CAPITAL MARKET IN THE GLOBAL ERA." *LEX ET SOCIETATIS* 9, no. 1 (2021), p 154



by individuals who have close proximity or direct access to a company. This trading activity is based on the presence of material information that has not been disclosed to the public, so that the individual can obtain economic benefits privately. This practice is considered a way of profiting unreasonably or through shortcuts, as the individuals involved make use of information that is not available to the general public.¹⁴

UUPM regulates insider trading in UUPM Chapter XI, which also regulates fraud, and market manipulation The provisions of insider trading are regulated in articles 95 to 99.

Ouska allegedly directed her client to sign an investor fund account (RDI) management contract with her affiliated

company, PT Mahesa Strategist Indonesia (MSI). The contract authorizes MSI to place funds into various investment portfolios.

In further developments, clients' investment funds were used to purchase several stocks and mutual funds, including the purchase of shares of PT Sentral Mitra Informatika Tbk (LUCK). However, when the values of the portfolio declined, especially LUCK shares, problems arose quickly, where the investment loss value of 41 Jouska customers reached Rp 16 billion. The cause of the loss was caused by Jouska's actions in placing customer investment funds in stock instruments and experiencing a significant decrease in value.

c. *Front Running*

¹⁴ Munir Fuady, Modern Capital Market, PT. Citra Aditya Bakti, Bandung, 1996, p. 167.



Front Running is a practice in which members of the Stock Exchange make prior transactions on a particular security, based on information that its customers will make large volumes of transactions on that securities that are expected to affect market prices. The goal of *Front Running* is to make a profit or avoid a loss.¹⁵

According to the definition of *Front Running* quoted from Stock Exchange regulation No. IV, members of the stock exchange (brokers / brokers) know that their customers will make transactions in large quantities. In practice, members of the stock exchange, both those who sell and buy, make transactions first before their customers, with the aim of getting capital gains. In this way, they master a

large number of securities in advance, allowing them to manipulate market prices more easily. The goal is that the market price can be controlled by them, so that they can get the maximum profit from the market games they do.

The occurrence of *Front Running* reflects the existence of certain party interests that do not consider the consequences of their actions on others. In this context, the rules that have been set are often ignored, because the priority for those involved in the practice of *Front Running* is to get the maximum profit.

d. *Short Selling*

Short selling is a stock selling mechanism in which the seller does not own the shares transacted at the time the transaction is made. Sellers short sell in

¹⁵ Supervision Regulation Number IV A. concerning General Provisions for Supervision of Securities Trading.



the hope of a decline in stock prices. At the closing of the transaction, the seller will look for shares in the market to fulfill delivery obligations arising from the *short selling* transaction he made.¹⁶

In a simple short selling scheme, the seller does short selling by borrowing shares first, and after that looking for shares on the exchange to return the borrowed shares. In the Indonesian Capital Market Law, the concept of short selling is regulated under Article 43 and Article 44.

By looking at the previous explanation of crime in the capital market, it is interesting to be associated with the theory of the purpose of law, where the purpose of law is to establish order in human association, so that security and

order are maintained. coercive, which determines human behavior in society made by official authorities bodies, violations of which result in certain legal actions.¹⁷ The existence of the UUPM regulates in such a way regarding prohibitions in capital market trading practices, it should be recalled that it is in accordance with its own legal objectives to maintain coercion made by official bodies and for the public.

When harmonized by UUPM with Jeremy Bentham's opinion, Jeremy Bentham states that the purpose of law and the concept of justice is to create "*the greatest happiness of the greatest number*". According to Bentham, the purpose of the rule of law is to generate happiness for society. Therefore, legal

¹⁶ Putri, Erika Liza, Yuni Rahmi, and Zul Azmi. "Legal Protection in Short Salling Transactions in Capital Markets." *Research in Accounting Journal (RAJ)* 2, no. 4, 2022, pp 500-506.

¹⁷ Mushafi, Mushafi. "The Existence of Legal Philosophy and Its Contribution to National Law." *Voice Justisia: Journal of Law and Justice* 4, no. 1 (2020): pp. 82-103.



regulations must strive to achieve four main objectives, namely:¹⁸

- a. *To provide subsistence*
- b. *Provide abundance*
- c. *To provide security*
- d. *To attain equity*

By achieving these four goals, Bentham believes that law can be an effective instrument to improve the happiness and welfare of society as a whole, in the UUPM the author can assess its relationship with Bentham's utilitarianism.

2. Protection of novice investors against *short selling* carried out by securities

Talking about novice investors that the author has described in the background, it needs to be explained further that the one who provides protection to investors is Bapepam-

LK, this is stated in the UUPM where this Authority operates under the Ministry of Finance with the task of fostering, regulating, and supervising the capital market. In its implementation, Bapepam-LK is under the direct supervision and responsibility of the Minister of Finance. Bapepam-LK has the authority to carry out legal protection of the capital market with a preventive and repressive approach.

In order to protect investors, issuers who plan to sell securities through a Public Offering are required to provide investors with the opportunity to read the prospectus related to the securities to be issued. This opportunity is provided before the securities booking is made or while the booking is in progress. After that, Bapepam-LK ensures the completeness and clarity of issuer

¹⁸ Kurniawan, I. Gede Agus. "The Constitutional Court's Ruling on the Job Creation Law in the

Perspective of the Philosophy of Utilitarianism." *USM Journal Law Review* 5, no. 1 (2022) pp. 282-298.



documents related to the Public Offering as a step to comply with the principle of openness in the capital market. It is important to remember that a securities prospectus plays a key role as the initial and time door for investors to consider whether or not to buy the securities.¹⁹

Bapepam-LK continues to take precautions by stipulating that the prospectus of securities must not contain misleading content or incorrect information regarding Material Facts, and must not present inaccurate information regarding the advantages and disadvantages of the securities offered. Bapepam-LK practically sets standards for the preparation of prospectuses for securities to be offered. This protection measure was initiated when Bapepam-LK granted licenses to SROs,

mutual funds, securities companies, and other supporting professions to operate in the capital market.

Please note that opening an account is the first step needed so that investors can make securities transactions on the stock exchange. However, if an investor wishes to use the short selling financing facility, they must sign a securities transaction settlement financing agreement. Short selling transactions are regulated in the form of agreements that reflect the principle of freedom of contract between securities companies and customers or investors. This agreement outlines the rights and obligations of both parties as part of an agreement that also provides legal protection.

However, it is important to note that the use of *short selling* facilities deserves

¹⁹ Destina Paningrum, S. E. *Capital market investment reference book*. Lantern Brahmin Chakra Institute, 2022. p 67



special attention, especially by novice investors. This becomes even more important because the level of investment literacy in novice investors is generally low, as explained in the previous context.

Short selling is indeed a facility that allows investors to make profits in the midst of falling market conditions. However, often short selling is considered a factor that can trigger a decrease in the value of the capital market. Against securities actions that harm investors.

The author underlines preventive actions from authorized institutions, because novice investors currently lack literacy in the capital market, which makes them risky for crime in the capital market. This is based on article 4 of Law Number 8 of 1995 on Capital Market, it is stated that "Guidance,

regulation, supervision as referred to in Article 3 are carried out by Bapepam with the aim of realizing the creation of orderly, fair, and efficient Capital Market activities and protecting the interests of investors and the public."

The phrase protecting the interests of financiers and construction when linked to Roscoe Pound's theory of interest states that the law must play a role in balancing competing interests in society in order to achieve the greatest profit, Pound further explained.²⁰

- a. Individual interests encompass the claims or demands arising from an individual's life, including interests in personality, domestic relations, and material possessions.

²⁰ Ali, H. Zainuddin. *Sociology of law*. Sinar Grafika, 2023.



- b. Public interest pertains to the claims or desires asserted by individuals within the context of political life. This implies that every individual in a society bears a responsibility towards one another and should utilize resources that are accessible for public use.
- c. Social interest involves the claims or demands related to social life, aiming to satisfy the collective needs of an entire society for its effective functioning and maintenance.

In the Pound's view, there is a question of the need for law to maintain a balance between interests. However, Pound is less likely to dive further into this balancing issue, as he leaves the responsibility to the law-carrying body, the state, to carry it out.²¹ Therefore, Pound explains the balancing between individual interests and social

interests. The public interest, according to him, is an interest that is the responsibility of the state, both as a subject of law and as a guardian of social interests, especially in this context related to novice investors who have private interests.

Therefore, the protection provided to novice investors must include coaching as well as protecting the interests of investors, which is carried out to the legal development institution, namely the state.

F. Conclusion

From the discussion above, in this study two conclusions can be drawn, namely crimes in the capital market that are prohibited according to the UUPM include market manipulation, *insider trading*, *front running*, *short selling* where the existence of the UUPM regulates in such a way regarding the prohibition of capital market trading

²¹ Ibid



practices, it should be recalled that it is in accordance with the law's own objectives to maintain coercion made by official bodies and for the public. Protection for novice investors is regulated in the UUPM which confirms Bapepam-Lk as a development institution, supervision in the capital market. The lack of literacy by novice investors makes it risky to do *short selling* carried out by securities brokers. Protection is charged to the state.

Bibliography

1. Book

Ali, H. Zainuddin. Sociology of law. Sinar Grafika, 2023.

Satjipto Rahardjo, Sociology of Law Method Development and Problem Choice, (Surakarta: Muhammadiyah Publishers, 2004)

2. Journal

Destina Paningrum, S. E. Capital market investment reference book. Lantern Brahmin Chakra Institute, 2022.

Elviandri, and A. I. Shaleh, "Protection of Indonesian Migrant Workers in the New Habit Adaptation Period in Central Java Province," Indonesian Journal of Legal Development, vol. 4, no. 2, pp. 245-255, May. 2022. <https://doi.org/10.14710/jphi.v4i2.%p>.

I Gusti Ayu Andara Yadnya Sangaswary et.al, LEGAL PROTECTION FOR INVESTORS IN STOCK BUYING AND SELLING TRANSACTIONS THROUGH ONLINE-BASED ILLEGAL SECURITIES COMPANIES, Journal of Legal Construction, Vol 3 No 1, 2022,

Kurniawan, I. Gede Agus. "The Constitutional Court's Ruling on the Job Creation Law in the Perspective of the Philosophy of Utilitarianism." USM Law Review Journal 5, no. 1 (2022)

M. Irsan Nasarudin and Indra Surya, Legal Aspects of the Indonesian Capital Market, Ctk. Sixth, First Edition, Kencana, Jakarta, 2010

Mikail Cesario A, Yudho Taruno Muryanto, THE EFFECTIVENESS OF CAPITAL MARKET LAW ON INVESTOR LEGAL PROTECTION IN MARKET MANIPULATION IN THE INDONESIAN CAPITAL MARKET, Journal of Private Law, Vol 10 No 2, 2022

Mushafi, Mushafi. "The Existence of Legal Philosophy and Its Contribution to National Law." Voice Justisia: Journal of Law and Justice 4, no. 1 (2020):



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2024

Putri, Erika Liza, Yuni Rahmi, and Zul Azmi.
"Legal Protection in Short Salling
Transactions in Capital Markets."
Research in Accounting Journal (RAJ)
2, no. 4, 2022,

cuma-coba-coba, accessed November
9, 2023

Rondonuwu, Jelita G. "STUDY OF
INSIDER TRADING ACTIONS AS A
FORM OF VIOLATION OF
BUSINESS TRANSACTIONS IN
THE CAPITAL MARKET IN THE
GLOBAL ERA." LEX ET
SOCIETATIS 9, no. 1 (2021), p 154

Sultan Syahril A kh, CHARACTERISTICS
OF CAPITAL MARKET CRIME,
Journal of Business Law, Vol 5 No 1,
2021

Verens Valenthio, LEGALITY OF SHORT
SELLING IN CAPITAL MARKET
PRACTICES IN INDONESIA,
Journal of Education and development,
Vol 8 No 1, 2020

3. Website

Annisa Kurniasari Saumi, Resolute!
Exchange Sanctions Two Securities for
Short Selling "Resolute! Exchange
Sanctions Two Securities Due to
ShortSelling",
[https://market.bisnis.com/read/202112
24/7/1481561/tegas-bursa-berikan-
sanksi-ke-dua-sekuritas-akibat-short-
selling](https://market.bisnis.com/read/20211224/7/1481561/tegas-bursa-berikan-sanksi-ke-dua-sekuritas-akibat-short-selling). Retrieved November 9, 2023

Romys Bineksari, Many Capital Market
Investors Just Try,
[https://www.cnbcindonesia.com/mark
et/20230915164745-17-
472870/banyak-investor-pasar-modal-](https://www.cnbcindonesia.com/market/20230915164745-17-472870/banyak-investor-pasar-modal-)