



LEGAL ENFORCEMENT AGAINST PT.SEKAWAN INTIPRATAMA, TBK REGARDING MARKET MANIPULATION CASE IN INDONESIAN STOCKS EXCHANGE

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Abstract

The background of this legal research on criminal acts of Market Manipulation conducted by PT.Sekawan Intipratama, Tbk (SIAP) assisted by three securities companies, namely PT. Danareksa Sekuritas, PT.Reliance Securities and PT.Millennium Danatama Sekuritas which aims to gain fresh funds in the framework of the acquisition of a coal mining company. Therefore, the financial services authority (OJK) and the Indonesia Stocks Exchange (IDX) are conducting investigations to discover the main perpetrators in the case of Market Manipulation against SIAP. The purpose of this legal research is to find out the role of IDX and OJK in completing cases of Market Manipulation against SIAP and to answer whether or not the theory that can explain criminal acts of Market Manipulation against SIAP. As for the results of this research, OJK are not yet providing file examination of this case to the Court because OJK still checks the case that the case will be released 6 months-1 year after file examination has been accepted by OJK from BEI. In recommendation, the authors hope to OJK not to postpone the examination of the parties involved in the case of Market Manipulation against SIAP

Keywords: *Legal Enforcement, Market Manipulation, IDX, OJK*

A. Background

The capital market¹ plays significant role in the national economy. It mobilizes funds from people for further investments in the productive channels of economy, activating idle monetary resources and put them in proper investments². Capital market unites the fund suppliers with the fund users in the purpose of *middle-term investment* and *long-term investment*. Capital markets consist mainly equity and debt instrument, it provides an avenue for raising the financial needs of business through equity and long-term debt by attracting investors with kinds of investments³.

The capital market business also in the Legal aspect due to the Government as a facilitator for investors in Indonesia should be able to provide certainty and legal protection regarding capital market Investments. In the end, the Government started its efforts in providing protection and legal certainty to invest as published in Act Number 8/1995 of Capital Market, Act No.21/2011 of the Financial Services Authority (OJK)⁴, Act No.40/2007 of Limited Corporation (UUPT)⁵, Indonesian Commercial Code (KUHD), Indonesian Civil Code (KUHPer), and other regulations under the Act relating to the capital market. The publication of some Legal product is expected to serve as one

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¹According to Rosenberg: Capital Market is “*the place through which the buying and selling of stock for the purpose of profit for both buyers and sellers of the security take place*”.

²http://www.finance.gov.pk/survey/chapter_12/06-CapitalMarkets.pdf page 81

³Supra note at 2, p. 81.

⁴Inda Rahadiyan, *Hukum Pasar Modal di Indonesia “Pengawasan Pasar Modal Pasca Terbentuknya Otoritas Jasa Keuangan”*, UII Press, Yogyakarta, 2014, p.4.

⁵Ridwan Khairandy, *Hukum Pasar Modal “Chapter One”*, FH UII Press, Yogyakarta, 2010, p.10.



of the aspects which are quite competitive in attracting investors to infuse capital in Indonesia. This relates to the Government's plans to bring about a national economy that is able to grow in a steady, orderly, fair, transparent, accountable, and sustainable and able to protect the interests of consumers and the public.

Things behind their Government to publish some of the products the law on capital market development is very rapid Globalization process, particularly in the financial sector⁶, the incidence of a wide range of business risks are increasingly complex as a consequence rather than a combination of advances in information technology and financial innovation that produces a wide range of financial products with a high degree of complexity, the occurrence of a conglomeration of financial institutions⁷. Both at the level of domestic, regional, and global, flows of capital movement that runs very fast, and to anticipate the attacks of the global financial crisis.

For example relating with the case for stock market Investment is capital market manipulation cases conducted by the plurality of persons which aims to make the stock price into a pseudo/not sure and mislead the investors. For the real case in which happen in 2015⁸ is the market manipulation case and the failure to pay the shares of PT.Sekawan Inti Pratama,Tbk (SIAP) accompanied by PT.Danareksa Sekuritas, PT.Reliance Securities, and PT. Millenium Danatama Sekuritas. The chronology of the case is when one of the controlling shareholders of SIAP there are looking for assets that can be taken over to the new company affixed to the acquisition so that the SIAP stock prices can go up. The shareholders met with one of the parties have about five to seven IUP (Mining permission letters) of coal. In the results of

its survey, the coal company that had deposits of about 400 million tons of coal with a value of Rp 5 trillion. Unfortunately, the mining company allegedly new observation and haven't done the production altogether. The company's acquisition plans came the coals by SIAP. SIAP which needs fresh capital finally published the right issue, in which the funds obtained would be used to buy Coal Company. So the acquisition could be done without funds altogether, or as if there is incoming funds from the issuance of new shares and used to buy property for their own company. After this, the SIAP Company's business is switched from plastic production to the production of coal.

After getting into the coal business, SIAP stock prices start uphill from below Rp 200 per sheet become Rp 460 per sheet. From here one of the market makers attracts loans with guarantee of stock ready or can be called with the repo (repurchase agreement). For example, the shareholders hold 1 billion sheets at the price of Rp 400/sheets so the total price is Rp 400 billion. SIAP undertake this repo to finance the working capital of the company. Unfortunately, the repo is rumoured not to be used for the benefit of the company, but for personal interest. As a result, when holder of repo is supposed to return the shares and get their money back, the owner of the shares previously had no money. The market was not ready to accommodate so that its price plummeting. In the case of the repo against SIAP, the stock is forced to be sold into the market (forced sell) so there are some brokers who allegedly failed to settlement. As a result, the three brokers who are play in this case (PT.Danareksa Sekuritas, PT.Reliance Securities, and PT.Millenium Danatama Sekuritas) should be stopped while performance by Indonesia Stocks Exchange (IDX).

⁶ Hamud M. Balfaz, *Hukum Pasar Modal di Indonesia*, Tata Nusa Press, Jakarta, 2012, p.1.

⁷ Sulistiowati, *Aspek Hukum dan Realitas Bisnis Perusahaan Grup di Indonesia*, Erlangga Press, Jakarta, 2010, p.15.

⁸ <http://www.jurnalasia.com/2015/11/12/goreng-saham-pt-sekawan-rp400-miliar-bei-suspensi-danareksa-reliance-dan-millenium/>



About "Das Sollen" to the example case above, it is evident that the Government has published a legal product is associated with a stock market that had previously been the author explain. But in terms of "Das Sein", since from 1995 to the present, Government in fact already formed some special team to oversee the movement of the capital market Supervisory Agency such as Otoritas Jasa Keuangan (OJK), and Indonesia Stocks Exchange (IDX), But the law enforcement efforts, the Government has trouble enough to implement it due to criminal acts in the area of capital markets has distinctive characteristics, i.e., among others, is the stuff of which became the object of a criminal offence is the alias information is not visible. Besides the perpetrator of a criminal offence in the capital markets is not to rely on physical abilities such as theft or assault, but rather rely on the ability to read the market situation and therefore to do the investigation and inquiry are likely to be difficult for revealed them⁹.

Because of that, the author makes the Method of Legal Research with the title is "Legal Enforcement against PT. Sekawan Intiprama, Tbk regarding Market Manipulation Case in Indonesia Stock Exchange". The title was chosen because considering the role of the capital market which is very essential in the life of the economy especially in countries such as Indonesia is the practice of artificial transactions to the detriment of not only the investors, but the wider community also affected mainly the shareholders. As well as the capital market so that it can develop the required the existence of a solid legal basis to guarantee the legal certainty of the parties conducting activities on the capital market and protect the interests of the community financier of harm practices¹⁰.

And given that the presence of investment can move the State economy¹¹.

B. Main Study

1. The role of OJK and IDX in Market Manipulation case regarding with PT.Sekawan Intipratama,Tbk

a. Role of OJK

OJK (Financial Services Authority) is an independent institution and free from interference by other parties, which has the functions, duties, and authority to regulate, control, inspection, and investigation (in financial business activity)¹². OJK replace the role of Bapepam-Lk as external supervisor of financial activity because in order to realize the national economy was able to grow in a sustainable and stable, necessary activities in the financial services sector was on a regular basis, fair, transparent, and accountable, as well as being able to realize the financial system grows in a sustainable and stable, and able to protect the interests of consumers and society¹³. The authorities of OJK relating with this case are¹⁴:

1. Organize a screening and investigation against any party in the event of events alleged a breach of UUPM and regulations implementation.
2. Pointing other party to perform certain inspection in the framework of the investigation against any party in the event of events alleged a breach of UUPM and regulations implementation.
3. Announcing the results of the examination to the public.
4. Freeze or cancel the recording of an effect on the stock exchange over stock transactions or stop a particular effect for a certain period in order to protect the interests of investors.

⁹ Surya, Nasarudin, *Aspek Hukum Pasar Modal Indonesia*, Prenada Media, Jakarta, 2004, p.258-260.

¹⁰ Act No.8/1995 of Capital Market phrase consideration.

¹¹ Hendrik Budi Untung, *Hukum Investasi*, Sinar Grafika, Jakarta, 2010, p.15.

¹² Art.1 (1) Act no.21/2011 of OJK

¹³ Art.51 Act no.21/2011 of OJK

¹⁴ Inda Rahadian, *Op.Cit*, p.101-102



5. Stop the trade stock exchange activities for a certain period in case of an emergency.

b. Role of IDX

Indonesia Stock Exchange (IDX) is the party that organizes and provides system and or the means to bring together offer buy and sell securities other parties with the aim of trade effects between them¹⁵. IDX authority in this case according to the Stock Exchange Rule No. II-A regarding Trading on Equity is¹⁶:

1. Overseen Securities Trading;
2. Monitor information on each Effects;
3. Ask for an explanation to members of the Stock Exchange;
4. Request a disclosure to the Issuer and a member of the Stock Exchange;
5. Give Administrative Sanction.

c. Investigation and Inquiry of PT.Sekawan Intipratama, Tbk Case

In the case of law enforcement, the OJK in cooperation with IDX to uncover market manipulation crimes committed by SIAP. The first step undertaken by OJK is appoint IDX to hold examination of 10 securities companies and the Board of Directors of SIAP alleged of Market Manipulation. Previously, due to the decline in the stock price going beyond reasonableness, IDX had decided to stop trading shares of SIAP on 2 November 2015 because rated moves outside the limits of reasonableness. As is known, the stock of SIAP is Rp110/sheet or down 46.81% of the closing price of Rp235/sheet on October 16, 2015 is Rp125/sheet on October 30, 2015¹⁷.

The result of the examination toward 10 securities companies by BEI, on 11 November 2015, Tito Sulistio, President Director of IDX, says that 3 of 10 securities companies that have been examined by the IDX namely PT.Danareksa Sekuritas, PT.Reliance Securities, and PT.Millennium Danatama Sekuritas suspended trading of shares in the case of the pawn transaction stock ready. He said that three such broker proven violation in the case of pawn transactions of shares of SIAP worth approximately Rp 400 billion¹⁸. On the same date, the Director of company valuation IDX, Samsul Hidayat, said that the management of IDX is still temporarily stop trading shares of SIAP. This termination related to the movement of stock ready that's unnatural. According to him, the cessation of the shares of SIAP aim is in order the examination of the management of SIAP in this case¹⁹.

Then, on November 12, 2015, IDX revoke the decision of suspension of trading in shares of SIAP and 3 securities corporation already established by IDX alleged Market Manipulation, in which a total of Rp 400 billion worth of trading while bestowing the case to OJK. However IDX did not want to reveal to the public because it is not the authority of IDX, but rather authority of OJK. IDX only served to give data the results of the investigation to OJK²⁰.

Then on November 23, 2015, the main Commissioner of OJK, Muliaman D Hadad, said that OJK has received the final results of the investigation by IDX related with Market Manipulation case regarding the shares of PT.SIAP. However, Muliaman was reluctant to reveal the contents of the final report of the in-depth investigation²¹.

¹⁵ Art.1 (4) Act no.8/1995 of Capital Market

¹⁶ Chapter II IDX Regulation no II-A of Equity Effects Transaction

¹⁷ <http://www.neraca.co.id/article/61216/ojk-belum-ambil-sikap-soal-kasus-siap>

¹⁸ <http://market.bisnis.com/read/20151111/7/491034/transaksi-gadai-saham-terkait-kasus-repo-siap-3-broker-disuspensi-otoritas-bursa>

¹⁹ <http://bisnis.liputan6.com/read/2369641/begini-penjelasan-bei-soal-status-saham-sekawan>

²⁰ <http://www.infovesta.com/infovesta/news/readnews.jsp?id=8f343114-164e-447a-b5d5-b201fb77b93f>

²¹ <http://www.indopos.co.id/2015/11/ojk-dapatkan-laporan-pelanggaran-transaksi-pt-sekawan-intipratama-tbk-siap.html>



Then, on December 3, 2015, OJK finally formed a special team to handle the cases of Market Manipulation regarding the shares of PT.SIAP. The purpose of this particular OJK formed a team is to prove the truth of the investigation results of the final report has been done by BEI. For the final investigation result report has been accepted by OJK, according to OJK Chief Executive of the capital markets Supervisory, Nurhaida, said that the report is still in the process of deepening the investigative file. In addition to the process of examination of the related parties, Nurhaida have not been able to mention in advance because the file itself is still at the stage of observation²².

Finally, on March 15, 2016, the OJK raising the status of SIAP to the investigation process. From the results of the previous inspection, the OJK found the alleged criminal act in capital market committed by SIAP management. Nurhaida, Head of Capital Market Supervisory of OJK, said authorities found a number of things that must be followed. From the results of the previous inspection, the OJK found the alleged criminal act in capital market committed by SIAP management. She said also OJK found a number of things that must be followed. If found guilty, there will be a penalty will be imposed to SIAP and some of the parties involved. OJK not sure when the case of SIAP will finish. Therefore, the case is still possible to develop and involve other parties.

Until this time, OJK has not yet explained to the public who truly are the prime suspect and the other suspects involved in the case of Market Manipulation conducted by SIAP and didn't yet give the file the results of an investigation of OJK to District Attorney. OJK with IDX just only give administrative sanctions namely temporary suspension of trading in the stock of PT.SIAP and the temporary suspension of the performance of the three securities

companies that allegedly assist the Board of Directors of PT.SIAP to perform Market Manipulation.

2. The theory is can explain the crime case against pseudo transactions regarding PT. Sekawan Intipratama shares.

a. Manipulation in Stocks Exchange

Manipulation is a criminal offense in which the capital market issuers (Commissioners, Board of Directors) in collaboration with the Exchange Members (Brokers) are engineering the trade that occurred in the secondary market. The interest of perpetrators to do Manipulation is so that investors will get lost in reading the movement of stock prices and ultimately the perpetrators reach benefit materially from manipulation. Manipulation is prohibited by UUPM because investors are in need of information regarding trading activity, market conditions or prices of securities is reflected in the strength of demand and supply as a basis for investment decisions.²³

The manipulation itself is divided into two types, namely Market Manipulation and Manipulation of Prices²⁴. Market manipulation is a criminal offense in the capital market where the actors create a picture of misguided regarding trading activity, market conditions and prices of securities on the Stock Exchange²⁵. This is done by the Issuer in collaboration with the Exchange Member by conducting securities transactions without any changes to the ownership of the securities or the offering of securities at a specified price where sellers and buyers have conspired to make an offer selling price and the purchase price at the same price²⁶. Meanwhile, price manipulation is a criminal offense of capital markets where the Issuer with the Exchange Members conduct securities transactions more than doubled so that the price of these

²² <http://news.lewatmana.com/investigasi-kasus-siap-ojk-bentuk-tim-khusus/>

²³ Art.91 Act no.8/1995 of Capital Market.

²⁴ Hamud M. Balfas, *Op.Cit*, p.501.

²⁵ *Ibid*, p.501.

²⁶ *Ibid*, p.501-502.



securities be raised, lowered or remain so investors are tempted to buy, sell or hold such securities.²⁷

3. Theory of Economic Crime in Capital Market.

Economic crime is a crime, specialized in criminal law that the material is regulated in separate legislation such as the Capital Market Act or the Banking Act. Economy Crime is not regulated in the Criminal Code²⁸. In terms of the rule, economic crime is an administrative penal law is a criminal offense as part of the administrative law of the State which has criminal sanction. For the provision of criminal sanctions, administrative penal law which is derived from the principle of subsidiarity tends to be dependent crime. Therefore, economic crime is generally a last resort when civil law and administrative law ineffective.²⁹

In general, economic crime carried out by the Corporation (Legal Entity, Company, Union and Foundation) if the offense is committed by someone who has a relationship with the corporation. The elements of the act in Economy Crime does not rest on one person, but can be spread over more than one person acting³⁰. According to Sutan Remy Syahdeni³¹, there are two doctrines that explain who is responsible for Corporate Crime namely Intra Vires Doctrine and Doctrine Identification Theory.

From both these doctrines can be concluded that the Corporation does not take over legal responsibility for acts committed by corporate personnel (directors, commissioners) who acted in accordance with the intent and purpose of the company. While the Corporation will be responsible if the corporation personnel act as the directing mind carried out in accordance with the intent and purpose of

the corporation as well as provide benefits for corporations.³²

C. Conclusion and Recommendation

1. Conclusion.

a). OJK is an independent Commission tasked to supervise the movement of the financial sector, including venture capital market and its law enforcement with several authority based on laws on the capital market (UUPM) and the Act on the financial services authority (UU OJK) previously the task entrusted by the Bapepam-Lk. Meanwhile, IDX is party that organizes and provides system and or the means to bring together offer buy and sell securities other parties with the aim of trade effects between them and has the authority to oversee the activities of stock exchanges based BEI Regulation No. II-A regarding Trading on Equity Securities. For the legal enforcement, OJK has employed BEI to cooperate in the process of examination and investigation of the case against Market Manipulation of SIAP. The result is started from an examination of 10 securities companies and the Board of Directors of SIAP to be associated in this case by BEI, then sanctions suspension of business activity by BEI to three securities companies that allegedly helped PT.SIAP in Market Manipulation, and also give the sanctions suspension from sale of shares of PT.SIAP, and then granting file inspection by the BEI to OJK, and then the establishment of the investigation team and the advanced examination conducted by OJK against parties who is suspected of being the perpetrator of a criminal offence against Market Manipulation, and the last is the announcement of OJK job to the public about the results of the checks carried out by the temporary regarding criminal acts against Market Manipulation conducted by SIAP.

²⁷ Art.92 Act no.8/1995 of Capital Market.

²⁸ Luhut Pangaribuan, *Hukum Pidana Khusus: Tindak Pidana Ekonomi, Pencucian Uang, Korupsi dan Kerjasama Internasional serta Pengembalian Aset*, Pustaka Kemang, Depok, 2016, p.33

²⁹ *Ibid*, p.35.

³⁰ *Ibid*, p.47.

³¹ Sutan Remy Syahdeni, *Pertanggungjawaban Pidana Korporasi*, Grafiti Pers, Jakarta, 2006, p.72

³² Luhut Pangaribuan, *Op.Cit.*, p.49-50.



b). Economy Crime is a criminal offense that is not governed by the Criminal Code, but regulated in special legislation. In terms of the rule, economic crime is an administrative penal law is a criminal offense as part of the administrative law of the State which has criminal sanction. There are two doctrines that explain who is responsible for Corporate Crime namely Intra Vires Doctrine and Doctrine Identification Theory. From both these doctrines can be concluded that the Corporation does not take over legal responsibility for acts committed by corporate personnel (directors, commissioners) who acted in accordance with the intent and purpose of the company. While the Corporation will be responsible if the corporation personnel act as the directing mind carried out in accordance with the intent and purpose of the corporation as well as provide benefits for corporations.

2. Recommendation

a). For legal enforcement, the performance of OJK and BEI quite good. But granting administrative sanctions to three securities companies and PT.SIAP less firmly due to the length of the sanction provided by BEI for only 1 day and according to the author is less effective. Supposedly, the time period for such sanctions must be long until the examination file has been submitted to OJK. The authors hope if there is again a criminal case on the scope of the capital markets parties OJK and BEI should give administrative sanctions more forcefully, even criminal sanction to the perpetrator, so that the parties are companies and securities can improve its company management to work better.

b). According to the writer's observation, the Board of Commissioners of SIAP should be responsible for the crime of market manipulation because of the activities undertaken by SIAP is aiming to gather fresh funds in order to process the acquisition of a company engaged in coal

mining, which is where the idea came from one of the Board of Commissioners. It can be explained that because there are two doctrines which explain who is responsible for the criminal acts of corporate namely Intra Vires and Identification Theory. For law enforcement itself, the OJK should apply both the doctrine that the OJK is easy to determine who is responsible and law enforcement process can be fast. If not, the State could be said to fail in enforcing the law in the capital markets and have a huge legal implications of the actors in the capital markets business.

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