

# Unravelling Financial Wrongdoing: A Regulatory Perspective on Crimes in the Indonesian Capital Market

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## Abstract

The perpetration of offenses within the capital market sector represents a multifaceted challenge, compounded by the intricacies associated with evidentiary establishment and legal pursuit within a judicial context. The research aims to assess the role of Indonesia's capital market in its economic development and the impact of regulatory evolution, particularly the transition from BAPEPAM to OJK. It also aims to analyze the effectiveness of stringent regulatory frameworks in maintaining market integrity and investor confidence while imposing legal consequences on transgressors. The research used normative research, characterized by a meticulous analysis of the normative paradigms enshrined within statutory regulations or normative constructs governing the capital market. The findings substantiate the assertion that the capital market assumes a pivotal role as a determinant of a nation's economic well-being and a catalyst for economic advancement. The evolutionary trajectory of Indonesia's capital market oversight, transitioning from the purview of Capital Market Supervisory Agency (BAPEPAM) to the Financial Service Authority (OJK), underscores the dynamic nature of financial markets and the imperative of preserving investor confidence and market integrity. The Indonesian Capital Market operates within the ambit of stringent regulatory frameworks, designed to uphold the integrity of securities trading and safeguard the interests of investors. These regulatory frameworks include explicit prohibitions against fraud, market manipulation, insider trading, and record manipulation, all aimed at fortifying transparency and nurturing ethical conduct. These measures serve as a testament to Indonesia's unwavering commitment to nurturing trust and integrity within its capital market industry, simultaneously imposing substantive legal ramifications on transgressors.

## Keywords

Capital Market; Financial Crime; Financial Watchdog; Regulatory Framework



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## Introduction

In the realm of economic instruments, the capital market is not immune to illicit exploitation by certain actors with the intention of unjustly enhancing their own wealth.<sup>1</sup> According to data from the October 2022 edition of the Financial Transaction Reports and Analysis Centre (PPATK) Statistical Report, the number of suspicious financial transactions from January to October 2022 reached 1,033 reports. This number increased 20.8% from the same period last year of 855 reports. Not a few of these reports concern modes in the capital market.<sup>2</sup> The commission of offenses within the capital market sector is a complex undertaking, compounded by the formidable challenges associated with establishing evidence and pursuing legal recourse in a court of law. This complexity is exacerbated by the inherently sensitive nature of the market, which is acutely responsive to material facts, particularly information pertaining to the capital market disseminated through reports, thereby heightening the intricacy of criminal investigations.<sup>3</sup>

Predominantly, criminal activities unfolding within the capital market milieu are executed with a high degree of professionalism, typically orchestrated by individuals commonly referred to as "white-collar" criminals. These actors conduct their activities in a manner that often leaves victims blissfully unaware of the harm inflicted upon them. In the midst of these activities, numerous stratagems are employed, many of which ultimately culminate in criminal transgressions.<sup>4</sup> Consequently, it is incumbent upon the legal apparatus to furnish a robust and comprehensive arsenal of tools, thereby preemptively averting losses and injustices suffered by society or specific parties. In light of the pivotal role that the capital market plays in underpinning the Indonesian economy, the imperative for unyielding and unambiguous legal instruments for its governance becomes

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<sup>1</sup> Ryan Brown and Andrea Velásquez, "The Effect of Violent Crime on the Human Capital Accumulation of Young Adults," *Journal of Development Economics* 127 (July 2017): 1–12, <https://doi.org/10.1016/j.jdeveco.2017.02.004>.

<sup>2</sup> Financial Transaction Reports and Analysis Centre, "Buletin Statistik Anti Pencucian Uang Dan Pencegahan Pendanaan Terorisme," 2022, <https://www.ppatk.go.id/publikasi/read/178/buletin-statistik-apu-ppt-vol-152---edisi-oktober-2022.html>.

<sup>3</sup> M. Fevzi Esen and Tutku Tuncali Yaman, "Approaches to Detect Securities Fraud in Capital Markets," 2021, 313–31, <https://doi.org/10.4018/978-1-7998-5567-5.ch017>.

<sup>4</sup> Liang-Mui Tay et al., "The Effect of White Collar Crime Announcement on Stock Price Performance," *Journal of Financial Crime* 23, no. 4 (October 3, 2016): 1126–39, <https://doi.org/10.1108/JFC-03-2015-0016>.

patently evident. The provision of such legal frameworks is indispensable for the effective regulation of this economic sector.<sup>5</sup>

Law Number 8 of 1995 encompasses a range of criminal offenses, among which fraud within the capital markets holds particular prominence, as explicitly delineated in Article 104 and Article 107 of this legislative framework. The capital market, by its very nature, categorically proscribes any activities involving securities trading that bear the hallmarks of fraudulent behavior. This prohibition arises from the potential to imperil the interests of the investing public and financiers, who have vested their capital within this domain, while simultaneously eroding public confidence in the integrity of the capital industry itself.

The typical manifestation of fraudulent conduct within the capital market transpires in the form of disseminating deceptive information pertaining to material facts or a deliberate suppression of such facts. These actions are executed with the dual intent of personal gain and the manipulation of other stakeholders, often leading them to acquire or create securities under false pretenses.<sup>6</sup> The persistence of such actions threatens the safeguarding of public investments and the overall sustainability of the capital market industry.

The promulgation of Law Number 8 of 1995 on Capital Markets serves the overarching purpose of furnishing a definitive legal framework and robust enforcement mechanisms within the capital market arena. This legal instrument serves as a pivotal means to ensure that the prevailing circumstances become an enduring and integral facet of the industry's ongoing development.

This research endeavour is underpinned by the primary objective of critically assessing the pivotal role and inherent benefits of capital markets in bolstering a nation's economic landscape. Furthermore, it seeks to comprehensively explore the dimensions of criminal transgressions encompassing crimes in the Indonesian capital market. It explores the regulatory framework provided within the country and discusses the supervision along the practice of financial activities.

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<sup>5</sup> Thi Thu Cuc Nguyen et al., "The Impact of Opportunity Factors on Fraudulent Behavior in the Vietnamese Stock Market," *Journal of Asian Economics* 79 (April 2022): 101451, <https://doi.org/10.1016/j.asieco.2022.101451>.

<sup>6</sup> Jie Xie, "Criminal Regulation of High Frequency Trading on China's Capital Markets," *International Journal of Law, Crime and Justice* 47 (December 2016): 106–20, <https://doi.org/10.1016/j.ijlcrj.2016.09.002>.

## **Method**

The employed research method is grounded in the tradition of normative legal research. This approach entails a rigorous examination of the normative frameworks enshrined within statutory regulations or norms governing the capital market. The overarching aim of this inquiry is to scrutinize these legal norms comprehensively, ensuring that their practical application aligns seamlessly with the stipulated provisions.

## **Result and Discussions**

### **The Role of Capital Markets in National Economic Development**

The capital market assumes a paramount role in the context of a nation's economic trajectory, serving as a pivotal barometer of its progress.<sup>7</sup> An emblematic feature characterizing advanced industrialized nations and burgeoning newly industrialized counterparts is the presence of thriving and evolving capital markets. Central to the evaluation of corporate well-being and economic vitality are the Composite Stock Price Index (IHSG) figures, which illuminate the status of enterprises listed on stock exchanges. Notably, IHSG assumes the dual role of a mirror reflecting a country's economic health and a harbinger of potential economic crises, as a precipitous decline in the Jakarta Composite Index (JCI) signifies tumultuous times.

Moreover, capital markets serve as a potent conduit for soliciting foreign investments and external capital inflows, thereby catalyzing the nation's economic advancement. Enterprises desiring an augmentation of their capital base may opt for the path of public offerings (going public) and subsequently divest their shares through stock exchanges, with the indispensable assistance of securities firms. Conversely, individuals possessing surplus financial resources can engage in stock exchange investments, encompassing equities, bonds, derivatives, or mutual funds. These financial instruments, traded on the stock exchange, proffer the allure of greater profit potential compared to traditional banking products such as

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<sup>7</sup> Zsuzsánna Biedermann, "The Case of Rwanda as a Developmental State," 2016, 139–57, [https://doi.org/10.1007/978-981-10-1727-8\\_9](https://doi.org/10.1007/978-981-10-1727-8_9).

savings and deposits, yet they also bear the inherent risk of substantial financial losses, even entailing the peril of complete capital erosion.<sup>8</sup>

Evidently, the allure of the safeguarded investments provided by banks, fortified by the protective aegis of the Deposit Insurance Corporation (LPS), remains indisputable. This sanctuary ensures that in the unfortunate event of a bank's insolvency, depositors shall receive full compensation as stipulated by LPS criteria. This, however, stands in stark contrast to the capricious nature of stock market investments, where participants encounter the binary possibilities of profit or loss. The specter of total asset depreciation looms, particularly in instances of corporate bankruptcy, rendering investments in stocks inherently devoid of any such guarantees.<sup>9</sup>

While investing in the capital market or stock exchange inherently entails greater risk, judicious and discerning management can yield commensurately greater returns. Presently, bank deposits merely yield annual interest rates of approximately 6%, whereas stock market participation can yield comparable profits within a few short months. The prudent execution of such strategies necessitates sagacity, caution, and an accrued wealth of experiential insights. Experience in capital market investment plays a pivotal role in honing the intuitive aptitude necessary for judicious decision-making regarding the timing of securities acquisition and divestiture.<sup>10</sup>

Fundamentally, the capital market fulfills the pivotal role of an intermediary, amalgamating purveyors of securities (namely, issuing companies seeking financial infusion) with seekers of such instruments (namely, the investing public or financiers). Beyond this, the capital market functions as a conduit for efficient, transparent, and accountable allocation of public funds.<sup>11</sup> It also presents a panoply of investment instruments,

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<sup>8</sup> Victoria Barbary, Adam D. Dixon, and Patrick J. Schena, "The Evolving Landscape of Sovereign Wealth Funds in a Changing World Economy: How Resilient Are the Santiago Principles?," 2023, [https://doi.org/10.1007/17280\\_2023\\_1](https://doi.org/10.1007/17280_2023_1).

<sup>9</sup> Diana RW Napitupulu, "Beneficiary of Resolution Bank by Indonesia Deposit Insurance Corporation (LPS)," *Jurnal Hukum Dan Peradilan* 11, no. 1 (March 31, 2022): 134, <https://doi.org/10.25216/jhp.11.1.2022.134-150>.

<sup>10</sup> Simone Schaner, "The Persistent Power of Behavioral Change: Long-Run Impacts of Temporary Savings Subsidies for the Poor," *American Economic Journal: Applied Economics* 10, no. 3 (July 1, 2018): 67–100, <https://doi.org/10.1257/app.20170453>.

<sup>11</sup> Anne Stafford and Pamela Stapleton, "Examining the Use of Corporate Governance Mechanisms in Public-Private Partnerships: Why Do They Not Deliver Public Accountability?," *Australian Journal of Public Administration* 76, no. 3 (September 11, 2017): 378–91, <https://doi.org/10.1111/1467-8500.12237>.

facilitating portfolio diversification. Further, it fosters broader public participation, beyond company founders, in the stewardship of thriving and promising public corporations, cultivating a robust and open business climate and engendering rewarding employment opportunities.

The Capital Markets industry, in its multifaceted ambit, confers substantial benefits. Foremost among these is the provision of a dependable wellspring of long-term financing for enterprises, promoting the judicious allocation of financial resources. Simultaneously, it offers a diverse spectrum of investment avenues for individuals, facilitating the expansion and optimization of their investment portfolios. Moreover, it engenders the broad distribution of corporate ownership, extending the opportunity of ownership in flourishing and prospective entities to a wider stratum of society.<sup>12</sup> In so doing, it begets an environment characterized by corporate health, transparency, and professionalism, while serving as a fertile ground for the cultivation of engaging vocations and professions.

## **Authority and Oversight in the Capital Market**

During the nascent stages of the capital market in Indonesia, the pivotal supervisory institution was the Capital Market and Financial Institution Supervisory Board, commonly known as BAPEPAM-LK. Inherent to its role as a supervisory entity were six fundamental conditions, each holding paramount significance in its overarching mandate.<sup>13</sup> First and foremost, BAPEPAM was compelled to maintain a substantial degree of independence. This requisite independence necessitated a robust legal foundation, a comprehensive and lucid regulatory framework, and a stature that transcended confinement to any single departmental unit. Indeed, in an ideal scenario, it should be appointed or nominated jointly by the legislative body (DPR) and the President, akin to the structure observed in the United States' Securities and Exchange Commission (SEC).

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<sup>12</sup> Chris Marquis and Mia Raynard, "Institutional Strategies in Emerging Markets," *The Academy of Management Annals* 9, no. 1 (January 24, 2015): 291–335, <https://doi.org/10.1080/19416520.2015.1014661>.

<sup>13</sup> Hartana Hartana, "Initial Public Offering (IPO) of Capital Market and Capital Market Companies in Indonesia," *Ganesha Law Review* 1, no. 1 (May 10, 2019): 41–54, <https://doi.org/10.23887/glr.v1i1.17>.



Furthermore, the leadership of BAPEPAM mandated individuals who embodied the qualifications sought after by the market. These individuals were inherently expected to possess a profound understanding of their respective domains, coupled with expertise, experience, and a reputation for integrity that resonated with market expectations. In addition, an imperative attribute of BAPEPAM's leadership lay in their willingness to exercise decisive authority.<sup>14</sup> This quality was indispensable to forestall the emergence of an atmosphere characterized by ambiguity and void, particularly in the context of market dynamics where the consequences of sluggish decision-making could entail risks and costs, especially during crisis situations.

Moreover, the escalating intricacy of capital market activities and the growing involvement of international stakeholders mandated that BAPEPAM exhibit a firm grasp of international financial markets. This entailed fostering collaborative relationships with international regulators and relevant international bodies, thereby affording the institution a broader perspective and a nuanced comprehension of global financial dynamics. Besides, in its regulatory capacity, BAPEPAM was charged with the formulation of rules that aligned with market imperatives and adhered to international standards.<sup>15</sup> It was imperative that these rules not only be promulgated but also rigorously enforced, thus avoiding a scenario in which rules remained inert. This underscored the critical importance of the implementation phase, a process that, albeit time-consuming and intricate, was equally indispensable as the inception of the rules themselves.

Additionally, the recognition that an efficient market hinged upon legal certainty was integral to BAPEPAM's mission. This encompassed various facets, including the need for a swift, equitable, and efficient judicial system, encompassing commercial courts. It further encompassed the consistency in the application of regulatory frameworks and the capacity to issue interpretative releases, serving as official elucidations, on matters of public concern—a measure pivotal in enhancing clarity within the regulatory landscape. These multifaceted conditions represented the bedrock upon which BAPEPAM's supervisory role within the Indonesian capital market

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<sup>14</sup> Widia Astuty, "The Extraordinary Solution for Indonesia Economic Crisis: Shariah Capital Market," *Journal of Islamic Banking and Finance* 3, no. 2 (2015), <https://doi.org/10.15640/jibf.v3n2a5>.

<sup>15</sup> Wandu Subroto, "Analysis of Legal Supervision in Preventing Criminal Practices and Capital Market Violations," *Akselerasi: Jurnal Ilmiah Nasional* 3, no. 3 (November 4, 2021): 27–37, <https://doi.org/10.54783/jin.v3i3.457>.

was premised, reflecting the imperative need for a robust and adaptable regulatory apparatus in this dynamic financial ecosystem.<sup>16</sup>

It is imperative to recognize that the Capital Market, whether driven by political, economic, or societal events, is highly sensitive to external stimuli. Consequently, one can assert that the Capital Market fundamentally thrives on trust. This trust dynamic is inexorably intertwined with the overarching concept of integrity. To this end, BAPEPAM, as we have come to learn, has endeavored to establish a comprehensive monitoring mechanism for market participants, encapsulated within the framework of the blacklist of individuals. The implementation of this system must adhere to principles of openness, fairness, and non-discrimination. Any deviation from such principles could potentially set a detrimental precedent, leading to a erosion of public trust. Furthermore, it is imperative to extend the concept of blacklist to encompass regulatory and administrative bodies as well.<sup>17</sup> By doing so, individuals appointed to oversee the Capital Market are inherently required to maintain an unblemished record, thus ensuring their acceptance and respect within the market they regulate.

A pivotal shift in the landscape of Capital Market supervision occurred with the enactment of Law No. 21 of 2011, which established the Financial Services Authority (OJK) on November 22, 2011. Article 55, paragraph (1) of the OJK Law marked a decisive transition, effective from December 31, 2012, by transferring the functions, responsibilities, and authority for regulating and supervising financial services activities across the Capital Markets, Insurance, Pension Funds, Financing Institutions, and Other Financial Services Institutions sectors from the Ministry of Finance and BAPEPAM-LK to the OJK. Additionally, Article 55, paragraph (2) of the OJK Law dictated the transfer of functions, responsibilities, and authority for regulating and supervising financial services activities within the banking sector from Bank Indonesia to the OJK, effective from December 31, 2013.<sup>18</sup>

The OJK is constituted as an independent institution, comprised of nine board commissioners, whose composition includes two ex-officio

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<sup>16</sup> Lena Rethel, "Governed Interdependence, Communities of Practice and the Production of Capital Market Knowledge in Southeast Asia," *New Political Economy* 25, no. 3 (April 15, 2020): 354–69, <https://doi.org/10.1080/13563467.2018.1563059>.

<sup>17</sup> Elsy Renie, Thohir Luth, and Siti Hamidah, "The Legal Construction of Sharia Capital Market in Indonesia," *Journal of Policy & Globalization* 82 (2019): 32.

<sup>18</sup> Nikmah Mentari, "Disgorgement (Fund): A New Era of Investor Protection in the Capital Market," *JIL: Journal of Indonesian Law* 2, no. 1 (June 30, 2021): 106–24, <https://doi.org/10.18326/jil.v2i1.106-124>.



representatives from the government, namely the Representatives of Bank Indonesia and the Ministry of Finance, alongside sectoral representatives. Article 70 of the OJK Law further stipulates that, upon its enforcement, Law Number 8 of 1995 on Capital Markets, together with its implementing regulations, as well as other relevant statutory regulations within the financial sector, shall remain in force, provided they do not conflict with or have been superseded by the provisions of the OJK Law.

The authority vested in the OJK extends beyond the express mandates delineated in the OJK Law; it also encompasses various authorities pertaining to the regulation and supervision of financial services, as articulated in Law Number 8 of 1995 on Capital Markets.<sup>19</sup> This extension of authority signifies a regulatory reform that transcends the scope of capital market supervision alone; it seeks to empower the OJK with cross-sectoral authority within the financial services sector.

Moreover, the inclusion of ex-officio representation from governmental authorities is instituted to facilitate coordination, collaboration, and policy harmonization across the fiscal, monetary, and financial services domains. This ex-officio presence is also indispensable in safeguarding and advancing national interests in the context of global competition and international agreements, while simultaneously fostering coordination and information exchange to preserve and fortify financial system stability.

During the transitional phase, the task of capital market supervision remained with BAPEPAM until the full transition period culminated, as specified in Article 68 of the Financial Services Authority Law. Consequently, all duties and authorities that were once vested in BAPEPAM have now been transitioned to the OJK. This includes the resolution of ongoing capital market cases, which spanned from the transition period and continue until its completion. Hence, the OJK is entrusted with the responsibility of resolving these cases. Notably, BAPEPAM is no longer subordinated to the Ministry of Finance; its responsibilities have been wholly transferred to the OJK. This transition has resulted in the OJK being

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<sup>19</sup> Yulia Sandra Sari, Anindya Ardiansari, and Syam Widia, "The Effect of Capital Adequacy, Market Risk, Credit Risk, Operational Risk and Liquidity on the Profitability (Case Study on Sharia Banks Registered in OJK Period 2010-2019)," 2022, <https://doi.org/10.2991/aebmr.k.220104.033>.

inundated with capital market cases, as BAPEPAM had been unable to resolve all pending matters.<sup>20</sup>

It is important to emphasize that, following the transfer of capital market supervisory functions to the OJK, there has been no substantive alteration in the capital market regulations themselves. The regulations, in essence, remain unchanged, with the only modification being the authoritative body responsible for their issuance, transitioning from BAPEPAM to the OJK.

## **The Legal Framework for Capital Market Offenses**

Within the capital market domain, a spectrum of criminal offenses prominently manifests, including but not limited to fraud,<sup>21</sup> market manipulation, and insider trading. Law Number 8 of 1995 on Capital Markets steadfastly proscribes any activities within the securities trading milieu that exhibit the hallmarks of fraud, manipulation, or insider trading. This regulatory edict serves a dual imperative: safeguarding the interests of investors and the investing community, and fostering an environment conducive to the equitable and ethical conduct of securities trading. The overarching objective is to perpetuate and fortify public trust in the Indonesian Capital Market industry, ensuring its enduring vitality.

Fraud, as articulated in Article 378 of the Penal Code, delineates a criminal act wherein an individual, motivated by personal or external gain, contravenes the law through the deployment of a false identity or pretense. This subterfuge, often orchestrated through deception or a sequence of falsehoods, is designed to induce another party to relinquish an object, assume a debt, or annul a receivable. Per the stipulated legal provisions, perpetrating fraud carries the potential penalty of a maximum incarceration period of four years.

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<sup>20</sup> Lakshmi Iyer and David Lane, "Indonesia's OJK: Building Financial Stability," in *Institutions, Institutional Change and Economic Performance in Emerging Markets* (WORLD SCIENTIFIC, 2016), 267–309, [https://doi.org/10.1142/9789814719766\\_0011](https://doi.org/10.1142/9789814719766_0011).

<sup>21</sup> Taofik Hidajat, "Unethical Practices Peer-to-Peer Lending in Indonesia," *Journal of Financial Crime* 27, no. 1 (December 19, 2019): 274–82, <https://doi.org/10.1108/JFC-02-2019-0028>.

Notably, several constituent elements characterizing fraudulent acts, as delineated in Article 378 of the Penal Code, pertain specifically to their relevance within the Capital Market context. These elements encompass the conscious intention to transgress legal boundaries while effectuating an act of inducement with the aim of personal or third-party gain. Integral to this framework is the use of a fictitious or unfounded position that imparts certain rights, notwithstanding the absence of actual entitlements. The act of assuming such a false position entails the adoption of a deceptive facade vis-à-vis a third party, oftentimes entailing roles such as proxy, agent, guardian, curator, or the cultivation of trust in capacities like trader or official.

Furthermore, the stratagem of deception and a sequence of falsehoods, though distinct in nature, each encapsulate deceptive attributes or fabrications, capable of engendering credulity or conviction in their veracity. Deception, in its essence, comprises actions that generate an impression or belief in the veracity of conduct, despite its inherent fallacy. Conversely, a sequence of falsehoods pertains to the verbal articulation of misleading statements or fabrications. These stratagems are strategic means employed by fraudsters to elicit emotional resonance or sway the will of the victim, ultimately culminating in the surrender of the coveted object.<sup>22</sup>

Nonetheless, it is imperative to acknowledge that the perpetration of such inducements does not guarantee that the individual subjected to them will indeed capitulate to external will, proffer objects, incur debts, or absolve receivables. In instances where the inducement has been effected yet fails to exert influence over the victim's volition, and consequently does not culminate in the transference of assets or liabilities, such instances are categorized as attempted fraud. Fraud, in its full realization, is contingent upon the responsive actions of other parties, thereby constituting a criminal act with an inherent dependence on external actors for its consummation.<sup>23</sup>

The term "debt" in this context diverges from its conventional financial interpretation and is instead construed as a contractual agreement or obligation. A pertinent elucidation can be gleaned from the pronouncement of the Hoge Raad in its 1928 ruling, which posits that "debt" signifies an

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<sup>22</sup> Ade Thompson Ojo and Olusegun Felix Ayadi, "Financial Malpractices and Stock Market Development in Nigeria," *Journal of Financial Crime* 21, no. 3 (July 1, 2014): 336–54, <https://doi.org/10.1108/JFC-05-2013-0034>.

<sup>23</sup> Paul Barnes, *Stock Market Efficiency, Insider Dealing and Market Abuse* (Gower, 2016), <https://doi.org/10.4324/9781315610801>.

obligation,<sup>24</sup> exemplified by the depositing of a security collateral. It is essential to emphasize that the concept of granting debt extends beyond simply providing financial assistance. Instead, it encompasses a wider range of implications, involving the establishment of a legal commitment that imposes a duty on one party to transfer or allocate a specific amount of money to another.

In a commercial setting, like a sale and purchase transaction, a duty arises, requiring the purchaser to deliver or transfer a specified amount, often referred to as the purchase price, to the seller. Similarly, when discussing the "debt" aspect within the context of writing off receivables, it conveys a more extensive meaning than simply erasing financial obligations associated with debt repayment or borrowing endeavors.

The process of writing off receivables involves the cancellation of various existing legal obligations, which subsequently releases the responsible party from their legal obligation to transfer a specified sum of money to the recipient or an alternate party. For instance, in a sale and purchase agreement where the physical transfer of the object from the seller to the buyer has occurred, but the necessary financial exchange remains outstanding, the contract can be invalidated. This invalidation results in the cancellation of the buyer's obligation to pay the purchase price. However, if the buyer employs tactics such as deception or a series of false statements to persuade the seller to agree to the cancellation, for instance, by claiming that the item will be returned due to alleged defects and compensation will be provided, even though the item has already been sold to another party and the purported defects are fictitious with no genuine intention to offer compensation, and if the seller is influenced by these appeals and ultimately consents to the cancellation, an act of fraud is committed.

When examining the subjective aspect of fraud, particularly the intention to gain personal or external advantages, it is clear that the act of providing debt or writing off receivables inherently advances the interests of the perpetrating party or related individuals. These individuals could

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<sup>24</sup> Azhari Ar Azhari Ar, "Parameter Menentukan Perbuatan Wanprestasi Dan Penipuan Dari Suatu Perjanjian," *Jurnal Hukum Kaidah: Media Komunikasi Dan Informasi Hukum Dan Masyarakat* 19, no. 3 (August 3, 2020): 477–98, <https://doi.org/10.30743/jhk.v19i3.2826>.

include collaborators or co-conspirators engaged in the commission of the fraud.<sup>25</sup>

The notion of mobilization can be defined as the deliberate act of exerting control or influence over others, with a particular emphasis on the voluntary actions of individuals. In the context of fraudulent activities, mobilization involves the deployment of tactics marked by falsehoods, deception, and deceit. In the specific context of criminal fraud within the Capital Market, the perpetrator engages in fraudulent behavior by disseminating false information about material facts or purposefully withholding crucial information, thereby obscuring the true state of affairs.<sup>26</sup> Such deceptive behavior is conducted with the clear objective of advancing personal interests, benefiting third parties, averting potential losses for oneself or others, or manipulating other entities into either buying or selling securities. This prohibition is explicitly outlined in Article 90, subclause c, of Law Number 8 of 1995 on Capital Markets. This provision states that the act of making false statements about material facts or deliberately omitting material facts to avoid creating misleading perceptions about the existing conditions, all with the intention of securing gains, preventing losses, or exerting influence on third parties in securities transactions, is considered a criminal offense.

Given the substantial scale of investments and the complex participation of numerous investors in securities trading, it is entirely justifiable to impose stringent criminal penalties and substantial fines. When juxtaposed with the stipulation in Article 378 of the Penal Code, which mandates a maximum sentence of four years in prison for established cases of fraud, Article 390 of the Penal Code provides for a comparatively less severe penalty, setting a maximum sentence of two years and eight months of incarceration.

In the realm of fraud, both the primary wrongdoer and those who actively assist or participate in the fraud (co-perpetrators) may be liable for potential criminal penalties. In the Indonesian criminal legal framework, this collaboration is referred to as "*deelneming*." The term "*deelneming*" traces its origins to the Dutch word "*deelnemen*," meaning "accompanying," and "*deelneming*" signifies the idea of "inclusion." The concept of "*deelneming*" in criminal law becomes relevant, especially when offenses

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<sup>25</sup> Hartmut Berghoff and Uwe Spiekermann, "Shady Business: On the History of White-Collar Crime," *Business History* 60, no. 3 (April 3, 2018): 289–304, <https://doi.org/10.1080/00076791.2018.1414735>.

<sup>26</sup> Jay Albanese, *Organized Crime* (Routledge, 2014), <https://doi.org/10.4324/9781315721477>.

are frequently committed collaboratively by multiple individuals. In cases where a criminal act is carried out by a single individual, that wrongdoer is designated as the "*alleen dader*."<sup>27</sup>

According to legal doctrine, "*deelneming*" is inherently characterized by two distinct modes: independent "*deelneming*," wherein the liability of each participant is assessed in isolation, and "*deelneming*" that is not self-contained, where the culpability of one participant is contingent upon the actions of others. Legislative provisions addressing "*deelneming*" have been codified in Articles 55 and 56 of the Criminal Code, which engender a discourse on the notions of perpetrator (*dader*) and participation. In congruence with the formulation articulated in Article 55 of the Penal Code, those who commit, instigate, or participate in the commission of a criminal act, along with those who deliberately induce others to perpetrate criminal acts through inducements such as material inducements, abuse of authority or status, exertion of coercion, intimidation, misdirection, or the provision of opportunities, means, or information, are collectively subject to penal consequences.<sup>28</sup>

Regarding the latter, the responsibility of such individuals is limited to their intentional encouragement of actions in others and the subsequent consequences that arise from these actions. In contrast, the criminal provisions outlined in Article 56 of the Criminal Code outline the culpability of accomplices in criminal activities. Precisely, this provision applies to those who purposefully offer assistance in the commission of a crime and those who are aware of providing the means, opportunities, or information that facilitates the perpetration of the crime.<sup>29</sup>

Subsequently, the research will elucidate the concept of Market Manipulation, an illicit act stipulated within the purview of Law Number 8 of 1995 pertaining to Capital Markets. In accordance with Article 91 of the Capital Market Law, Market Manipulation constitutes actions undertaken by any party, either directly or indirectly, with the intent of fabricating a

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<sup>27</sup> Topo Santoso, "Parties to Crime: Development and Comparison," *Indonesian Comparative Law Review* 2, no. 2 (2020), <https://doi.org/10.18196/iclr.2217>.

<sup>28</sup> Samsul Huda et al., "Reconstruction of 'Obstruction of Justice' As a Criminal Act in the Law on Eradicating Corruption in Indonesia," *International Journal of Environmental, Sustainability, and Social Science* 3, no. 3 (November 30, 2022): 606–28, <https://doi.org/10.38142/ijess.v3i3.260>.

<sup>29</sup> Prihartono Prihartono et al., "The Implementation of Law Enforcement Against Criminal Acts of Mobbing Against Persons Is Reviewed by Article 170 Paragraph (2) of the Criminal Code," *Journal of Social Research* 2, no. 1 (December 14, 2022): 185–90, <https://doi.org/10.55324/josr.v2i1.492>.



false or misleading representation concerning trading activities, market conditions, or securities prices on the stock exchange.

Within the Indonesian Capital Market framework, the aforementioned definition is in accordance with the provisions outlined in Article 92 of the Capital Market Law. This article expressly forbids any actions, whether undertaken individually or in collaboration with others, that involve the execution of two or more securities transactions, either directly or indirectly. These actions must lead to the artificial inflation, escalation, or depreciation of securities prices on the Stock Exchange, with the intention of influencing other parties to buy, sell, or hold onto securities. Consequently, the prohibited aspects of this act encompass the execution of two or more securities transactions, whether through direct or indirect means, and the deliberate manipulation of securities prices on the stock exchange, pursued with the objective of influencing the decisions of other stakeholders regarding securities transactions.<sup>30</sup> Pursuant to Article 104 of the Investment Law, those found in breach of the aforementioned provisions in Article 92 may face a maximum penalty of 10 years of imprisonment and a fine not exceeding IDR 15 billion.

The subsequent criminal offense under consideration is Insider Trading, a distinctive transgression within the realm of the Capital Market. This crime is characterized by its unique focus on non-public, material information exploited by insiders for personal gain and profit, either individually or collectively. Insider Trading, as a criminal offense within the capital market sector, may be perpetrated by individuals and corporate entities alike. Individual offenders face punitive measures as stipulated in Article 104 of the Capital Markets Law, encompassing imprisonment and fines. In tandem, corporate actors are subject to administrative sanctions as articulated in Article 102 of the Capital Market Law, in conjunction with Article 61 of Government Regulation Number 45 of 1995 concerning the Implementation of Activities in the Capital Market.

Within the context of the Capital Market Law, these criminal acts involve active participation in misleading or deceiving other parties and the propagation of false statements regarding material facts or the omission of material facts to prevent the creation of misleading impressions regarding the prevailing circumstances at the time of statement issuance. These

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<sup>30</sup> Imam Wahyudi and Gandhi Anwar Sani, "Interdependence between Islamic Capital Market and Money Market: Evidence from Indonesia," *Borsa Istanbul Review* 14, no. 1 (March 2014): 32–47, <https://doi.org/10.1016/j.bir.2013.11.001>.

actions are executed with the intent of accruing benefits, averting losses, or influencing third parties to engage in securities transactions.<sup>31</sup>

Individuals convicted of securities fraud may be subject to a maximum penalty of 10 years of imprisonment and a fine not exceeding IDR 15 billion, as stipulated in Article 104 of Law Number 8 of 1995. This statutory punishment exceeds the penalties specified for fraud under Article 378 of the Penal Code, which carries a maximum prison term of four years, or Article 390 of the Penal Code, which imposes a maximum prison term of two years and eight months.

Additionally, there are further consequences for fraud perpetrators, as outlined in Article 107 of the Penal Code. This provision states that any party deliberately intending to deceive, harm, mislead another party, or manipulate, erase, alter, conceal, or falsify records related to permits, approvals, or registrations, including those of issuers and public companies, may face a maximum prison sentence of three years and a maximum fine of IDR 5 billion.

## Conclusion

The capital market serves as a pivotal barometer of a nation's economic well-being, reflecting progress in both developed and emerging economies. In Indonesia, the Composite Stock Price Index (IHSG) not only acts as an economic gauge but also plays a significant role in attracting foreign investments. The evolution of Indonesia's capital market oversight commenced with the inception of the Capital Market and Financial Institution Supervisory Board (BAPEPAM-LK), which operated under specific conditions to ensure its effectiveness. However, a significant transformation took place in 2011 with the establishment of the Financial Services Authority (OJK), which assumed regulatory responsibilities from BAPEPAM across various financial sectors, including capital markets, while preserving essential regulations. Indonesia's Capital Market is governed by

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<sup>31</sup> Miranda Tanjung, "A Cross-Firm Analysis of Corporate Governance Compliance and Performance in Indonesia," *Managerial Auditing Journal* 35, no. 5 (February 28, 2020): 621–43, <https://doi.org/10.1108/MAJ-06-2019-2328>.

rigorous regulations designed to maintain the integrity of securities trading and protect the interests of investors. Prohibited activities encompass fraud, market manipulation, and insider trading, each carrying substantial penalties. Engaging in fraud can result in a maximum prison term of four years, while market manipulation may lead to a 10-year prison sentence and substantial fines. Insider trading involves exploiting non-public information for personal gain, and penalties apply to both individuals and corporations. Furthermore, Article 107 of the Criminal Code prescribes penalties for those manipulating records related to capital market permits, underscoring Indonesia's commitment to transparency and accountability within its capital market industry. These stringent legal provisions emphasize Indonesia's dedication to cultivating trust, transparency, and ethical conduct while ensuring severe consequences for those who transgress these principles.

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# Absolute sentientia expositore non indiget

**A simple proposition needs no further explanation.**