

## Empirical Analysis on Investor Protection in Minimizing Fraud Risk From Investment Managers

<sup>1</sup>May Shinta Retnowati\*, <sup>2</sup>Intan Puspitasari, <sup>3</sup>Arfah Kamila

<sup>1</sup>Universitas Darussalam Gontor, <sup>2</sup>STIE Pemuda Surabaya, <sup>3</sup>Universitas Darussalam Gontor

<sup>1</sup>[mayshinta@unida.gontor.ac.id](mailto:mayshinta@unida.gontor.ac.id), <sup>2</sup>[puspitasari@stiepemuda.ac.id](mailto:puspitasari@stiepemuda.ac.id),

<sup>3</sup>[arfahkamila26@student.hes.unida.gontor.ac.id](mailto:arfahkamila26@student.hes.unida.gontor.ac.id)

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### Abstract

Violations related to the capital market are special criminal acts as shown by various types of violations. These violators can be committed by various parties including directors, commissioners, and other manager-level officials; professionals such as brokers, investment advisors, accountants, lawyers, and appraisers; and issuers or public companies that are affected themselves. Such as violations committed by investment managers that give rise to investment risks felt by investors, such as Providing false information that deceives investors In order to maintain the stability of activities in the capital market, it is necessary to have Legal protection can be defined as actions that seek to prevent and punish and provide sanctions. In this study, a literature method with an empirical studies approach is used. The results of this study show that there are various forms of protection for actors in the capital market. By safeguarding their investments, the Investor Protection Fund (DPP) provides confidence and security to investors when they are involved in the capital market. According to Article 110 paragraph (1) of the Capital Market Law, market violations include operations carried out without OJK permission, investment managers who receive money illegally, and attempts to thwart OJK inspections. because in the capital market, the role of the OJK carries out its 3 functions, namely rule making, adjudicatory, and investigatory to support its responsibilities so that it is carried out properly For violations and crimes in the capital market, the Capital Market Law applies three types of sanctions, there are civil sanction, criminal sanction, and witness administrative.

**Keywords:** *Investor Protection, Fraud, Risk*

### Abstrak

Pelanggaran yang terkait dengan pasar modal merupakan tindak pidana khusus yang ditunjukkan dengan berbagai jenis pelanggaran. Pelanggar ini dapat dilakukan oleh berbagai pihak termasuk direksi, komisaris, dan pejabat setingkat manajer lainnya; profesional seperti broker, penasihat investasi, akuntan, pengacara, dan penilai; dan emiten atau perusahaan publik yang terkena dampaknya sendiri. Seperti pelanggaran yang dilakukan oleh manajer investasi yang menimbulkan risiko investasi yang dirasakan oleh investor, seperti Memberikan informasi palsu yang menipu investor Dalam rangka menjaga stabilitas kegiatan di pasar modal, perlu memiliki Perlindungan hukum dapat didefinisikan sebagai tindakan yang berusaha mencegah dan menghukum serta memberikan sanksi. Dalam penelitian ini digunakan metode literatur dengan pendekatan studi empiris. Hasil penelitian ini menunjukkan bahwa terdapat berbagai bentuk perlindungan bagi pelaku di pasar modal. Dengan menjaga investasinya, Dana Perlindungan Investor (DPP) memberikan kepercayaan dan keamanan kepada investor ketika mereka terlibat di pasar modal. Menurut Pasal 110 ayat (1) UU Pasar Modal, pelanggaran pasar meliputi operasi yang dilakukan tanpa izin OJK, manajer investasi yang menerima uang secara ilegal, dan upaya menggagalkan pemeriksaan OJK. karena di pasar modal, peran OJK menjalankan 3 fungsinya, yaitu pembuatan peraturan, adjudikasi, dan penyidikan untuk mendukung tanggung jawabnya agar terlaksana dengan baik Untuk pelanggaran dan kejahatan di pasar modal, UU Pasar Modal menerapkan tiga jenis sanksi, ada sanksi perdata, sanksi pidana, dan saksi administratif.

**Kata Kunci:** *Perlindungan Investor, Penipuan, Risiko*

### Introduction

Indonesia is a developing country. As a developing country, Indonesia is currently trying to carry out development in all sectors to encourage the country's economic growth. The development of the economy requires large costs, these large needs cannot be met by the government alone, even through taxes, and other revenues<sup>1</sup>.

<sup>1</sup> Jusuf Anwar. Capital Market as a Means of Financing and Investment, (Bandung: PT. Alumni, 2005), p. 5.

One of the alternative sources of financing for a country's economic development is the capital market. The capital market is one of the alternatives to financing national economic development. In 2024, the capital market sector is very promising, as in the success of the banking sector which currently dominates with positive indicators for capital market development in Indonesia. This success attracts attention to the presence of investors who have promising desires for them.<sup>2</sup> There is an interest of these investors in the field of capital markets, even though they do not have the skills and time to concern in the field so they ask for help from investment managers. The capital market, as described in article 1 number 13 of Law No. 8 of 1995, refers to activities related to the trading of securities of public companies and public offerings<sup>3</sup>.

This concept includes various institutions and occupations that affect securities and their outcomes. In the securities market, a variety of securities are traded, and each security has unique legal and regulatory characteristics. Although there is a law that regulates this capital market activity, there are still many problems that arise from this practice, such as violations or default of investment managers.

Violations in the field of capital markets are criminal offenses of a special nature, and this specificity can be seen both from the type of violation and the type of criminal offense. The perpetrators are educated and behave in a very orderly manner. expressed in the form of a matrix. Potential perpetrators include those who occupy strategic positions in the company (directors, commissioners, and other manager-level officials), professionals such as brokers, investment advisors, accountants, lawyers, and appraisers, or issuers or affected public companies themselves who commit violations.<sup>4</sup>

Investment managers will invest the money they accumulate into different types of investments, such as stocks, bonds, or deposits. For financiers, especially small financiers who do not have much time or knowledge required to calculate their investment risks, mutual funds are another investment option. One of the main tasks of an investment manager is to divide the liquidation proceeds of the participating units equally to the respective investors or holders of the participating units. If the income from capital market liquidation is insufficient to provide investors equally, then the profits from capital market liquidation, no matter how large, should be given to investors in a balanced manner. this results in Investors or Participation Unit holders experiencing losses.<sup>5</sup> Assignment investment not only distributes profits equally, but also has tasks including; manage investor assets, own and decide which investment instruments to buy, make decisions to sell or release investment instruments, and report investments. To prevent the occurrence of risks that can harm investment, BAPEPAM-LK (Capital Market and Financial Institutions Supervisory Agency) has issued regulations on prohibited acts of investment managers.<sup>6</sup> One of the actions of an investment manager that can harm an investment is to provide information that misleads investors or commits fraud. Investors, especially professional investors and institutional investors, continue to gather various information and use it to understand the stock prices available in the primary and secondary markets. This information consists of material

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<sup>2</sup> Kompas Cyber Media, "Pasar Modal 2024, 'Outlook' Cerah dengan Sektor Perbankan yang Dominan," KOMPAS.com, April 22, 2024, <https://money.kompas.com/read/2024/04/22/145556326/pasar-modal-2024-outlook-cerah-dengan-sektor-perbankan-yang-dominan>.

<sup>3</sup> "Undang-Undang Nomor 8 Tahun 1995 Tentang Pasar Modal," accessed June 3, 2024, <https://ojk.go.id/id/kanal/pasar-modal/regulasi/undang-undang/Pages/undang-undang-nomor-8-tahun-1995-tentang-pasar-modal.aspx>.

<sup>4</sup> Jusuf Anwar. Capital Market Series 2, Capital Market Law Enforcement and Supervision Indonesia. (Bandung: PT. Alumni, 2008), p. 27.

<sup>5</sup> Ananda Mustika Prameswari, "Pertanggungjawaban Kepada Investor Reksadana Yang Mengalami Kerugian Akibat Wanprestasi Yang Dilakukan Manajer Investasi," *Jurnal Begawan Hukum (JBH)* 2, no. 1 (January 3, 2024): 101.

<sup>6</sup> Cecep Galih Pratama and Elan Jaelani, "Perlindungan Hukum Terhadap Investor Dalam Investasi Reksa Dana," *Binamulia Hukum* 12, no. 2 (2023): 369–79, <https://doi.org/10.37893/jbh.v12i2.429>.

facts. Meanwhile, if a new investor, for example, does not choose the right investment manager, it will be easy to risk fraud.<sup>7</sup>

One of the capital market violations discussed in this study is the act of market manipulation by investment managers. Related to the practice of market manipulation, the Capital Market Law has its own articles, namely Articles 91, 92, and 93. In Indonesia itself, there is a case of manipulation of capital market transactions. PT Manulife Aset Manajemen Indonesia (MAMI) sees the emergence of websites, social media accounts, applications, and other communication platforms that aim to imitate investment management companies such as MAMI and commit fraudulent investment product practices that violate the law. Public suffered losses of Rp.126 trillion from 2018 to 2022 due to skimming, phishing, social engineering, and sniffing scams<sup>8</sup>. In addition, there is also a former investment manager of Allianz who is a large company, namely Gregoire Tourant, who was also dragged into a fraud case to reach USD 7M.<sup>9</sup> The capital market with various investment schemes that continue to develop with the needs of a diverse society, the existence of investment manager services is still needed to help regulate investment from the community as passive income in particular, this is a concern, especially the number of frauds obtained by using investment manager services, even though there has been authorized supervision, but the fraud is still found to take advantage more

### Research methods

This research uses literature research method by empirical approach, through in-depth discussions descriptively in an inclusive and clear manner,<sup>10</sup> Data collection procedures must include the correct data collection methods.<sup>11</sup> Thus, in this research, data was collected using the Document Study method: The researcher utilized this kind of collection to explore and examine various papers and archives

### Results and discussion

#### A. Overview of legal protection

Supervision in the capital market was initially in the supervision of BAPEPAM LK based on Law No. 8 of 1995 concerning the Capital Market which explained that the guidance, supervision and operational arrangements were carried out by BAPEPAM LK. but in 2011 there were efforts from the reform of the financial sector and the government where the Financial Services Authority (OJK) was formed, so that the tasks of BAPEPAM LK have been merged into one, in accordance with Law No. 21 of 2011<sup>12</sup>

Legal protection can be explained as an action that aims to protect legal subjects, both individuals and legal entities, with various efforts as well as both preventing and punishing. According to Satjipto Raharjo, legal protection is an effort to provide protection for human rights that have been harmed by other parties, so that people can enjoy the rights that have been regulated by law and feel good in mind and physically from disturbances or threats from any parties<sup>13</sup>.

Such legal protection is an important part of safeguarding the rights protected by the law in an appropriate manner.<sup>14</sup> The law must carefully consider diverse interests and create a balance

<sup>7</sup> May Shinta Retnowati, "Observasi Pola Investasi Di Pasar IDX," 2024.

<sup>8</sup> Manulife, "Waspada penipuan mengatasnamakan MAMI," WAM, 2024, <https://www.manulifeim.co.id/edukasi/waspada-penipuan-mengatasnamakan-mami.html>.

<sup>9</sup> Syamsul Ashar, "Mantan Manajer Investasi Allianz Gregoire Tournant Terseret Kasus Penipuan US\$ 7M," *Insight Kontan.Co.Id*, 2023, <https://insight.kontan.co.id/news/mantan-manajer-investasi-allianz-gregoire-tournant-terseret-kasus-penipuan-us-7-m>.

<sup>10</sup> Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif, Dan R&D* (Alfabeta, 2018).

<sup>11</sup> Nughrhani Farida, *Metode Penelitian Kualitatif Dalam Penelitian Pendidikan Bahasa* (Solo: Cakra Books, 2014).

<sup>12</sup> Asriati Asriati and Sumiyati Baddu, "Investasi Online Reksadana: Aspek Hukum Dan Perlindungan Bagi Investor Selaku Konsumen," *Pleno Jure* 10, no. 1 (April 26, 2021): 45, <https://doi.org/10.37541/plenojure.v10i1.561>.

<sup>13</sup> Satjipto Raharjo, *Legal Science*, (Bandung: Citra Aditya Bakti, 2000), pp. 53

<sup>14</sup> Satjipto Rahardjo, *Legal Theory Human Ordering Strategies Across Space and Generations*, (Yogyakarta: Genta Publishing, 2010), pp. 44

between these interests. Meanwhile, according to Van Sijk and Peter Mahmud,<sup>15</sup> the law must play a role in creating peace and prosperity which can be realized by providing fair regulation. In business, there are certain laws that provide protection to the company for its business operations based on reasonable actions so that AHA can freely issue policies if the decision is not detrimental to the company, as well as consumer protection in investment activities in the capital market.<sup>16</sup>

The Investor Protection Fund (DPP) provides investors with a sense of security and comfort when participating in the Indonesian capital market by protecting their assets. The Indonesian Securities Investor Protection Program (PPPIEI) established the Indonesian Securities Investor Protection Fund (SIPF) to protect Indonesian investors (DPP). Investors rely on securities companies to look after their best interests, so their assets must be protected. DPP members are authorized to record, store, transfer, utilize, or report transactions related to financiers' assets.<sup>17</sup>

However, securities companies can use those securities for their own benefit or employees, which is a form of fraud. Teguh Prasetyo<sup>18</sup> emphasizes that the theory of dignified justice sees the Indonesian legal system as part of the heritage of world civilization, which is a product of civilization itself. The Pancasila legal system is considered an authentic and original legal system, which characterizes the Indonesian nation.

In the explanation of M. Isnaeni, legal protection can be divided into two, if based on its source, namely external legal protection, and internal legal protection. The internal legal protection refers to the protective efforts organized by the parties involved during the making of the agreement, by stating the provisions of the contract which are intended to provide balanced legal protection to both parties.<sup>19</sup> However, external legal protection is implemented by the government to protect the interests of weaker parties, in accordance with the principle that the rule of law must not be discriminatory and must be proportionally fair, and provide equal legal protection from the start to the other party.<sup>20</sup>

### B. Overview of investors

Conceptually, every business operation will involve two entities that support each other, namely between the bank entity itself and also the party that provides funds to support these business activities. Investors are individuals or entities that provide excess funds for investment in legitimate and productive businesses, or in other words, they can also be called investors.<sup>21</sup> In the dictionary of the Financial Services Authority (OJK), an **investor** is a person or company that **invests** in the hope of getting **profits in the future**. The types of investment are very diverse, ranging from investment in stocks, bonds, mutual funds, pension funds, commodities, metals precious, to property. He can also be called a financial supporter because of his activities that place their assets in financial instruments such as stocks, bonds, and so on. In KBBI, investment

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<sup>15</sup> Vincentia Audia Kirana Putri and Suyatno, "Perlindungan Hukum Terhadap Investor Dalam Transaksi Pasar Modal: Perlindungan Hukum Terhadap Investor Dalam Transaksi Pasar Modal | Jurnal Intelek Dan Cendekiawan Nusantara," *Jurnal Intelek Dan Cendekiawan Nusantara* 1, no. 2 (2024), <https://jicnusantara.com/index.php/jicn/article/view/183>.

<sup>16</sup> Wiwik Sri Widiarty, "PERLINDUNGAN HUKUM BAGI DIREKSI BERDASARKAN BUSINESS JUDGMENT RULE TERHADAP KERUGIAN PERUSAHAAN TERBATAS," *RIO LAW JURNAL* 5, no. 1 (February 20, 2024), <https://doi.org/10.36355/rj.v5i1.1282>.

<sup>17</sup> elvira Fitriyani Pakpahan Et Al., "Peran Ojk Terhadap Kerugian Nasabah Yang Diakibatkan Oleh Manager Investasi Yang Tidak Memiliki Izin," *Hukum Responsif* 14, no. 2 (August 27, 2023): 71–78, <https://doi.org/10.33603/v14i2.8721>.

<sup>18</sup> Teguh Prasetyo, *Dignified Justice from a Legal Theory Perspective*, (Bandung: Nusa Media, 2015), pp. 58

<sup>19</sup> Ibid p.3

<sup>20</sup> Moch. Isnaeni, *Introduction to the Law of Property Security*, (Surabaya: Revka Petra Media, 2016), pp. 159-160

<sup>21</sup> [Badan Pengembangan dan Pembinaan Bahasa](https://kemdikbud.go.id), *Kamus Besar Bahasa Indonesia*, [Search Results - KBBI VI Online](https://kemdikbud.go.id) (kemdikbud.go.id), 20 feb, 3:19

is an individual who includes capital in a business entity by buying shares or bonds from the business entity.<sup>22</sup>

Investment refers to the placement of money in the hope of obtaining dividends and increasing the value of the investment object, although the term investment is not mentioned in Law No. 8 of 1995 concerning the capital market, there is a comparable concept that can be presented from the perspective of the importance of financial support according to what is in the KBBI. And one of them is the financier or investor. If the investor meets the following requirements for the Investor Protection Fund:<sup>23</sup> 1. Have a securities account with the custodian and place assets; 2. The custodian opens a securities sub-account at the Depository and Settlement Institution; and 3. Obtain an investor identification number (DSN) from the Depository and Settlement Institution.<sup>24</sup>

### C. Overview of Investment Manager

In its official portal, OJK states that an investment manager is a party whose business activity is to manage a Securities Portfolio for customers or manage a Collective Investment Portfolio for a group of customers, except insurance companies, pension funds, and banks that conduct their own business activities based on applicable laws and regulations.<sup>25</sup>

With an assignment that is considered a high credibility holding among clients, the investment manager must apply the principle;<sup>26</sup>

1. Independence;
2. Integrity;
3. Professionalism;
4. Prioritize the interests of the investment product;
5. Supervision and control;
6. Resource adequacy;
7. Asset protection of investment products;
8. Information disclosure;
9. Conflict of interest;

In terms of this discussion, the author will include one of the main obligations of the investment manager to expose the underdevelopment of deviations that occur such as manipulation and churning;<sup>27</sup>

1. Disclosure of interests of investment bankers and their affiliates
2. Prioritize the interests of the investment product over the interests of the investment manager and its affiliates
3. Prohibition of receiving/giving benefits to customers/other parties
4. Taking into account the principles of a generally accepted anti-bribery management system
5. Rational reasons and adequate working papers in making investment decisions including the obligation for the investment manager to be independent without interference from the interests of other parties in implementing investment policies, investment recommendations, and transactions for the benefit of clients.

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<sup>22</sup> Wardah Yuspin, "Telaah Yuridis Perlindungan Konsumen Dalam Kegiatan Investasi Aset Kripto Di Indonesia |," *DiH: Jurnal Ilmu Hukum* 19, no. 1 (2023), <https://jurnal.untag-sby.ac.id/index.php/dih/article/view/7886>.

<sup>23</sup> Martha Hasanah Rustam et al., "Peran Dan Tanggung Jawab Konsumen Untuk Mencegah Praktik Penipuan Dalam Transaksi Online Dari Perspektif Hukum Perlindungan Konsumen," *Riau Law Journal* 7, no. 1 (May 31, 2023): 1–24, <https://doi.org/10.30652/rj.v7i1.8050>.

<sup>24</sup> Pakpahan et al., "Peran Ojk Terhadap Kerugian Nasabah Yang Diakibatkan Oleh Manager Investasi Yang Tidak Memiliki Izin."

<sup>25</sup> Regulation of the Financial Services Authority of the Republic of Indonesia No.17 /POJK.04/2022 concerning Investment Manager Code of Conduct

<sup>26</sup> Jhoni Lie, Gunardi Lie, And Moody Rizqy Syailendra P, "Perlindungan Hukum Terhadap Investor Dalam Transaksi Pasar Modal Akibat Praktik Penipuan," *Jurnal Ilmu Hukum Prima* 6, no. 2 (May 28, 2023): 234–45.

<sup>27</sup> Asriati and Baddu, "Investasi Online Reksadana."

6. Transactions for the investment manager's own account.<sup>28</sup>

### D. Overview of the Capital Market

The capital market or also known as the securities market in various languages is basically a process that connects individuals or entities that have surplus funds with those who need funds. Knowledge of the capital market is in accordance with the provisions stipulated in Law No. 8 concerning the capital market which includes the public offering and trading of securities of public companies related to the securities issued as well as securities-related professional institutions in Law Article 1 no. 1.

"Companies mainly, sell shares and bonds in the capital market with the aim of using additional funds or strengthening the company's capital"<sup>29</sup>, according to Husnan, "the capital market is a trading place for various long-term financial instruments (also known as securities) that can be traded. These instruments can be issued by governments, public bodies, or private entities and can also be in the form of debt or equity capital "<sup>30</sup>

According to Tandelin, the capital market is an arena where individuals who have excess funds meet with those who need funds by trading securities, meanwhile, according to the capital market regulation no 8 of 1995, the definition of the capital market refers to activities related to the issuance of securities as well as related products and institutions.<sup>31</sup>

Violations in the market include activities that do not have OJK permits, illegal receipt of remuneration by investment managers, and efforts to prevent OJK inspections regulated in Article 110 Paragraph (1) of the Capital Market Law. Capital market crime has its own characteristics, namely the object is information. Capital market crime is based on the ability to analyze, supervise, and understand market movements and mechanisms and use opportunities for personal gain<sup>32</sup>. Capital market crime is different from other crimes because it is more difficult to prove and has a big impact in the capital market or outside. Capital market crimes in Articles 91 to 93 of the Market Law The capital reaffirmed in Law No. 4 of 2023 concerning the development and strengthening of the financial sector is classified in 5 (five) forms, including:<sup>33</sup> Fraud, market manipulation, insider trading, misleading information, pseudo-transactions.

### E. Regulation to prevent a manipulation in the capital market: Market manipulation practices in the capital market

Crimes and violations in the capital market have characteristics that are different from violations and crimes in other fields, such as the amount of impact, and the amount of loss experienced by victims if it occurs. Most cases in the capital market occur because of false or invalid information that can affect the price of securities and investment decisions for investors, and it should be noted, that the high number of violations and criminal acts in the capital market can undermine confidence in the capital market industry itself. <sup>34</sup>Violations and crimes in the capital market are regulated in Articles 90 to 99 of Chapter XI of the Capital Market Law. Types of crimes in the capital market according to the Law are divided into fraud, market manipulation, and trading based on internal information <sup>35</sup>

Quoted from the black dictionary market manipulation is an illegal practice to increase or decrease the price of securities by creating unnatural trading activity. Meanwhile, according to

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<sup>28</sup> Summary Material of Financial Services Authority Regulation on Investment Manager Behavior Guidelines

<sup>29</sup> Fahmi irham, Introduction to Capital Markets, (Bandung: Alphabeta), p.55

<sup>30</sup> Suad Husnan, *Fundamentals of Portfolio Theory and Securities Analysis*, (Yogyakarta: UPT STIM YKPM), pp. 3

<sup>31</sup> Tandelin Eduardus, *Investment Analysis and Portfolio Management*, (Yogyakarta: BPFE, 2010). pp. 26.

<sup>32</sup> Jeri Wijaya, "Perlindungan Hukum Bagi Investor Retail Dalam Praktik Manipulasi Pasar Di Pasar Modal" (Lampung, Universitas Lampung, 2024).

<sup>33</sup> UU No.4 Tahun 2023, "Pengembangan Dan Penguatan Sektor Keuangan," Pub. L. No. 4, 4 (2023).

<sup>34</sup> Mas Rahmah, *Capital Market Law*, (Kencana: Surabaya, 2019), p. 378. 378

<sup>35</sup> Yogi Prabowo, *Market Manipulation and the Relevance of Sanctions in the Capital Market Law (Case Study of Stock Acquisition by PT. SI)*, Journal of Education and development Vol.7 No.4 (Repository Ubayana: Surabaya, 2019), p 34

Thomas B. Hatch and Thomas C. Mahlum, market manipulation is the deliberate creation of artificial prices by legitimate supply and demand factors<sup>36</sup>.

Taking a look at the definition, the characteristics of market manipulation are as follows:

1. The ability of a manipulator to influence market prices.
2. The presence of artificial prices is not what it should be
3. An increase in demand and supply that is not normal because it is engineered or can also be referred to as artificial or abnormal levels.
4. The method used by manipulators is by deception of engineering devices and also by making false certificates.
5. Price growth caused by manipulators
6. The existence of specific motivations that cause the manipulator to deliberately create a price growth in the market

One way to maintain the integrity and public trust in capital markets is to implement regulations that prohibit market manipulation practices.<sup>37</sup> This is a key aspect in improving market liquidity and efficiency. According to John Kose and Ranga Narayanan, market manipulation can be categorized into two main categories:<sup>38</sup>

1. Trade-based manipulation, i.e. manipulation that occurs through trading activities
2. Action-based manipulation,<sup>39</sup> i.e. manipulation that occurs through actions outside of trading activities

Action-based manipulation is the practice of manipulating the value of securities through concrete actions that can directly affect their value.<sup>40</sup> Meanwhile, information-based manipulation occurs when false information is intentionally spread, often through untrue rumors.<sup>41</sup> Some examples of information-based manipulation include:

- a. The provision of incomplete information (misinformation), which can damage the reputation of the capital market and influence other investors to buy or sell securities, resulting in price changes due to affected demand and supply in misdirected market conditions, manipulators can benefit greatly from the increase in the price of securities in the capital market.
- b. Presentation of false information, which aims to influence prices so that other investors are interested in buying or selling securities.
- c. Dissemination of invalid information or information

As for *trading-based manipulation*, it occurs when the party conducting the transaction attempts to manipulate securities by purchasing or selling securities without taking action to influence the price or without releasing false information to change the price.<sup>42</sup>

There are five types of market manipulation that often occur in securities trading, such as:<sup>43</sup>

- a. Cornering the Market, In the practice of cornering the market, a manipulator will buy large amounts of Securities and hold them for a while with the intention of controlling the

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<sup>36</sup> Thomas B. Hatch and Thomas C. Mahlum, *Defining Market Manipulation: Lessons From The commodity position limit rules, futuremag*, 2021, p.1

<sup>37</sup> Mas Rahmah, *Capital Market Law*. p. 379

<sup>38</sup> Pakpahan et al., "Peran Ojk Terhadap Kerugian Nasabah Yang Diakibatkan Oleh Manager Investasi Yang Tidak Memiliki Izin."

<sup>39</sup> John Kose and Ranga Narayanan, *Market Manipulation and the Role of Insider Trading Regulations*, *The Journal of Business*, Vol. 70, No. 2, April 1997, p.129.

<sup>40</sup> Ibid, p.129

<sup>41</sup> May Shinta et al., "Penerapan Asas Kebebasan Berkontrak Dan Asas Keadilan Dalam Transaksi Bisnis," *Iqtishaduna* 4, no. 2 (2021): 671–80.

<sup>42</sup> Vincentia Audia Kirana Putri and Suyatno, "Perlindungan Hukum Terhadap Investor Dalam Transaksi Pasar Modal: Perlindungan Hukum Terhadap Investor Dalam Transaksi Pasar Modal | Jurnal Intelek Dan Cendekiawan Nusantara."

market. The cornering practice usually starts with short selling or selling securities without owning them.

- b. Marking the Close, It is a fraudulent act by adjusting the supply and demand price of Securities before the close of trading to make the Securities price higher than usual.
- c. Pooling Trading, It is a transaction agreement with certain rules and duration entered into between an investor and a manager, where profits are split in half. These bulk purchases can increase the buying interest of other investors and accelerate trading activity, thereby pushing up the price of the securities. Illiquid, small and volatile stocks are the main targets of pooled trading.<sup>44</sup>The purpose of pooling trading is: 1). Manipulate the price of the target stock. 2). Creating market activity that is not derived from actual market demand (artificial market activity). Regarding how to do pooled trading, it can only happen when a group of investors make a profit by buying shares and then spread false rumors about the company that result in the company's reputation soaring, which has an impact on the stock price in the stock market. At that point, investors sell back their shares.
- d. Painting the Tape, Trading activities carried out by using the same Securities account to buy and sell Securities, where there is no actual buyer or seller, so as to create an unreal Securities trading with the aim of displaying Securities trading activities.
- e. Wash Selling, This is a fraud committed by a person acting as a buyer and seller at the same time, which does not actually change the ownership status of the Securities themselves, especially in terms of the benefits or risks of the Securities. In wash selling, trading of Securities is done simultaneously by the conspiring parties, without any change in the beneficial ownership of the Securities.<sup>45</sup>

### F. Regulation on Prohibition of *Market Manipulation* Practices in the Capital Market

Regulations that prohibit fraudulent practices in market manipulation can be divided into four categories, namely:<sup>46</sup>

#### 1. Price Manipulation

For example, by increasing the price of securities over a period of time with the help of a broker, it attracts the attention of investors because the activity looks active and safe.

#### 2. Volume Manipulation

Divided into churning and wash trades, where churning involves buying and selling shares on a large scale to increase the volume of shares with the aim of creating a false impression of investor sentiment towards the stock. Churning aims to manipulate the market.

#### 3. Spoofing Manipulation

Involving actions that give a false or invalid impression of price movements and market activity in security transactions. There is a prohibition in the trading regulations under the Capital Market Law for actions aimed at creating a false impression in trading on the capital market of price movements.

#### 4. False Disclosure Rules

Different from insider trading rules, information related to false notifications. Market manipulation can be carried out by individuals or groups by conducting a series of transactions that create and disseminate false or invalid information to manipulate capital market activities.<sup>47</sup>

UUPM provides legal certainty and protection to investors when buying and selling securities on the stock exchange. This is expected to prevent the public from obtaining false and

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<sup>44</sup> Goulin Jiang et al., *Market Manipulation: A Comprehensive Study of Stock Pools*, 2004, pp. 3

<sup>45</sup> Mas Rahmah, *Capital Market Law*, p. 385

<sup>46</sup> Pakpahan et al., "Peran Ojk Terhadap Kerugian Nasabah Yang Diakibatkan Oleh Manager Investasi Yang Tidak Memiliki Izin."

<sup>47</sup> Nella Apriana Siregar, *Juridical Review Of Market Manipulation Practices In The Capital Market*, Thesis, (USU Repository: Medan), 2020, p. 38



misleading information that can cause losses, as well as avoid public confusion due to conditions that occur in the capital market<sup>48</sup>.

Manipulators in the capital market try to create a false situation to gain huge profits from the public. Criminals will create false perceptions and harm many parties. This is clearly regulated in Article 91 and Article 92 of the Capital Market Law, which prohibit manipulative practices that can result in *Market Manipulation* are prohibited as contained in Articles 91, 92 and 93 of the Capital Market Law. From these provisions, there are several prohibitions on market manipulation, namely:<sup>49</sup>

1. Creating an unreal image, either directly or indirectly, is prohibited for all parties involved in trading activities in the capital market.
2. Neither individuals nor groups, either directly or indirectly, are allowed to conduct more than one Securities transaction, as it may cause instability in Securities prices which may affect the buying and selling or holding activities of certain Securities.
3. All parties involved are prohibited from providing invalid or materially misleading opinions or information that may affect the price growth of Securities on the stock exchange. If such information is provided with:
  - a. The party providing the information knows that the statement or information is invalid or materially misleading; or
  - b. There is a lack of care on the part of the concerned party in verifying the facts of the information in the statement or caption.

Based on the Financial Services Authority Regulation No. 9/POJK.04/2019 regarding Broker-Dealers for debt securities and sukuk, Article 18 letter d states that it is prohibited to manipulate the market by providing misleading information to the public. Therefore, the practice of market manipulation is an act that violates the provisions in the Capital Markets Law by providing invalid and misleading information, as well as deliberately providing exaggerated information for the manipulator's personal benefit, but to the detriment of customers or other investors.

#### **G. Legal Protection Provided by Related Institutions for Investors Harmed by *Market Manipulation* Practices in the Capital Market**

Bapepam's Authority as a Form of Protection for Investors, Bapepam is authorized to investigate and prosecute fraudsters in court as it has specialized expertise in securities fraud. Bapepam is also responsible for supervising the market so that investors' right to be informed of the true market price, which is the result of a fair supply and demand process, is fulfilled. Therefore, Bapepam has the duty to monitor the market to identify possible manipulative activities.<sup>50</sup>

IDX's role in providing legal protection to investors, The role of the Indonesia Stock Exchange (IDX) in providing legal protection to investors involves the authority to regulate members, trading mechanisms, and supervision of their activities. As a result, the IDX has the responsibility to provide legal certainty and protection to all parties involved in market activities on the exchange such as;

##### **1. Preventive Measures**

In an effort to prevent fraudulent transactions in the secondary market, the IDX takes preventive measures against crimes and violations of applicable rules, by providing education and socialization to ordinary investors about the types of crimes and violations and how to avoid them. This educational effort is carried out as a means to ensure compliance by all parties with applicable rules.

Supervision is carried out by the IDX by monitoring the monitor screen that is directly connected to the trading computer system of exchange members. This system is designed in

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<sup>48</sup> Yogi Prabowo, *Market Manipulation and the Relevance*, p 35

<sup>49</sup> UU No.4 Tahun 2023, Pengembangan dan Penguatan Sektor Keuangan.

<sup>50</sup> Neni Sri Imantiati and Diana Wiyanti, Legal Protection of Investors and BAPPEPAM's Efforts in Overcoming Market Violations and Crimes, *eJournal UNISBA Mimbar* No.4Th.XVI Oct.-Dec.2000), p. 352.

such a way that it can monitor securities trading activities, including price developments, transaction frequency, market depth, and other aspects.

Monitoring by the Stock Exchange is related to various aspects, including volume and price movements, frequency, orders, transactions, transaction patterns, transaction settlement information, as well as other important information.<sup>51</sup> In carrying out this trading supervision function, decisive action can be taken, such as:

- a. Request oral or written explanation from members of the Stock Exchange
- b. Requiring listed companies to provide information disclosure
- c. Issuing unusual market activity (UMA) or unusual movement in the price of a security
- d. Suspend trading in the securities of listed companies
- e. Suspend the membership of a member of the Stock Exchange
- f. Conducting inspections of members of the Stock Exchange

Companies whose shares are listed on the Exchange are obliged to submit all important information that they know and believe may affect price movements in the market. This information is used as a reference by the Exchange to conduct future investigations.<sup>52</sup> The IDX has a system of identifying trades made by investors known as SID, namely Single Investor Identification, apart from the supervision carried out. SID (Single Investor Identification) is used as the single identity of an investor who is a customer of a stock exchange member. Issued by KSEI, SID is used by individual and institutional customers for securities transaction settlement, trading and clearing activities.<sup>53</sup>

### 2. Repressive Measures

Occurs when there is an unusual movement in share prices over a period of time, indicating a possible violation of regulations in the capital market. The purpose of this action is to raise investors' awareness so that they always conduct a thorough analysis of available information before trading in the capital market. The IDX issues UMA (Unusual Market Activity) alerts to remind investors to conduct research before making transactions.

UMA is used by investors as a guide to analyze unusual price movements in the market, which may be perpetrated by certain parties for personal gain. Cooling down is the act of temporarily halting stock trading in the event of unusual price movements.

The IDX endeavors to contact the relevant parties, identify its findings, and report them to the OJK for further follow-up.<sup>54</sup>

## H. Legal Protection of Investors by OJK

Legal Protection for Investors by OJK is based on Law No. 21 of 2011 concerning the Financial Services Authority, which authorizes OJK to regulate and supervise financial services activities in the Capital Market sector in accordance with the Capital Market Law. OJK is responsible for taking action against violations and crimes in the capital market and providing legal protection to parties who feel harmed. There are two approaches to legal protection by OJK in the financial services sector:<sup>55</sup>

### 1. Preventive Measures:

#### a. Socialization

OJK, through BPSPM, has conducted SEPMT (Integrated Capital Market Socialization and Education) to increase the knowledge of business people and the public at

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<sup>51</sup> May Shinta, "The Dimensions of Legal Opinion's Role in Settlement of Civil Law Cases," *LEGAL BRIEF* 11, no. 2 (March 13, 2022): 566–74.

<sup>52</sup> Rio Cahya Nandika, *Legal Protection Of Investors Against Semu Transaction Practices In Indonesia's Secondary Markets*, Script, (FH UNS: Surakarta, 2018), p. 49

<sup>53</sup> Ibid, p.50

<sup>54</sup> Ibid, p.51

<sup>55</sup> Pakpahan et al., "Peran Ojk Terhadap Kerugian Nasabah Yang Diakibatkan Oleh Manager Investasi Yang Tidak Memiliki Izin."

large about current issues in the capital market and provide an understanding of smart and safe investment.

b. Coaching

SE OJK No. 2/SEOJK.07/2014 concerning services and settlement of consumer complaints on business services actors, stipulates that all parties involved in activities in the capital market must attend training. Settlement of consumer disputes or complaints must be carried out through the IDR (internal Dispute Resolution) mechanism with the principle of consensus as an effort to strengthen consumer trust and reputation and strengthen culture in the financial sector.

c. Regulation

The protection provided by OJK to investors in the capital market is based on regulations such as POJK No.1/POJK.07/2013 on financial services consumer protection, POJK No. 1/POJK.05/2016 on investment in state securities for non-bank financial services institutions, POJK No. 29/POJK.04/2016 on annual reports of issuers or public companies, POJK No. 69/POJK.04/2017 on document maintenance by exchanges, and POJK No. 78/POJK.04/2017 on securities transactions that are not prohibited for insiders.<sup>56</sup>

Investor protection by OJK also includes the obligation to provide opportunities for investors to examine the prospectus related to the Securities to be announced. The openness and completeness of the issuer's documents is the goal to fulfill the principle of openness in the capital market. The securities prospectus must contain clear and complete information regarding material facts related to the offered securities.

OJK has 5 strategies for protection, including the development of an Integrated Financial Services System that can be accessed and operated easily, the implementation and development of standards for effective handling of user complaints by financial institutions using the IDR system as part of an actual and reliable LAPS in the financial sector, and the development of information systems to support and monitor the implementation of consumer protection policies.

d. Education

OJK's Integrated Consumer Service serves as a platform for consumers to submit their complaints, known as Financial Customer Care (FCC), as a measure to improve financial literacy and review financial services products offered by relevant institutions. OJK has a responsibility to educate the public about investments that lack clear licensing and legality.

e. Warning/Reprimand

In an effort to protect and provide certainty to investors and consumers, OJK provides notifications to companies suspected of violations to immediately correct behavior that can harm the public. One example is through the Investment Alert Portal (IAP), which functions as a warning tool by providing notifications and as a source of investment information that will be updated regularly.

f. Surveillance

OJK optimizes complaint services through the IDR or LAPS mechanism, by continuing to supervise and evaluate consumer complaints. This is not only as a tool to deal with existing problems, but also as an analytical material to formulate consumer protection policies that suit the needs of society. The goal is to encourage financial services institutions to improve their safety and empower consumers.

2. Repressive Action (Countermeasures)

These countermeasures are based on OJK Law Article 29, which regulates the preparation of consumer complaint services, facilitating the settlement of complaints from aggrieved consumers, and structuring the consumer complaint process. Article 30 of the OJK

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<sup>56</sup> Widiarty, "Perlindungan Hukum Bagi Direksi Berdasarkan Business Judgment Rule Terhadap Kerugian Perusahaan Terbatas," 88.

Law authorizes OJK to conduct legal defense, such as ordering the settlement of consumer complaints and filing a lawsuit for compensation for the aggrieved party.<sup>57</sup> Thus, OJK provides an opportunity for the implementation of IDR between consumers and related financial service institutions.

According to Article 38 of POJK No. 1 of 2013, businesses in the financial sector are required to conduct an internal examination of complaints that is objective, clear, and competent.<sup>58</sup> This involves a thorough analysis to ascertain the veracity of the complaint's claims, as well as offering an apology and making an offer of compensation.

If the complaint is proven true, OJK has the authority to provide protection by directing efforts to resolve violations and crimes in litigation, by filing a lawsuit to recover losses experienced by the complaining party, such as loss of property.<sup>59</sup>

The steps that can be taken through Repressive Measures are as follows: a) Settlement outside the court process (Non-litigation):

OJK has a role in providing advice in dispute resolution through non-litigation channels. Further regulations on out-of-court settlements refer to POJK Number 1/POJK.07/2014 regarding Alternative Dispute Resolution Institutions (LAPS). b) Settlement in litigation: Based on Article 2 of POJK Number 1/POJK.07/2014 regarding complaint resolution by Financial Services Institutions, the problem must be attempted to be resolved first by the Financial Services Institution. If unsuccessful, settlement can be made through the litigation process.

Sanctioning:

For violations and crimes in the capital market, the Capital Market Law applies three types of sanctions, namely:<sup>60</sup>

a. Civil Sanctions

The application of civil sanctions may include the payment of compensation to the victim. If the victim suffers a loss, he or she can file a civil lawsuit based on several legal grounds, including Article 1365 BW, Article 111 UUPM, and Article 1243 BW.

b. Criminal sanctions

As the last measure applied, also refers to the *ultimum remedium* principle. This is regulated in Article 103 through Article 105 of the Capital Market Law. Criminal sanctions can be in the form of imprisonment or fines, and can be given to direct perpetrators or parties involved in a crime in the capital market. Criminal sanctions can vary, for example for cases such as market manipulation, insider trading, fraud, and violation of the principle of disclosure. Criminal penalties can reach a maximum of 10 years in prison and a maximum fine of 15 billion rupiah. In addition, for other cases such as carrying out activities without a business license in the capital market, the threat can reach a maximum of 5 years in prison and a maximum fine of 5 billion rupiah. Furthermore, for other violations such as not notifying the registration of a public company, the threat can reach a maximum of 3 years in prison and a maximum fine of 5 billion rupiah. Finally, for lighter cases such as unlicensed activities, the threat can reach a maximum of 1 year in prison and a maximum fine of 1 billion rupiah.

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<sup>57</sup> Anik Gita Yuana et al., "Strategi Meningkatkan Pemahaman Mahasiswa Terkait Literasi Pasar Modal Syariah Melalui Kegiatan Kspm (Kelompok Sekolah Pasar Modal)," *Ar-Ribhu: Jurnal Manajemen Dan Keuangan Syariah* 2, no. 2 (2021): 239–51, <https://doi.org/10.55210/arribhu.v2i2.744>.

<sup>58</sup> Media, "Pasar Modal 2024, 'Outlook' Cerah dengan Sektor Perbankan yang Dominan."

<sup>59</sup> Rio Cahya Nandika, *Legal Protection Of Investors Against Semu*, p.58

<sup>60</sup> I. Gusti Ayu Firga Julia, Anak Agung Sagung Laksmi Dewi, and I. Made Minggu Widyantara, "Perlindungan Hukum Bagi Konsumen oleh Otoritas Jasa Keuangan (OJK) Terhadap Kegiatan Investasi Ilegal yang Dilakukan oleh Investor," *Jurnal Konstruksi Hukum* 2, no. 3 (September 1, 2021): 489–94, <https://doi.org/10.22225/jkh.2.3.3622.489-494>.

- c. Witness and administrative, The enforcement of administrative sanctions is regulated in Article 5 to Article 7 of Part III of POJK No.1/POJK.04/2020 relating to the preparation of financial statements of Securities companies

## Conclusion

One of the immoral activities for investment managers is providing false information that deceives investors so that it has a detrimental impact on investors. If professional investors they can independently collect information about stock prices and operate it in the primary and secondary markets while for beginner investors they do not have specific skills and understanding, therefore the role of an investment manager is needed. In order to maintain the stability of activities in the capital market, it is necessary to have legal protection, which can be defined as actions that seek to prevent, punish, and sanction. There are various forms of protection for actors in the capital market. By safeguarding their investments, the Investor Protection Fund (DPP) provides confidence and security to investors when they are involved in the Indonesian capital market. To safeguard Indonesian investors, the Indonesian Securities Investor Protection Fund (SIPF) was formed under the Indonesian Securities Investor Protection Program (PPPIEI) (DPP). Market violations include operations carried out without OJK permits, investment managers receiving money illegally, and attempts to thwart OJK inspections, which are governed by Article 110 Paragraph (1) of the Capital Market Law. The Capital Market Law's Chapter XI, Articles 90 through 99, regulates offenses and crimes in the market. Fraud, market manipulation, and trading based on internal knowledge are the three categories of capital market crimes according to the law. Stock market manipulators attempt to fabricate a situation in order to extract enormous sums of money from the general public. False impressions will be spread by criminals, hurting numerous people. The Capital Market Law's Articles 91 and 92, which forbid manipulative actions that may lead to market manipulation, as well as Articles 93 and 92, specify exactly how this is to be done. For violations and crimes in the capital market, the Capital Market Law applies three types of sanctions, there are civil sanction, criminal sanction, and witness administrative.

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