



# Law Protection for Stock Investor on Cornering the Market Case in Securities Trading In Indonesian

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**Abstract:** There are two types of law protection for investor: preventive and repressive. Preventive law protection is the one that is preventing in nature and the repressive law protection is the one after *Cornering the market* practice has occurred. The form of preventive protection includes: Building, Regulation, and supervision over Capital Market's daily activities conducted by Stock Exchange and Financial Service Authority. Stock Exchange also monitors the information on any effect related to Stock or securities trading. Then, the form of repressive law protection in the case of *Cornering the market* practice is Auto Rejection in the case of securities price changing dramatically, and the incidence of *Cornering the market* practice leads the exchange to include the emittent into UMA (Unusual Market Activity), and to impose sanction in the form of securities trading suspension for certain period of time.

**Keywords:** Cornering, Securities, Capital Market, Investor

## A. INTRODUCTION

Capital market is an investment vehicle developing rapidly along with economic and technology advance. In modern economy, the existence of capital market is a need. In the states with developed economic condition, the existence of capital market as manifested in stock exchange institution plays an important role, just like the bank does. Capital market is the indicator of interaction between businesspersons and investors through and economic activity. Businesspersons represented by company will need to look for capital by entering into capital market. Meanwhile, investors enter into capital market to invest their fund (Inda Rahadiyan, 2014).

Capital market plays an important part in a state's economy. Capital market has been the leading indicator of economic development. Transaction activity development in the Exchange indicated with an index can be the parameter of a state's overall economic condition (Hamud M Balfaz, 2006).

In addition to bringing about a new phenomenon benefiting much the economy, capital market development also generates a variety of crimes potentially harming the public widely. Modus operandi frequently conducted sophisticatedly makes the actually harmed investors not aware that the loss (the harm) they suffer from is a business risk in capital market (Hamud M Balfaz, 2006).

In contrast to the crime generally potentially generating the loss directly, the crime in capital market is often considered as not generating the visible and tangible loss. The loss resulting from this crime is even considered as indefinite. Such the perception likely contributes to the low level of law enforcement against the crime in capital market today (Hamud M Balfaz, 2006).

As technology and economy develop, there are 3 types of crime in capital market: Insider Trading, Fraud in Capital Market, and market manipulation practice. This study raises one of sufficiently popular crimes in capital



market, market manipulation practice. One of market manipulation practices occurring frequently is *Cornering the market* practice.

Cornering the market is an individual cooperating with several securities companies to buy up stocks in a large number, so that the stock market reacts and the stock price is boosted. After the stock price has soared, the actor of *cornering* releases the stock he/she has. Usually, the stock price will go down dramatically in second or minute (Benni Sinaga, 2015).

In the presence of *Cornering* practice, minority investors having a company's stock in small number, of course, suffer from the loss, as they buy the stock at high price and have no time to sell it because of the stock price decreasing dramatically.

Considering this *Cornering* practice, there are some law protections to minority investors; this law protection is intended to prevent the *Cornering* practice from occurring, that can be harmful to many parties including investor, emmitent, and stock exchange.

## B. METHODOLOGY

This study is using statute approach, because it is normative research. This article aims to find out the law protection for stock investor in the case of "*cornering the market*" practice in securities trading in Indonesian capital market. The source and type of law material consists of primary law material including legislation, particularly related to Capital Market, and some PT. Bursa Efek Indonesia (Indonesia Stock Exchange)'s Board of Directors Regulations, and secondary law material including the law material related to primary law materials and source such as books and journals relevant to capital market.

## C. LITERATURE REVIEW

The monetary policy rule specified the means trough which the monetary policy authority controls the economic activities in an economy, the stock market inclusive (Ayopo, Isola, & Olukayode, 2016).

The capital market in any economy is the swivel on which the fortune of that economy revolves. The importance of a well-functioning capital market in an economy cannot be over emphasized considering the fact that it provides the resources for its growth and developmental agenda and also serves as an indicator of the economy's general performance (Ibrahim B. Shaibu, 2014).

A stock market can be a very sophisticated market place, where stock and shares are the traded commodity. At the same time, it is central to the creation and development of a strong and competitive economy. It is a key to structural transformations in any economy, from traditional, rigid, insecure bank-based to a more flexible, more secure economy that is immune to shocks, fluctuations and lack of investors confidence (Masoud, 2013).

Large uninformed traders with market power could manipulate prices to their advantage and generate profits at no risk. Profitable manipulators aimed to create 'price momentum' so that an increase in price caused by the manipulator's trade at one date tended to increase prices at future dates. Jarrow also showed that profitable manipulation is possible where the manipulator corners the market (Jarrow, 1992). The manipulation activity is likely to be prevalent among other emerging markets. Numerous accounts of emerging markets today show similar concerns (Khwaja, 2005).

*Cornering* is one form of market manipulation. Manipulation can occur in a variety



of ways, from actions taken by insiders that influence the stock price (e.g., accounting and earnings manipulation such as in the Enron case) to the release of false information or rumors in Internet chat rooms. Moreover, it is well known that large block trades can influence prices. For example, by purchasing a large amount of stock, a trader can drive the price up. If the trader can then sell shares and if the price does not adjust to the sales, then the trader can profit selling shares will depress the stock price, so that, on average, the trader buys at higher prices and sells at lower prices. This is the unraveling problem and would seem to rule out the possibility of trade-based manipulation” (Aggarwal & Wu, 2006). Manipulation harms market efficiency by disrupting with the process by which prices reflect the market forces of supply and demand (Gerace & Chew, 2014).

#### D. ANALYSIS AND DISCUSSION

Law protection is one of elements to improve the law enforcement aspect in a state. Law protection is, of course, given by the state to its people for the sake of realizing stability in any thing, including economic and legal matters (Hilda Ilmiyah, 2014).

Law protection, according to Philipus M. Hadjon, is a set of norm rules that will be able to protect one thing from others. He said that law protection for the people can be the governments' preventive and repressive measures. Preventive law protection aims to prevent dispute from occurring. The preventive law protection is very meaningful to the government's measure based on the freedom of action because in the presence of preventive law protection, the government is encouraged to make decision carefully based on discretion. Meanwhile, repressive law protection aims to resolve any dispute. The management of

law protection by general court and administrative court in Indonesia belongs to this category of law protection. The principle of law protection for the government's measure builds on and originates from the concept of recognition and protection of human rights ([www.suduthukum.com](http://www.suduthukum.com)).

The form of law protection in preventive measure or the prevention of *Cornering the market* practice case in securities trading in this capital market includes supervision over securities trading in capital market. It is in line with the Article 3 clause (1) of Law Number 8 of 1995 about Capital Market reading “Building, Regulation and Supervision over daily activities of Capital Market are conducted by Capital Market Supervisory Agency”. Then, in the presence of Financial Service Authority, particularly the provision of Article 55 of Law Number 21 of 2011 about Financial Service Authority, since December 31, 2012, the function, duty, and authority of regulating and supervising financial service activity in Capital Market sector is transferred from Capital market Supervisory Agency to Financial Service Authority. Corresponding to the provision of Article 6 letter b of Law Number 21 of 2011 about Financial Service Authority, the Financial Service Authority undertakes regulatory and supervisory duties over financial service activity in Capital Market sector related to securities trading. This building is intended to give the investors a view on investment. In relation to supervision, financial service authority is responsible for the securities trading process in capital market in order to make the securities trading running orderly according to the enacted regulation without any infringement that can be harmful to the parties.

In addition to Financial Service Authority, in the attempt of supervising the securities trading activity in capital market, the Stock Exchange also provides supporting vehicles and supervises the



members of exchange's activity. It is in line with the provision included in Article 7 clause (1) of Law Number 8 of 1995 about Capital Market, reading "In the attempt of achieving the objective as mentioned in clause (1), Stock Exchange obligatorily provides supporting vehicles and supervises the members of Stock Exchange's activities. Stock Exchange also contributes to supervising securities trading in capital market in order to prevent any infringements from occurring in securities trading in the capital market, and ensures that the securities trading transaction runs fairly, regularly and with information transparency from emittent to the market actors (performers).

In capital market, investor is a consumer. Corresponding to the provision of Article 1 number 15 of Law Number 21 of 2011 about Financial Service Authority, consumer includes those investing their fund and/or utilizing the service available in Financial Service Institution including bank customers, investor in Capital market, policy holder in insurance, and participants of Pension Fund, based on the legislation in financial service sector. Considering such the provision of article, an investor in capital market is a consumer.

In line with the provision of Article 4 of Law Number 21 of 2011 about Financial Service Authority, the Financial Service Authority is established to makes all activities in financial service sector organized regularly, fairly, transparently, and accountably, thereby can realize a financial system growing sustainably and stably, and protect the consumers' and people's interest.

Then, article 28 of Law Number 21 of 2011 about Financial Service Authority mentions that for protecting the Consumer and the Public, Financial Service Authority is authorized to take some measures to prevent the consumers and the public from suffering any loss, by means of:

- a. Informing and educating the people (the public) about the characteristics of financial service sector, its service and products.
- b. Telling the Financial Service Authority to cease its activity when the activity potentially harms the public; and
- c. Other measure considered as necessary according to the provision of legislation in financial service sector.

Corresponding to the provision of Article II.10 of Regulation Number II-A about Stock Trading that is Equity in nature, the Board of Directors of PT Bursa Efek Indonesia's Decree Number Kep-00399/BEI/11-2012 amended with the Board of Directors of PT Bursa Efek Indonesia's Decree Number Kep-00071/BEI/11-2013 reading "In the attempt of supervising the Stock trading, the Exchange monitors the information on any Stock related to the followings:

- II.10.1. fluctuating price and volume;
- II.10.2. frequency;
- II.10.3. order;
- II.10.4. transaction;
- II.10.5. transaction pattern;
- II.10.6. information on transaction completion;
- II.10.7. other most important and relevant information.

This is intended to give the investor a view on investment, so that through monitoring the information on an emmittent's stock, the investors are expected to be precise and not to be affected by the stock whose price changes dramatically without clear information, just like *Cornering the market* practice. Generally, this *cornering the market* practice occurring at the time when the stock price is played by actors and rises dramatically leads the investors having less knowledge on an emmittent's stock condition like its fundamental condition to buy the stock at high price with an assumption that the price will be





getting higher and they will get capital gain. However, in many cases after the price rises and there is no time to sell the stock at good price, the stock price goes down dramatically only in minute and it makes the investors buying the stock at high price and having no time to sell it suffering from capital loss. It of course harms several parties.

This *cornering the market* practice is governed in the provision of Articles 91 and 92 of Republic of Indonesia's Law Number 8 of 1995 about Capital Market. The provision of Article 91 of Republic of Indonesia's Law Number 8 of 1995 about Capital Market reads "Every party is prohibited from doing any action, either directly or indirectly, aiming to create a pseudo or misleading representation about trading activity, market condition or stock price in the stock exchange".

Then, the provision of Article 92 of Republic of Indonesia's Law Number 8 of 1995 about Capital market reads "Every party, either individually or collectively along with other parties, is prohibited from doing two or more Stock transactions, either directly or indirectly, thereby leading the stock price in Stock Exchange to be constant, increase or decrease, aiming to affect other parties to buy, to sell or to restrain the Stock".

The unfair securities trading such as *Cornering* can influence the state economy, because it can influence both domestic and foreign investors to prefer withdrawing their invested fund to being lost due to manipulation practice in securities trading called *Cornering* in this capital market.

In addition, the regulation concerning *Cornering the market* in stock trading in Capital Market has been included into the Board of Directors of PT Bursa Efek Indonesia's Decree Number Kep-00399/BEI/11-2012 enacted since January 2, 2013 amended with the Board of

Directors of PT Bursa Efek Indonesia's Decree Number Kep-00071/BEI/11-2013. Article II.9 of Regulation Number II-A about Equity Stock Trading reading "the members of Stock Exchange are prohibited from:

- II.9.1. Making sale offering and or purchasing request aiming to give pseudo representation about activity and or movement of a stock's price through information in JATS (Jakarta Automated Trading System), the stock trading system prevailing in the Exchange for the trading conducted automatically using computer<sup>1</sup>.
- II.9.2 Conducting trading potentially resulting in market manipulation, for both self-interest and customer interest.
- II.9.5 Being involved, either directly or indirectly, or cooperating with other parties in a deed or an action that can result in misleading impression that a stock is as if traded actively or encourage the unfair transaction to occur over a stock.

The Law Number 8 of 1995 about Capital Market mentions two sanctions imposed against those making infringement in securities trading in capital market: administrative and criminal sanctions. Administration sanction is mentioned in Article 102 clause (2) of Law Number 8 of 1995 about Capital Market reading:

"Administrative sanction can be:

- a. Written warning;
- b. Fine or obligation of paying a certain amount of money;
- c. Business activity restriction;
- d. Business activity suspension;

<sup>1</sup> Article I.16 with the Board of Directors of PT Bursa Efek Indonesia's Decree Number Kep-00071/BEI/11-2013. Regulation Number II-A about Stock Trading that is Equity in nature.



- e. Business license revocation;
- f. Agreement cancelation; and
- g. Registration cancelation”<sup>2</sup>

Meanwhile, the provision of criminal sanction is mentioned in Article 104 of Law Number 8 of 1995 about Capital market reading “Every party breaking the provisions as intended in Articles 90, 91, 92, 93, 95, 96, 97 clause (1) and 98 will be threatened with maximally 10-year imprisonment and fine of IDR 15,000,000,000.00 (fifteen billions rupiahs)”.

The form of repressive law protection or the one in the case of *Cornering* practice has occurred, when some infringements are made in securities trading in capital market, the stock exchange will suspend an emmitent’s securities trading. In addition, when there is unfair price movement in a stock, the Stock Exchange will include the emittent’s stock into an announcement of Unusual Market Activity (UMA). Unusual Market Activity (UMA) is an announcement in which the movement of an emittent’s stock price is considered as unfair due to the dramatically increasing stock price movement without a cause such as Corporate Action and the dramatically decreasing stock price in an emittent. In the case of *Cornering* practice in securities trading in capital market, the emittent’s stock is surely included into the announcement of Unusual Market Activity (UMA) and the corresponding emmittent is required to deliver information the public and the marketers should know transparently.

In line with the provision of Article II.11 of Regulatin Number II-A about Stock Trading that is Equity in nature, the Board of Directors of PT Bursa Efek Indonesia’s Decree Number Kep-00399/BEI/11-2012 amended with the Board of

Directors of PT Bursa Efek Indonesia’s Decree Number Kep-00071/BEI/11-2013 reading “In the attempt of supervising the Stock trading, the Exchange takes the following measures:

- II.11.1. asking the members of Stock Exchange for either direct or indirect explanation;
- II.11.2. asking the Enlisted Companies for Information transparency;
- II.11.3. publishing Unusual Market Activity (UMA), unusual trading activity and or Stock movement in a certain period of time in the Stock Exchange, according to the Stock Exchange assessors, harming the organization of a regular, fair, and efficient stock trading;
- II.11.4. imposing suspension over the Enlisted Companies’ Stock;
- II.11.5. imposing suspension over the Members of Stock Exchange;
- II.11.6. auditing the Members of Stock Exchange.

In addition, in the case of unfairly changing or dramatically increasing and increasing stock price, the stock exchange will make Auto Rejection over a stock traded. Considering the Article I.2 of Regulation Number II-A about the Board of Directors of PT Bursa Efek Indonesia’s Decree Number Kep-00399/BEI/11-2012 amended with the Board of Directors of PT Bursa Efek Indonesia’s Decree Number Kep-00071/BEI/11-2013, Auto Rejection is an automatic rejection made by JATS against the offering for selling or the demand for buying a stock that is equity in nature included into JATS because the price threshold or the number of stocks that is equity in nature specified by the stock exchange has been surpassed. It is conducted to prevent the stock price from decreasing or increasing continuously, but this Auto Rejection is made in only every

<sup>2</sup> Article 102 clause (2) of Law Number 8 of 1995 about Capital Market



trading per day. So, when a stock's price decreases due to *Cornering* practice, Auto Rejection is made when the stock price moves dramatically only, and it is possible that in the following day the stock price will decrease, because of massive stock selling triggered by the investors' panic due to *Cornering* practice. It will result in loss among others investors buying the stock at high price and having no time to sell the stock.

In line with the provision of Article 9 letter c of Law Number 21 of 2011 about Financial Service Authority, the Financial Service Authority is authorized to supervise, to audit, to investigate, and to take other measures over Financial Service Institutions, actors and/or those supporting financial service activity, and to protect consumer as mentioned in the legislation in financial service sector. In this case, the Financial Service Authority is authorized to supervise securities trading in capital market. When such infringements as *Cornering* practice occur in securities trading in capital market, it is authorized to audit and to investigate the case incidence. In addition, in the case of such infringements as *Cornering* practice occurring in securities trading in capital market, in line with the provision of Article 9 letter g of Law Number 21 of 2011 about Financial Service Authority, the Financial Service Authority is authorized to determine administrative sanction to imposed over those infringing the legislation in financial service sector, such as *Cornering* case.

Based on the provision of Article 8 letter i of Law Number 21 of 2011 about Financial Service Authority, to undertake regulatory duty as included in Article 6 of Law Number 21 of 2011 of Financial Service Authority, the Financial Service Authority is authorized to develop regulation about the procedure of imposing sanction corresponding to the provisions of legislation in financial service sector.

Considering the provision of Article 29 of Law Number 21 of 2011 about Financial Service Authority, the Financial Service Authority provides Consumer Complaint service including:

- a. Preparing adequate equipment for providing complaint service for the consumers harmed by the actors in Financial Service Institution;
- b. Developing complaining mechanism for the consumers harmed by the actors in Financial Service Institution; and
- c. Facilitating the resolution of complaint for the consumers harmed by the actors in Financial Service Institution corresponding legislation in financial service sector.

In the case of *Cornering* practice in securities trading in capital market resulting in a targeted emmitent's stock trading suspension, the stock the investors have can be sold through negotiation market. Considering the provision of Article I.28, the Board of Directors of PT Bursa Efek Indonesia's Decree Number Kep-00399/BEI/11-2012 amended with the Board of Directors of PT Bursa Efek Indonesia's Decree Number Kep-00071/BEI/11-2013 about the Stock Trading that is Equity in Nature, negotiation market is the one in which the stock trading that is equity in nature in the stock exchange is conducted based on individually direct bargaining rather than continuous auction, and the resolution can be made based on the consensus among the Members of Stock Exchange.

Based on the Article VII.2, the price of equity stock traded in Negotiation market is specified based on the consensus among the members of selling and buying Stock Exchange without referring to the size of price fraction. This stock trading in negotiation market is conducted through individually bargaining process between members of stock exchange or between customers through a member of stock exchange or between



customer and members of stock exchange; thereafter, the result of consensus on bargaining is processed through JATS.

## E. CONCLUSION

In relation to the case of *Cornering* practice, there are two types of law protection for investors: preventive and repressive. Preventive law protection is the one that is preventing in nature and the repressive law protection is the one after *Cornering the market* practice has occurred. The form of preventive protection includes: Building, Regulation, and supervision over Capital Market's daily activities conducted by Stock Exchange and Financial Service Authority. Stock Exchange also monitors the information on any effect related to Stock or securities trading. Then, the form of repressive law protection in the case of *Cornering the market* practice is Auto Rejection in the case of securities price changing dramatically, and the incidence of *Cornering the market* practice leads the exchange to include the emittent into UMA (Unusual Market Activity), and to impose sanction in the form of securities trading suspension for certain period of time. Furthermore, the sanction imposed to the security companies can be fine and administrative sanction in the form of business activity suspension, while the one to the emittent can be the suspension of stock trading activity in capital market. In the case of stock that cannot be traded in regular market due to stock transaction suspension because of *Cornering the market* practice the investors can sell the stock they have through negotiation market.

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