

Article Title

**The Role of the Financial Services Authority in Supervising
Capital Market Flows in Indonesia**

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ABSTRACT

*This study aims to examine the enforcement of laws and the role of the Financial Services Authority in addressing capital market violations amid the development of economic flows in Indonesia. This study uses normative legal research with the statute and comparative approaches. The collected legal material is then qualitatively analyzed to describe the problem and answer study purposes. The results show that capital market violations consist of administrative violations and criminal offenses. Meanwhile, Bapepam's role in addressing capital market violations has been shifted to the Financial Services Authority. OJK is a builder, regulator, and supervisor of capital market activities. In executing its law enforcement functions, OJK also has the authority to examine, impose administrative sanctions, and investigate criminal offenses to be pursued and resolved through the criminal justice system. On the other hand, based on the *una via* principle, OJK can also decide not to proceed to the investigation stage of an alleged criminal offense by imposing an administrative sanction in the form of a fine accompanied by a written order. In carrying out its enforcement functions, OJK enforces criminal law both preventively and repressively. Therefore, it is recommended that the OJK and relevant parties enhance coordination and collaboration in enforcing capital market laws, both preventively and repressively. This enforcement can be achieved by improving human resources capacity and infrastructure to monitor daily capital market activities. Increasing investor education and awareness is also crucial to reduce the likelihood of violations. Lastly, OJK should ensure a balanced approach between preventive and repressive law enforcement, considering the *una via* principle in specific cases. Implementing these recommendations will support creating a conducive, transparent, and fair capital market environment, ultimately attracting investors and further promoting Indonesia's economic growth.*

Keywords: Capital Market; Financial Services Authority; Law Enforcement; Violation.

INTRODUCTION

As a developing country, Indonesia has experienced significant economic growth over the past few decades (Salamah & Dewi, 2023). On the other hand, the development of modern society often precedes the development of law. Meanwhile, order within society is based on rules established by the authorities to achieve goals that benefit the community.

As a social order, the law has its character of establishing norms and making rules with its characteristics to maintain societal stability. Along with societal development, the need for law also evolves, driving the development of law in both private and public sectors (AlModarra, 2019; Hidayat & Hainadri, 2021). In the context of a legal state, the government is responsible for maintaining security and order and realizing social welfare for the community. Therefore, a comprehensive legal framework is needed to achieve the desired order.

As the policymaker in general and specific legal matters, the government expresses these policies through legislation. The rules created by the government are then processed and enriched based on Pancasila, National Insight, and Archipelagic Insight, forming the national legal system. In its implementation, the law serves as both the subject and object of development (Hasyim et al., 2023). The advancement of

national legal science should be pursued without diminishing the universal character of scientific activities, considering that legal science differs from other sciences and technologies. For instance, current society requires new business regulations to accommodate needs not met by existing legal rules, given the rapid development of business in recent decades.

Furthermore, the ongoing globalization drives economic growth, especially in the capital market sector, which has become the center of increasingly advanced and aggressive business activities (Pakpahan et al., 2020). The capital market meets the financial needs of private companies, individuals, and governments and is an essential instrument in a country's economy. The capital market also functions as an investment and financing tool for companies and individuals and a venue for long-term fund transactions, whether in debt or equity, connecting sellers and buyers (Tarasov, 2018). In addition, investment has shifted towards the capital market, where options such as gold and foreign currency investments are also in high demand, although only some start with the capital market.

On the other hand, the history of the capital market in Indonesia dates back to the Dutch East Indies administration, with the establishment of the stock exchange in Batavia (now Jakarta) on 14 December 1912, under the name *Vereniging voor de Effectenhandel*. Capital market activity regulation is also a part of financial business law, which falls under general business law. According to Marzuki Usman, banks and financing institutions need capital markets to complement the financial sector. A country's banking quality influences proper capital market implementation, as banks function as transaction bridges managing financial flows for investments in capital market institutions. Furthermore, the banking and insurance industries utilize capital markets as venues to lend their funds.

The capital market plays a crucial role in the investment and financing of national development. Additionally, capital market traffic contributes significantly to financing needs related to economic growth. The capital market serves as a monetary tool linking investors or capital owners with issuers and entrepreneurs as fund borrowers and as a bustling venue for meeting needs through transactions in the capital market (Maulana & Marasabessy, 2018). Therefore, clear rules are necessary to protect market participants/investors. A well-organized capital market is vital to developing and succeeding in a country's economic growth.

Legal aspects regulating the capital market are essential to ensure proper implementation and sound financial flows within the capital market (Lubis & Susanto, 2019). The Indonesian government strives to develop a healthy, efficient, and transparent capital market, enhancing the enforcement of laws and regulations in line with international standards and overseen by an independent institution as a direction

for economic policy. This effort materialized in [Decision Number IV/MPR/1999](#) and [Law Number 8 of 1995](#) on the Capital Market. [Law Number 8 of 1995](#) encompasses civil, administrative, and criminal sanctions. The purpose of criminal provisions in [Law Number 8 of 1995](#) is to anticipate potential legal violations within capital market activities. This anticipation indicates that lawmakers have recognized the potential for deviations in capital market business activities, prompting the establishment of comprehensive legal rules in capital markets as a preventive measure.

Furthermore, considering the significant funds involved in the capital market financial flows, [Law Number 8 of 1995](#) also regulates the existence and role of the Capital Market Supervisory Agency/*Badan Pengawas Pasar Modal* (Bapepam). Over time, the role of the Capital Market Supervisory Agency is shifted to the Chief Executive of Capital Market Supervision as one of the Commissioners on the Financial Services Authority (OJK) as regulated in [Law Number 21 of 2011](#). On the other hand, to develop and strengthen the financial sector by regulating the Capital Market sector, [Law Number 8 of 1995](#) was later amended by Article 22 of [Law Number 4 of 2023](#). The presence of the OJK is crucial in maintaining the continuity and stability of Indonesia's capital market. The OJK's role is vital in maintaining the trust of both domestic and international investors in investing in the Indonesian capital market.

Although the government has introduced a series of regulations to prevent and eradicate crimes and violations, loopholes for deviations in the capital market persist ([Rachmadini, 2019](#)). These deviations are not detached from the rapid development of capital market traffic, which carries potential risks such as price manipulation, the spread of misleading information, and various other forms of abuse that can harm investors and disrupt financial market stability. Therefore, examining the possible or existing deviations in the capital market from the perspective of business law applicable in Indonesia and the implications of sanctioning rules if imposed on capital market violators is essential.

Based on the above discussion, this study aims to examine the enforcement of laws and the role of the Financial Services Authority in addressing capital market violations amid the development of economic flows in Indonesia.

METHOD

This study uses normative legal research with the statute and comparative approaches ([Qamar & Rezah, 2020](#)). The legal materials used in this study include legislation, books, scientific law articles, and online materials discussing the role of the Capital Market Supervisory Agency. The collection of legal materials is carried out using a literature study technique. The collected legal material is then qualitatively analyzed to describe the problem and answer study purposes ([Sampara & Husen, 2016](#)).

RESULTS AND DISCUSSION

A. Enforcement of Law against Capital Market Violations

The capital market, where corporate stocks are traded, including those of publicly listed companies, is one of the most strictly regulated markets in the world (Haidar, 2015). Long-term and short-term investments in capital markets provide alternatives for investors, attracting them to invest their funds. The advancement of Indonesia's capital market relies heavily on the professionalism of its participants, who include Capital Market Organizers, Capital Market Supervisors, Issuer Companies, Investors, Underwriters, Brokers, Investment Managers, Investment Advisors, Capital Market Supporting Institutions, and Capital Market Supporting Professionals.

Historically, Indonesian business law has been built on a solid legal foundation. The two principal codes governing business law are the [Civil Code](#) and [Commercial Code](#), which were first enforced in 1848 based on the concordance principle. However, as capital markets developed, specific market-related crimes involving market participants and harming investors became more frequent. Various tactics often lead to criminal issues in the capital market. Some causes of these crimes and violations are attributed to weak understanding among market participants, weaknesses in the professionalism and integrity of authorities, and inadequate regulations on capital markets (Sofyan, 2019). Therefore, legal rules must provide a clear and comprehensive legal framework to prevent injustice and protect those involved in capital markets. This legal framework must address various tricks and tactics that could potentially harm parties in the capital market while maintaining fairness and stability in the sector.

Law enforcement is the process undertaken to ensure the application of specific legal provisions, allowing sanctions to be imposed to uphold legal certainty and regulate order according to general legal principles. According to [Rahardjo \(2002\)](#), law enforcement transforms legal desires into reality, starting drafts and formulating legislation based on lawmakers' ideas. However, enforcing business law in capital markets requires a unique law enforcement concept that distinguishes it from the general understanding of criminal law enforcement.

[Goldstein and Goldstein \(1971\)](#) differentiates criminal law enforcement into three types: total enforcement, full enforcement, and actual enforcement. Total enforcement refers to criminal law enforcement as formulated by substantive criminal law. However, it is difficult to achieve due to limitations imposed on law enforcers by criminal procedural law and the boundaries known as the area of no enforcement. Meanwhile, full enforcement encompasses criminal law enforcement

without the constraints of the area of no enforcement found in the total enforcement formulation. However, it is hard to achieve due to time, personnel, and other limitations, leading law enforcers to exercise discretion.

Actual enforcement refers to criminal law enforcement that can be carried out when sufficient evidence is available, requiring the existence of an act, a perpetrator, a violated provision, witnesses, and other evidence related to the violation (Bobyleva & Lvova, 2020). In addition to Joseph Goldstein's distinctions, Hoefnagels (1973) differentiates between law enforcement in a broad sense and law enforcement in a narrow sense, which is more focused on enforcing rules specified in legislation.

Law Number 8 of 1995 divides criminal offenses in the capital market into crimes and violations, both of which fall under the category of criminal acts. However, resolving capital market violation cases prioritizes imposing administrative sanctions rather than criminal law enforcement frequently. Previously, administrative sanctions were imposed by Bapepam, but since the issuance of Law Number 21 of 2011, that responsibility has shifted to the OJK. Criminal provisions related to violations of Law Number 8 of 1995 began to be enforced in 2004, with resolutions carried out through the criminal justice system. There are no longer categories of crimes and violations since Article 110 of Law Number 8 of 1995 has currently been removed in Law Number 4 of 2023. Law Number 4 of 2023 divides violations in the capital market sector into administrative violations and criminal offenses.

From the provision above, it can be understood that there are several forms of criminal violations in the capital market, including parties conducting capital market activities without OJK authorization, investment managers or affiliated parties receiving remuneration that influences the decision to buy or sell securities for mutual funds, and parties obstructing the OJK's implementation of inspections related to violations of Law Number 8 of 1995 and its implementing regulations.

In addition to the legal aspects of capital market legislation, the business community must consider and be morally responsible when conducting their activities. A well-functioning capital market is characterized by organized, safe, orderly, efficient, and well-regulated market activities. Two criteria measure capital market efficiency: reflecting all relevant information in stock prices and immediate price reactions co-occurring as new information spreads evenly.

Although business ethics are obligatory, their implementation often encounters difficulties due to emerging moral issues from various evolving business activities. Regarding capital, the 1993 GBHN established that development

financing should come from one's capabilities. The risk of crime and fraud cannot be separated from the capital market as a provider and recipient of funds. Thus protection must be well-regulated.

A fair, orderly, efficient capital market provides legal certainty and protection. Fair and definite regulations are the consequences of local, national, and global transactions in business. Ethics in mergers and acquisitions, environmental damage, and health and safety protection for workers are issues related to the moral responsibility of businesses. Enforcement of ethics based on individual awareness is often challenging to implement, especially when the primary goal of business is to seek profit.

From the above discussion, the government must be present in free competition and freedom of contract to protect the weaker parties through legal rules accompanied by sanctions, which should not solely depend on moral standards. In this context, the law should facilitate businesses to achieve business democratization and efficiency in development financing. Consequently, capital market participants can conduct their activities efficiently and responsibly while prioritizing legal and moral aspects.

B. The Role of the Financial Services Authority in Addressing Capital Market Violations

The conceptual aim of law enforcement is to harmonize the values embodied in legal norms and regulate society's behavior to create, maintain, and preserve peace in communal life (Daud & Jaya, 2022). Various positive and negative interrelated factors influence the effectiveness of law enforcement. Factors affecting law enforcement's effectiveness include legal, law enforcer, infrastructure, societal, and cultural factors. By understanding and optimizing the roles and relationships among these factors, law enforcement can more effectively achieve its primary goal: creating peace and justice in society.

The law must play a role in business development by creating stability, predictability, and fairness. Stability and predictability are essential prerequisites for any business system to function correctly. Meanwhile, the law also has the potential to balance and accommodate competing interests. On the other hand, sociologically and anthropologically, societal developments must be accommodated by law to establish orderly social structures. Consequently, according to many experts, the law serves as a means of renewal in society.

Furthermore, the law also predicts potential changes in future life, allowing it to anticipate upcoming challenges. In terms of justice, the law must ensure equal treatment and market mechanism standards, thereby preventing excessive

bureaucracy that can hinder capital market businesses. In developing and building nations, the law functions to maintain stability and social control and as a means of renewal or change within society. As expressed by [Pound \(1997\)](#), the law functions as a tool of social engineering and control. Conversely, the dominance of illegal market activities in business results in inefficiency and promotes injustice and extortion. Therefore, presenting a capital market supervisory institution is crucial.

OJK's legal supervision is crucial for enforcing and protecting capital market activities while minimizing potential violations. The existence of the OJK has become increasingly important since the Asian financial crisis, which demanded the restoration of public confidence in the financial sector. As a trust institution connecting fund users and owners, the capital market requires OJK's active role as an effective supervisory body. In the context of law enforcement, investors hold a weak position in capital market activities and thus need protection. Consequently, OJK's contribution to providing legal assurance and certainty is highly expected, particularly in overseeing the implementation of legislations in the capital market.

OJK serves as a builder, regulator, and supervisor of daily capital market activities under the authority regulated in Article 5 of [Law Number 8 of 1995](#) in conjunction with [Law Number 4 of 2023](#). OJK has the authority to regulate, grant permissions, and supervise capital market activities. In executing its law enforcement functions, OJK also has the authority to examine, impose administrative sanctions, and investigate criminal offenses to be pursued and resolved through the criminal justice system. On the other hand, based on the *una via* principle, OJK can also decide not to proceed to the investigation stage of an alleged criminal offense by imposing an administrative sanction in the form of a fine accompanied by a written order. The *una via* principle and written orders are regulated in [Law Number 4 of 2023](#). In carrying out its enforcement functions, OJK enforces criminal law both preventively and repressively.

1. Preventive Law Enforcement

Strict supervision of the capital market industry is the first step taken by OJK in enforcing the law preventively. By conducting adequate supervision, OJK can ensure that capital market participants comply with the provisions of the applicable legislation. This supervision is crucial to maintain investor trust and reducing the risk of criminal violations.

In addition, the implementation of clear regulations and guidelines is also an essential part of preventive law enforcement. OJK must develop and update clear, transparent, and fair regulations and guidelines so that capital

market participants can easily understand and comply with the provisions of the applicable legislation. Clear regulations also facilitate OJK in identifying violations and taking action against violators.

Education and socialization for market participants are other vital preventive measures against capital market criminal violations. OJK needs to provide an understanding of the provisions of the applicable legislation and the negative impacts of capital market criminal violations on market participants. This education will increase awareness of the importance of regulatory compliance and reduce the likelihood of violations.

Empowering OJK's internal resources is also an essential step in preventive efforts. OJK needs competent human resources and adequate infrastructure for supervisory and law enforcement tasks. With improved human resources quality and infrastructure, OJK can perform its duties more efficiently and effectively.

Collaboration with related institutions such as the police, prosecutor's office, and international organizations is also crucial to preventive law enforcement. Through this cooperation, OJK can share information, develop technology, and enhance the effectiveness of law enforcement.

The use of technology for monitoring and analysis is an essential step in the preventive efforts against capital market criminal violations. Technology can help OJK identify patterns of violations and detect suspicious transactions, allowing for prompt follow-up.

Reporting suspected violations by the public and market participants is also critical to preventive efforts. OJK must provide facilities that make it easy for the public and market participants to report suspected violations, enabling OJK to take immediate action when necessary.

Lastly, administrative sanctions and early warnings are crucial in preventive efforts against capital market criminal violations. OJK must impose strict sanctions on market participants who violate regulations and issue early warnings to those potentially breaching the rules. This sanction will create a deterrent effect and raise awareness of the importance of compliance with the provisions of the applicable legislation.

In the context of preventive law enforcement, the steps outlined above must be carried out in an integrated and comprehensive manner by OJK. By implementing these preventive efforts, OJK can help create a conducive, transparent, and fair capital market environment, ultimately attracting

investors and supporting Indonesia's economic growth. Moreover, preventive law enforcement will reduce the burden of repressive law enforcement. By minimizing the chances of capital market criminal violations, OJK will have more time and resources to focus on cases requiring repressive handling.

2. Repressive Law Enforcement

In addressing capital market criminal violations in Indonesia, OJK also needs to implement repressive law enforcement measures. Examining suspected violations is a crucial first step. OJK must examine every report and allegation of violations to gather relevant information and evidence, allowing for appropriate follow-up according to the provisions of the applicable legislation.

Collecting relevant information and evidence is a critical step in repressive law enforcement. OJK must carefully and thoroughly analyze the evidence found during the examination process, providing a solid basis for proceeding to the investigation stage.

Forming a specialized investigation team is another essential step in repressive law enforcement. This team should consist of experts with specific expertise in capital market law to effectively and efficiently uncover and address criminal violations.

Coordination with law enforcement institutions such as the police, the public prosecutor's office, and courts is also essential in repressive law enforcement. Through effective coordination, OJK can ensure the smooth progression of law enforcement processes, from examination and imposing administrative sanctions to investigating criminal offenses to be pursued and resolved through the criminal justice system.

Seizing assets related to violations is another crucial step in repressive law enforcement. OJK must collaborate with law enforcement agencies to execute the seizure of assets suspected to originate from capital market criminal violation activities. This seizure ensures that violators cannot enjoy the proceeds of their illegal activities.

Submitting and transferring investigation results to the public prosecutor's office is also vital to repressive law enforcement. OJK must ensure that all collected evidence complies with the provisions of the applicable legislation, allowing the Public Prosecutor to prove the charges in court. Furthermore, the evidence can also provide confidence to the judge. With that confidence, the judge decides to punish the accused according to the provisions

of the applicable legislation. This punishment will deter and prevent future capital market criminal violations.

Lastly, restoring victims' rights and recovering seized assets are crucial steps in repressive law enforcement. OJK must ensure that victims of capital market criminal violations receive their rights, which the perpetrators' actions have harmed. This recovery process includes returning seized assets to their rightful owners and compensating the aggrieved victims appropriately.

In repressive law enforcement, the steps outlined above must be carried out systematically and coordinated by OJK. Through practical and firm law enforcement, OJK will be able to address capital market criminal violations comprehensively and ensure that the accused receive punishment according to the provisions of the applicable legislation. Implementing repressive law enforcement is also essential for maintaining investor confidence in the Indonesian capital market. Additionally, repressive law enforcement will complement the preventive efforts carried out by OJK. In situations where preventive measures are insufficient to stop violations, repressive law enforcement will become necessary to prosecute violators and restore justice. By demonstrating a solid commitment to eradicating capital market violations, OJK will ensure that the Indonesian capital market remains a safe and fair environment for investors and capital market participants.

CONCLUSIONS AND SUGGESTIONS

Based on the results and discussion, it can be concluded that capital market violations consist of administrative violations and criminal offenses as regulated in [Law Number 8 of 1995](#) was later amended by Article 22 of [Law Number 4 of 2023](#). Meanwhile, Bapepam's role in addressing capital market violations has been shifted to the Financial Services Authority as regulated in [Law Number 21 of 2011](#). OJK is a builder, regulator, and supervisor of daily capital market activities. In executing its law enforcement functions, OJK also has the authority to examine, impose administrative sanctions, and investigate criminal offenses to be pursued and resolved through the criminal justice system. On the other hand, based on the *una via* principle, OJK can also decide not to proceed to the investigation stage of an alleged criminal offense by imposing an administrative sanction in the form of a fine accompanied by a written order. In carrying out its enforcement functions, OJK enforces criminal law both preventively and repressively. Overall, preventive and repressive law enforcement by OJK in addressing capital market violations in Indonesia is a necessary effort to ensure capital market participants comply with regulations and protect the interests of investors. Based on the conclusion, it is recommended that the OJK and relevant parties enhance coordination and collaboration in enforcing capital market laws, both preventively and repressively. This

enforcement can be achieved by improving human resources capacity and infrastructure to monitor daily capital market activities. Increasing investor education and awareness is also crucial to reduce the likelihood of violations. Lastly, OJK should ensure a balanced approach between preventive and repressive law enforcement, considering the *una via* principle in specific cases. Implementing these recommendations will support creating a conducive, transparent, and fair capital market environment, ultimately attracting investors and further promoting Indonesia's economic growth.

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