

Studi Komparatif Mengenai Penegakan Hukum Pidana Terhadap Tindak Pidana Manipulasi Saham Pada Pasar Modal di Indonesia dan Hong Kong = Comparative Study on Criminal Law Enforcement against Crime of Stock Manipulation in the Capital Market in Indonesia and Hong Kong

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Abstrak

Manipulasi saham merupakan suatu perbuatan mengenai perilaku ilegal di pasar keuangan untuk memperoleh keuntungan. Kejahatan terhadap pasar modal memasuki fase yang mengerikan, modus pelaku mengikuti perkembangan dunia, dampak dari kejahatan manipulasi bisa merugikan pasar secara keseluruhan. Manipulasi saham dilakukan dengan berbagai metode dan cara, secara garis besar perbuatan manipulasi terbagi menjadi tiga yaitu action-based manipulation, information-based manipulation, dan transaction-based manipulation. Saham sebagai salah satu instrumen penggerak perekonomian, memerlukan regulasi dan penegakan hukum yang optimal untuk mencegah praktik manipulasi dan menjamin berjalannya pasar modal yang adil dan efisien. Penelitian ini menggunakan metode normatif dengan menggunakan studi literatur dan menitikberatkan pada tipologi micro comparison. Perbandingan dilakukan dengan menitikberatkan pada mekanisme murni dari unsur mikro hukum yaitu melihat keberlakuan regulasi dan penegakan hukum antara Indonesia dengan Hong Kong dengan mencantumkan beberapa kasus. Hasil perbandingan ditemukan bahwa dari segi regulasi, beberapa tindakan manipulasi pada pengaturan di Hong Kong belum diatur dalam peraturan Indonesia, seperti pengaturan cross border secara khusus dalam Securities and Futures Ordinance. Selain itu, setelah melakukan analisis terhadap beberapa kasus dijumpai upaya penegakan hukum dilakukan oleh instansi terdapat perbedaan yang signifikan khususnya dalam penerapan delik dan penjatuhan sanksi. Di Hong Kong terdapat pengadilan khusus yang mengadili perkara pelanggaran pasar bernama Market Misconduct Tribunal. Hasil penelitian menyimpulkan bahwa terdapat beberapa usulan reformulasi regulasi terhadap peraturan di Indonesia, perlu menambahkan bidang penggunaan alat atau skema perbuatan manipulasi saham terutama dalam penggunaan teknologi dan jaringan, menambahkan bidang lintas batas dan menambahkan pembatasan terhadap transaksi frekuensi tinggi berskala besar. Selain itu, perlu pengaturan terhadap whistle-blowing dan pengadilan ekonomi.

.....Stock manipulation is an act of illegal behaviour in the financial market for profit. Crimes against the capital market are entering a terrible phase, the mode of the perpetrator follows the development of the world, and the impact of manipulation crimes can harm the market as a whole. Stock manipulation is carried out by various methods and means, broadly speaking, the act of manipulation is divided into three, specifically action-based manipulation, information-based manipulation, dan transaction-based manipulation. As one of the instruments driving the economy, the capital market requires optimal regulation and law enforcement to prevent manipulation practices and ensure a fair and efficient capital market. This research uses a normative method using literature studies and focuses on the typology of micro comparison. The comparison is carried out by emphasising the pure mechanism of micro-legal elements, namely looking at the applicability of regulations and law enforcement between Indonesia and Hong Kong by listing several cases. The results of the comparison found that some acts of manipulation in Hong Kong regulations have

not been regulated in Indonesian regulations, such as cross-border arrangements specifically in the regulation Securities and Futures Ordinance. In addition, after analyzing several cases, it was found that law enforcement efforts were carried out by agencies, and there were significant differences, especially in the imposition of offence and sanctions. In Hong Kong, there is a special court that tries market misconduct cases called the Market Misconduct Tribunal. The research concludes that there are several proposals for regulatory reformulation of regulations in Indonesia, it is necessary to add the field of using tools or schemes for stock manipulation, especially in the use of technology and networks, adding cross-border fields and adding restrictions on large-scale high-frequency transactions. In addition, it is necessary to regulate whistle-blowing and economic courts.