



The Una Via Principle: New Effective Regulation in Indonesian Capital Market Case Resolution

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‘Abstract— Case resolution for violations in the capital market must be carried out by taking into account financial system stability and public trust. This article aims to discuss the regulation based on the Una Via principle as a case resolution model in the capital market legal system in Indonesia and things must be considered in the application of the regulation based Una Via principle in the capital market case resolution. This research was conducted doctrinally with statutory approach and comparative approach to similar arrangements in the United States and France. The results showed that the Chapter XIIA Law Number 4 of 2023 on Omnibus Law for Financial Sector is based on Una Via Principle becoming a new model for resolving case in the financial services sector, especially the capital market sector by avoiding the imposition of double sanctions for a violation in order to realize restorative justice. There are several things that must be considered by the Financial Services Authority in the implementation of the regulation based on Una Via principle, namely harmonization of the law enforcement system for violations in the capital market sector, proportionality of the imposition of sanctions, and supervision and evaluation of the application of the Una Via principle-based regulations including its impact on financial system stability.

Keywords: Una Via Principle, Capital Marke, Effective Regulatio;

I. INTRODUCTION

Capital market sector is part of the essential economic bases in every nation. A country's capital market activity can be a mirror of a nation's economic indicators considering the ease of transacting in the capital market can have a significant effect on capital liquidity for issuers. From the figures of the Composite Stock Price Index (JCI) in the capital market, it can be known the performance of companies *listed* on the stock exchange. JCI also figure out the economic condition of a certain country. The sharp decline in JCI indicates a country is run into an economic crisis.[1] On the other hand, the security of transacting in the capital market will also foster confidence for investors in investing in the capital market.

Chapter XIIA Law Number 4 of 2023 on Omnibus Law for Financial Sector has mandated the application of the Una Via Principle in solving violations and crimes in the capital market.[2] The regulation based on the Una Via principle in resolving capital market case has an important urgency in maintaining the integrity and efficiency of the capital market. The Una Via principle refers to the idea that disputes arising in the context of the capital market must be resolved through a predetermined settlement channel, namely through a capital market regulatory authority. Although it has positive sides, the application of the Una Via Principle also has vulnerabilities in terms of fulfilling the right to justice for capital market investors. Therefore, this article aims to discuss how to regulate the application of the Una Via Principle in solving cases in the capital market and what matters need to be considered in the application of the Una Via Principle in solving cases in the capital market.

Violations in the realm of capital markets have a unique nature that is different from other forms of violations and crimes in other fields considering the impact of this crime, namely the number of parties harmed and the amount of losses suffered by victims.[3] Violations and crimes in the realm of capital markets can have a chain and widespread effect. Losses from this criminal act are not only limited to investors or securities traders who are directly involved in a transaction, but can extend and continue to companies whose effects are transacted such as the company's image becomes bad, the stock exchange where the securities are transacted is considered an inadequate supervisory mechanism, and capital market activities are not trusted in the eyes of the public.[4] Of course, this kind of impact will affect the nation's economy globally. Therefore, law enforcement for violations in the capital market needs serious attention from the government and competent authorities in the capital market.

In general, there are three types of violation and crimes in the field of capital markets, namely: fraud, market manipulation and insider trading. Besides the number of parties harmed and impact the losses, the three types of violation and crimes in the realm of capital market have certain uniqueness considering that these violation and crimes are related to securities as intangible objects, the actors involved are intellectual groups and also proving these crimes tends to be difficult.[5] Therefore, investors are entitled to legal protection for violations caused by the actions issuers or other party that result in losses for investors in transacting in the capital market.[6]

The principle of Una Via comes from the Latin proverb which reads “*Electa una via (non datur recursus ad alteram)*” means “one route having been chosen (no recourse to another is given)”.[7] This principle is an extension of the principle of *nebis in idem*. *Nebis in idem* itself means that a person cannot be prosecuted more than once before the court in the same case.[8] Based on the Una Via principle, the application of sanctions for a violation is not allowed to be applied cumulatively to administrative sanctions and criminal sanctions.[9] In the event that a case has been resolved through the administrative realm, it closes the opportunity for criminal settlement. The application of the Una Via principle is intended so that court decisions pay attention to justice, legal certainty, and expediency.

II. METHOD

This research was prepared using doctrinal research types with a statutory approach and a comparative approach. The statutory approach is carried out by reviewing a number of regulations related to the capital market and financial services in Indonesia. The comparative approach is carried out by reviewing regulations related to the application of the Una Via Principle in the United States and in France.

III. RESULT AND DISCUSSION

A. The Regulation Based on Una Via Principle in Indonesia Capital Market Case Resolution

In general, in Indonesia it is possible that administrative and criminal investigations are carried out simultaneously and separately for certain cases. This certainly results in ineffectiveness and potentially violates the principle of *nebis in idem*. [10] The wedge between the principles of criminal and administrative law develops to such an extent that it becomes difficult to draw a clear and unequivocal dividing line between the two. Therefore, the use of the principle of Una Via as an attempt to clarify and reinforce the vagueness. [11]

Before the regulation regarding the settlement of violation cases in the capital market sector was regulated based on the Una Via principle, the provisions regarding the Una Via principle were known in judges' decisions in the tax court. In several cassation decisions in tax cases, it was found that the judges considered explicitly mentioned the urgency of applying the Una Via principle in dispute resolution in order to realize justice for the parties. [12]

Una Via Principle has already been regulated as a dispute resolution in the capital market in Indonesia. The phrase Una Via Principle is expressly stated in Chapter VII A of Law Number 4 of 2023 on Omnibus Law for Financial Sector. Although its expressly stated, there is no explicit explanation regarding the meaning of this principle in this Law. The principle of law is the soul of certain norm or regulation. [13] However, based on the provisions of Article 100A, the regulation is based on Una Via principle. In this article, the Financial Services Authority (OJK) may determine not to proceed to the investigation stage or the commencement of investigative actions against allegations of capital market crimes. OJK has the control to consider the impact of crimes that occur and the control to forward them to the investigation stage based on certain considerations. The consideration of whether to proceed to the investigation stage or not in this case is based on the application of the principle of Una Via which opens the choice between criminal sanctions or administrative sanctions.

In the event that OJK determines not to proceed to the investigation stage for an alleged capital market crime, OJK is authorized to provide administrative sanctions. The administrative sanction is in the form of an order to the perpetrator of a criminal act to return the profits obtained and/or losses that can be avoided unlawfully from administrative violations or criminal acts.

In the event that OJK chooses to conduct a criminal settlement, investigations into criminal acts in the Capital Market can only be carried out by investigators from the OJK. [2] Thus, investigators from the police do not have the authority to investigate cases in the field of capital markets. This is very necessary considering the characteristics of the capital market that are unique and different from transactions in general. Therefore, special expertise is needed to explore cases in the field of capital markets considering that crimes that occur in the capital market sector are very diverse both in terms of type, modus operandi, to the harm caused.

The Una Via principle has actually been applied in other countries' regulation such as the United States (as one of common law countries) and France (as one of civil law countries). In the United States, the Una Via principle is known as Double Jeopardy where a person may not be punished more than once for an offense. [14] This double jeopardy is reflected in the fact that many capital market disputes must be resolved through regulatory bodies such as the Securities and Exchange Commission (SEC) [15] or through specialized federal

courts such as the United States District Courts. This allows for more consistent and efficient arrangements in handling capital market disputes.

The *Una Via* principle has also been known and applied in France with the term “*non cumul des peines*” which means if a person is found guilty of several offences or crimes in the same event then only the highest penalty can be applied (non-cumulative).[16] Multiple prosecutions (criminal and administrative) for market manipulation have been declared unconstitutional by a 2015 decision of the French Constitutional Council, albeit without relying on the “*nebis in idem*” principle.[17] The *Una Via* principle in capital market dispute resolution in France refers to the principle that emphasizes that investors must choose one particular dispute resolution path and may not conduct dispute resolution simultaneously or simultaneously in several different dispute resolution bodies. In the capital market sector, the Securities and Exchange Authority (*Autorité des Marchés Financiers* - AMF) is the main regulatory institution regulating capital markets in France.[18] AMF has rules and guidelines governing the dispute resolution process involving capital market participants.

B. Things to Be Considered in the Application of the Una Via Principle

The existence of regulation based on the principle of *Una Via* in the capital market sector is very important in ensuring legal protection for investors, legal certainty, and market efficiency. By ensuring dispute resolution through competent settlement bodies, investors have clear and structured access to seek justice in the event of a violation of their rights. This strengthens investor confidence in the capital market system. This principle is also a way to avoid ambiguities and conflicts that may arise if disputes can be submitted to different jurisdictions or resolution bodies. The regulation based on the principle of *Una Via* allows regulatory authorities and regulatory bodies to be actively involved in the settlement of capital market disputes.

In the implementation of regulation based on the *Una Via*, there are a number of things that need to be considered considering that the application of the regulation based on *Una Via* Principle also has the potential to be misused by criminals in the capital market. The perpetrators of crimes may have moral hazard where the perpetrator will not bear the full consequences of his actions and can avoid criminal sanctions by only making amends through the restorative justice process based on civil agreements. From the perpetrator's perspective, deliberation with the victim can be understood as a process of restructuring obligations within the scope of civil, not criminal, law. What must be emphasized is that the implementation of the agreement process aims to restore the condition of the victim.[19]

Based on the potential misuse of the *Una Via* principle, several things must be considered in the application of the *Una Via* principle, namely Harmonization of law enforcement systems. The realm of the capital market is closely related to various other legal domains such as the realm of criminal law including corruption and money laundering. Although the amendment to the Capital Market Law has stated that capital market investigators must come from OJK investigators, at the practical level there needs to be harmonization of law enforcement in the event of violations that occur intersecting between the capital market sector, criminal acts, and administrative. Proportionality of sanctions. Based on the amendment to the Capital Market Law, the OJK must conduct an assessment to determine whether a case in the capital market field can proceed to the criminal investigation stage. The OJK assessment is carried out by considering the transaction value of violations or the impact of violations, the presence or absence of settlement for losses arising from criminal acts, due to criminal law on Securities offering and/or trading activities as a whole, and the crash of losses or the interests of investors and/or the public.[2]

Monitoring and Evaluation of the Application of regulation based on *Una Via* Principle. OJK has the obligation to carry out monitoring and evaluation of the application of the regulation based on *Una Via* principle. The application of the regulation based on *Una Via* principle is expected to be able to provide effectiveness in law enforcement for violations that occur in the capital market sector. With the application of regulation based on the *Una Via* principle and a written order to return profits earned and/or unlawfully avoidable losses from administrative offenses or criminal offences it is expected to provide restorative justice.

IV. CONCLUSION

Based on the discussion that has been done, the conclusions in this article are: the principle of *Una Via* is regulated in Law Number 4 of 2023 on Omnibus Law for Financial Sector as a new effective regulation in resolving case in the financial services sector, especially the capital market sector by avoiding the imposition of double sanctions for a violation in order to realize restorative justice. There are several things that must be considered by the OJK in implementing regulation based on the *Una Via* principle, namely harmonization of the law enforcement system for violations in the capital market sector, proportionality of the imposition of sanctions, and supervision and evaluation of the application of the regulation based on *Una Via* principle including its impact on financial system stability.

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