







Legal Review of the Authority of Financial Services Authorities in Crime Practicesinsider Trading in Capital Markets in the Development of Information Technology

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ABSTRACT

The practice of insider trading constitutes a violation or crime within the Indonesian capital market, necessitating a legal role to safeguard investors against frequent violations in the market. This research delves into the legal role in addressing insider trading practices within the Indonesian capital market. The objectives include identifying the characteristics of insider trading in the Indonesian capital market and discerning the legal responsibilities associated with such practices. The research addresses the following issues: First, the characteristics of insider trading in the Indonesian capital market; and second, legal responsibilities concerning insider trading practices in the Indonesian capital market. This study employs a deductive-analytic juridical-normative approach. The analysis reveals that, firstly, the provisions on insider trading in capital markets law have not effectively ensured maximum protection for investors in Indonesia. Secondly, there are hindrances to offering comprehensive legal protection to investors in light of insider trading practices within the capital market.

Keyword: Financial Services Authority, Insider Trading, Capital Markets

ABSTRAK

Praktik inside trading merupakan suatu bentuk pelanggaran/kejahatan dalam pasar modal di Indonesia sehingga pelanggaran yang kerap terjadi dalam pasar modal perlu adanya peran hukum dalam melindungi para investor. Adapun penelitian ini membahas tentang peran hukum terhadap praktik inside trading dalam pasar modal di Indonesia. Penelitian ini bertujuan untuk mengetahui karakteristik insider trading dalam pasar modal Indonesia, dan bagaimana tanggung jawab terhadap praktik insider trading dalam pasar modal Indonesia. Permasalahan yang diangkat, yaitu: Pertama, karakteristik insider trading dalam pasar modal Indonesia; dan kedua, tanggung jawab hukum terhadap praktik insider trading dalam pasar modal Indonesia. Penelitian ini merupakan penelitian yuridis-normatif bersifat deduktif-analisis. Hasil analisis menunjukkan bahwa: pertama, ketentuan insider trading dalam Undang-Undang pasar modal belum mampu memberikan perlindungan secara maksimal kepada para investor di Indonesia; Kedua, adanya hambatan untuk memberikan suatu perlindungan hukum secara menyeluruh kepada investor akibat praktik insider trading dalam pasar modal.

Keyword: Otoritas Jasa Keuangan, Insider Trading, Pasar Modal



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1. Introduction

The business landscape is rapidly evolving due to globalization, driven by technological advancements that significantly impact a country's economic progress. The efficiency of the business sector is crucial for optimal outcomes. The capital and financial markets sector, which serves as an economic barometer, witnesses thousands of companies listing their shares on the stock market.

Technological progress, particularly the digital revolution, has transformed businesses through digital platforms and applications across various industries. This transformation, known as Financial Technology (Fintech), combines finance with technology to offer trading facilities, corporate solutions, interactions, and consumer services more conveniently.

Technology has modernized the once conventional capital markets sector, enabling remote transactions that previously required face-to-face exchanges. Despite its benefits, technological advancements have also led to economic crimes, including Insider Trading.

Insider Trading involves stock trading by insiders using privileged information to manipulate stock prices or engage in trading practices. This information was once considered confidential, but with the use of technological devices and Fintech, it can be disseminated quickly. Insider Trading practices unfairly benefit a select few while causing losses to the issuer and other investors.

Law Number 8 of 1995 concerning Capital Markets, or Undang-Undang Pasar Modal (UUPM), regulates the principle of information disclosure, requiring issuers and other relevant parties to promptly disclose material information that could influence investors' decisions.

Fair stock trading is characterized by natural market forces of supply and demand operating without detrimental conditions. Participants seek accurate and timely information, preventing certain parties from exploiting others' ignorance, and establishing systems that ensure fairness in securities market operations.¹

Information disclosure serves as a crucial mechanism for three key parties: issuers, investors, and intermediaries in the capital market. Issuers are obligated to disclose information to maintain market efficiency, while investors use this information to make well-informed decisions. Intermediaries in the capital market, including investment analysts, brokers, investment managers, and other professionals, play a vital role in assimilating and interpreting this information. They are responsible for filtering complex data and providing expert advice to market participants based on their analysis.²

Legal certainty in investment and business encompasses the characteristics of the law and the legal framework, which are mutually dependent and offer legal protection and security. Detecting insider trading in the capital market poses difficulties due to the ambiguous standards for material information under the information disclosure principle. Furthermore, the UUPM lacks clear provisions regarding legal protection against insider trading in the context of information technology advancement. The absence of legal certainty for investors regarding insider trading may result in unfair markets, facilitating illegal gains and creating unreliable markets that could harm investors.

2. Method

Legal research refers to the systematic study of laws and the resolution of legal issues through the identification and application of legal principles.³ This process involves examining legal sources related to insider trading and information disclosure principles in the Indonesian capital market. The research methodology follows a statutory approach, analyzing relevant laws and regulations, as well as primary and secondary legal documents.

To conduct this research, legal documents are collected and processed to identify legal events and isolate relevant legal issues. Both legal and non-legal documents are gathered through thorough investigations. After analyzing the collected data, the research formulates arguments to address the legal questions posed by the issues. Finally, regulations are proposed based on the developed arguments and conclusions drawn from the research.⁴

3. Result and Discussion

3.1 Insider Trading Practices in Indonesia

Insider trading is when individuals use undisclosed information to buy or sell securities, manipulating stock prices or engaging in trading practices. This behavior occurs when insiders, who have access to material information, trade securities of a company or related businesses. Insiders intentionally disclose previously confidential share price information, resulting in selective share issuance to specific individuals or companies.

¹Gisymar, Najib A, *Insider Trading in Securities Transactions*, Bandung: Citra Aditya Bakti, 1999, p. 70.

²Rahmad, Sir, *Capital Market Law*, Jakarta: Kencana, 2019, p. 20.

³Marzuki, Peter Mahmud, *Penelitian Hukum*, Jakarta: Kencana, 2014, p. 23.

⁴Marzuki, Peter Mahmud, *Penelitian Hukum (Edisi Revisi)*, Jakarta: Prenadamedia Group, 2015, p. 40.

This can lead to profits for some and losses for the issuer and other investors, as only a few have access to inside information. There have been notable cases of insider trading in the capital market, including share transaction cases involving PT Perusahaan Gas Negara Tbk and PT Indosat Tbk.⁵

Insider trading in the capital market has substantial adverse effects, impacting not just investors but also the involved issuers or public companies. Legal protection is crucial, particularly in light of the emphasis on the Indonesian public capital markets. Moreover, if insider trading implicates individuals within the issuer or limited liability company, there is a legal duty for the issuer to address the matter. This is essential for safeguarding and rebuilding the confidence of both domestic and foreign investors who have invested in the Indonesian capital market.⁶

Insider trading is considered a fraudulent activity performed by individuals within the issuing company or those closely related to it. This behavior is addressed in Article 95 of Law No. 8 of 1995 concerning Capital Markets, which prohibits insiders from buying or selling securities of the issuer or engaging in transactions with the issuer using non-public information.

According to Article 95 of Law No. 8 of 1995 concerning Capital Markets, insider trading involves individuals within issuers or public companies who possess non-public information, especially in cases where the public company collaborates or conspires with insiders from the issuer's company. Insiders, as defined by this law, include directors, commissioners, or anyone with access to information about the issuer's transactions, such as brokers who act as intermediaries between the issuer and investors.

Insider trading is a serious offense that can lead to significant losses for the issuer and hinder investment in the capital market. Moreover, proving insider trading and identifying its subtle *modus operandi* can be challenging, as it involves parties with privileged information who may use it for personal gain.⁷

The Capital Markets Law (UUPM) provides regulations for both administrative and criminal sanctions for insider trading. However, in practice, companies tend to only impose administrative sanctions on offenders and fail to report them to the appropriate authorities for further action. Article 102 of the Capital Markets Law, in conjunction with Government Regulation No. 45 of 1995, outlines administrative sanctions such as written warnings, fines, restrictions on business activities, freezing of business, revocation of business licenses, and cancellation of approvals or registrations. These sanctions are categorized into light, medium, and heavy, with light sanctions often not reported to the authorities. Despite the law's provisions, enforcement regarding insider trading, particularly criminal penalties, is considered insufficient and challenging to implement fully.⁸

One of the deficiencies in the UUPM's regulations on insider trading is the limitation of the term "insider" in Article 95's explanation to actors with a fiduciary relationship with the company. This means that individuals who do not have such a relationship, such as those who accidentally obtain information, are not clearly addressed by the UUPM regarding whether they can be considered involved in insider trading.⁹

Another factor preventing this insider trading case from reaching court is the difficulty of providing evidence, which is one of the main reasons why a thorough investigation was not conducted, ultimately resulting in the case not reaching court. Another issue frequently lamented is primarily attributable to trading in the capital market, which is predominantly conducted through electronic systems, while our laws have not yet fully accommodated electronic evidence.

3.2 *The Influence of Information Technology on Investment in the Indonesian Capital Market*

The impact of technological advancements on a country's economy, particularly in the financial sector, is significant. The capital market serves as a key economic indicator, with numerous companies engaging in buying and selling shares on stock exchanges. The speed and accuracy of these transactions are crucial for stakeholders such as capital owners, brokers, traders, and analysts. Technological progress has made investing more accessible and secure, benefiting individuals across society. Information about investing in the capital market is now more widely available, influencing people's interest in investing.

Despite these advancements, financial literacy in Indonesia has not kept pace. According to the 2016 National Financial Literacy and Inclusion Survey by the Ministry of Financial Literacy and Inclusive Stock Consumer Development and Protection, public understanding of the capital market remains low. The survey

⁵ Detik Finance, Kasus Insider Trading, Bapepam Denda 9 Karyawan PGN, <https://finance.detik.com/bursa-dan-valas/d-871501/kasus-insider-trading-bapepam-denda-9-karyawan-pgn>.

⁶ Rozeff, Michael, S. and Zaman, Mir A, Market Efficiency and Insider Trading, *Journal Of Business*, 1988, p.14.

⁷ Bhattacharya, U., and H. Daouk, The World Price of Insider Trading. *Journal of Finance*, 2002, p. 57.

⁸ Jefri Telekonde, Criminal Law Policy on Insider Trading Practices as a Business Crime in the Capital Markets Sector, *Hermeneutika*, 2021, p. 25.

⁹ Qomariyanti & Tavinayati, *Indonesian Capital Market Law*, Jakarta: Sinar Graphics, 2009, p. 86

indicated that in 2016, the comprehensive financial literacy indicator was 4.4%, the traditional indicator was 4.4%, and the Islamic Sharia indicator was 0.02%. These figures suggest that many Indonesians lack knowledge about the capital market and do not view shares and mutual funds as viable investment options.

Investors in the stock market generally aim to achieve capital gains, seeking a positive difference between the selling and purchase prices of shares, along with cash dividends from profitable companies. If the selling price is lower than the purchase price, investors incur a loss (capital loss). Although investors share the common goal of earning profits, their investment objectives may vary, including both short-term and long-term goals.¹⁰

Technological advancements have contributed to the emergence of crimes in the capital market, often due to insufficient public information disclosure. These crimes typically do not directly cause financial loss to the victim. Victims of insider trading, a common type of crime in the capital market, experience distinct characteristics. The focus of these crimes is on information, and perpetrators rely on their understanding of market conditions for personal gain, rather than physical actions. Detecting and proving crimes in the capital markets can be challenging, but the repercussions are significant and widespread.

As technology progresses, the principle of transparency becomes increasingly important in maintaining investor trust. When trust erodes in the capital market, it can lead to substantial capital outflows and potentially trigger a market crash.¹¹ Misappropriation theory states that anyone who uses insider information or information that has not been announced and trades shares based on that information can be classified as an insider. Even though the person carrying out the transaction does not have a fiduciary obligation to the company.¹²

Technological advancements have enabled the OJK to enforce laws against Insider Trading, but the UUPM currently lacks regulations regarding resolving crimes in the capital market committed through electronic media. The effectiveness of the Financial Services Authority (OJK) in enforcing capital market laws, particularly those concerning Insider Trading, has not been optimal. Despite the enactment of the ITE Law No. 11 of 2008 and Law No. 19 of 2016, which recognize electronic data as valid evidence in court (Electronic Information and Transactions Law, Article 5), facilitating the OJK in proving their efforts, challenges remain in providing written proof of insider trading. Since perpetrators engage in insider trading for financial gain, the criminal concept may shift from *ultimum remedium* to *primum remedium*, indicating that the Principle of *Ultimum Remedium* in the case of administrative and criminal sanctions will only be effectively applied if the administrative sanctions have been fully implemented.¹³

The government has recently introduced the second amendment to the ITE Law with Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions. This amendment, which focuses on the valid use of electronic systems, still relies on the original ITE Law Number 11 of 2008 but modifies the contents of Article 5, both in paragraph (4) and paragraph (1). These revisions aim to address concerns raised by some members of the public regarding criminal provisions. However, challenges remain, including differing interpretations of several articles, which make it difficult to apply the provisions correctly and avoid targeting individuals who should not be subject to them.¹⁴

3.3 The Role of the Financial Services Authority (OJK) in Providing Legal Protection for Investors in the Indonesian Capital Market

The increasing occurrence of insider trading in the Indonesian capital market is linked to conflicts of interest and the widespread presence of close relationships among parties considered insiders. The market's operational framework continues to depend on personal connections, affiliations, and close ties. Therefore, it should not be considered surprising or overlooked that the market system in Indonesia fosters a mindset conducive to individuals committing violations.¹⁵

¹⁰ Yusuf, Muhammad, "The Influence of Technological Progress and Knowledge on the Millennial Generation's Interest in Investing in the Capital Market", *Jurnal Dynamics of Management and Business*, Vol. 2, No.2, 2019, p. 2-3.

¹¹ Sinaga, Sare Intan A. "Juridical Review of Insider Trading Practices in the Indonesian Capital Market." *Law Journal*. Vol. 5, No. 2, 2019, 143.

¹² Fuadi, Munir, *Modern Doctrines in Corporate Law and Their Existence in Indonesian Law*, Bandung: Aditya Citra Bakti, 1996, p. 60.

¹³ Prawitra Talib & Anwar Rachman, "Mechanism for Handling Capital Market Insider Trading Crimes in Indonesia," *Juridika*: Vol. 27, No 2, 2012. p.181.

¹⁴ See General Explanation of Law Number 1 of 2024 concerning Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions.

¹⁵ Joko Sri Widodo, *Law Enforcement Against Insider Trading in the Capital Market and Efforts to Protect Investors*, Bams Mediatama, 2013, P. 82-83.

Under Law Number 8 of 1995 regarding Capital Markets, the Capital Market Supervisory Agency (Bapepam) was the key authority overseeing capital market regulations. However, with the introduction of Law Number 21 of 2011, Bapepam's responsibilities, functions, and authority were absorbed into the broader framework of the Financial Services Authority (OJK). According to the transitional provisions outlined in Article 55(1) of the OJK Law, effective from December 31, 2012, the tasks, functions, and authority related to overseeing and supervising financial services activities in capital markets, insurance, pension funds, financial institutions, and other financial services institutions were transferred from the Ministry of Finance and Bapepam to the OJK.¹⁶

Hence, the OJK is now the stronghold and forefront in upholding the legal tenets of the capital market, which includes combating insider trading. The direction of the capital market, whether it will progress towards being more secure, fair, and orderly, or deteriorate into chaos with aggressive tactics and deceit from market participants and speculators driven by greed, hinges on the OJK's effective fulfillment of its functions, duties, and authority.¹⁷

Including the OJK's organizational efficiency, the clarity of regulatory frameworks, and most importantly, the dedication, vision, and vigilance of individuals within the OJK, are crucial factors. The OJK is tasked with being at the forefront of enforcing capital market laws. Thus, the responsibility for ensuring ethical conduct in the capital market, especially regarding insider trading in Indonesia, largely lies with those within the OJK.

The OJK plays a pivotal role in enforcing capital market laws, especially in cases of UUPM violations such as market manipulation, criminal fraud, dissemination of false information, and insider trading. The authority to address these issues is vested in the OJK. According to Article 105 of the UUPM, civil servant investigators must clearly define the start and end of an investigation and subsequently present the investigation results to the public prosecutor to avoid conflicts with the Criminal Code.

Both capital markets law and OJK regulations have gained momentum, with a significant focus on law enforcement. The current capital markets law has substantially increased the number of sanctions compared to its predecessor, particularly in terms of criminal sanctions. These sanctions include various criminal penalties, such as a maximum of 10 years in prison (Article 104), 5 years in prison (Article 103 paragraph 1), 3 years in prison (Article 106 paragraph 2 and Article 107), and 1 year in prison (Article 103 paragraph 2, Article 105, Article 108, and Article 109). Notably, the criminal act of insider trading generally incurs the most severe penalty, with a maximum of 10 years (Article 104).

While the OJK does not have direct authority to enforce criminal sanctions, its primary function as a regulatory body overseeing the financial services industry, including the capital markets, is crucial. The OJK plays a vital role in ensuring compliance with regulations and responding to violations. It can collaborate with law enforcement agencies, such as the police and prosecutors, to investigate potential legal breaches. The OJK can provide evidence, information, and support during these investigations. Regarding criminal sanctions, the OJK typically reports suspected unlawful activities to the relevant law enforcement agencies. Effective collaboration between the OJK and these agencies is essential for enforcing criminal sanctions related to capital market violations.

4. Conclusion

Legal protection for investors facing insider trading challenges in Indonesia's capital market is hindered by weaknesses in the UUPM (Capital Markets Law). Providing effective legal protection for investors engaged in insider trading is difficult. A comparison with other countries shows that capital market regulations are regularly updated, reflecting the global complexity of capital markets. The UUPM's weaknesses are highlighted, providing insights for improvement in Indonesian Capital Market Law.

Insider trading violations undermine the principle of information disclosure in the capital market. Despite aiming for transparency, the principle can be exploited for insider trading, resulting in financial losses for investors. The OJK (Financial Services Authority) plays a crucial role in combating insider trading in Indonesia's capital market. Therefore, ensuring concrete legal certainty is essential to avoid contradictions between the Financial Services Authority Law and the Capital Market Law.

¹⁶ Tolokonde, J., Anshar, A., & Imam, W. Z., *Criminal Law Policy Against Insider Trading Practices as a Business Crime*, 2021, p. 23.

¹⁷ Br Gultom, WA, *Juridical Analysis of the Authority of the Financial Services Authority in Conducting Investigations into Insider Trading in the Capital Market*, 2018, (Doctoral dissertation, University of North Sumatra).

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