



INFORMATION INEQUALITY WITH INSIDER TRADING PRACTICES IN THE INDONESIAN CAPITAL MARKET

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Abstrak

This paper focus on discussing the issue of insider trading practices in the Indonesian capital market. Bearing Act 8 of 1995 concerning the Capital Market does not provide a clear definition of insider trading. Insider trading is a practice carried out by people in the corporation who in carrying out trading activities make use of information exclusively through insiders. Insider trading is one of the crimes in the capital market which has a very detrimental impact on many parties. The existence of inside information that is not yet available to the public is misused to trade shares on that information. The practice of insider trading is a capital market crime which in terms of proof is very difficult to prove. The practice of insider trading is a violation of the principle of transparency, even though the objective of implementing the principle of openness is to ensure transparency in capital market activities.

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I. INTRODUCTION

In the current era, many people choose to improve their economy, one of which is by investing. Investments are also of various types, such as in the form of savings, land property, valuable certificates, or gold. However, if people choose to invest, they must understand that investment is a long-term savings that can only be enjoyed for a certain period (Yenni Samri Juliati Nasution, 2015). One way to develop the economy in Indonesia is through the capital market. To better know and understand the importance of a capital market, better understand stocks, and the obstacles that occur when potential investors start investing, there are currently many programs that provide education regarding the capital market (Luh Komang Merawati, 2015). Although having a low investment capital does not affect the interest in investing (Daniel Raditya, 2014). The capital market is a medium and long-term source of financing that is very important in efforts to mobilize public funds for the development of the business world (Anna Nurlita, 2015). Since the activation of the capital market in Indonesia in 1977, the Government has made various efforts to improve the capital market. Through Bapepam as a government institution that has the authority to make policies in accordance with the provisions of Article 4 of Law Number 8 of 1995 concerning the Capital Market, hereinafter referred

to as the Capital Market Law, which is expected to be able to create a more promising capital market for the advancement of the business world.

The objectives of capital market law are, among others, to ensure that capital market activities are carried out regularly, fairly and efficiently and to protect the interests of investors and the public because protecting the interests of investors is very important. If investors do not get reasonable protection, then they will not make transactions in the capital market. The number of investors will greatly affect activities in the capital market.

The capital market as the market in general is a place to bring together sellers and buyers. The difference with other markets is in the object being traded. If in other markets the object is something concrete such as daily needs, but what is traded in the capital market is capital or funds in the form of securities (securities). It is known that what is traded in the Capital Market is not "ordinary goods" but securities or securities that have no intrinsic value. The intrinsic value of a share, for example, is the value or price of the paper itself, which is of course very low. Therefore, what determines the value of a security is the law that becomes the capital market infrastructure (Sofyan A. Djalil, 1997).

Currently, the pace of economic development and the capital market is running very rapidly, and at the same time, the Indonesian capital market is required to compete with other capital markets. In this case, OJK (Financial Services Authorization) whose position replaces BAPEPAM-LK (Capital Market and Financial Institution Supervisory Agency) as the agency that conducts guidance and supervision of capital market activities is expected to be able to make regulations that can provide an umbrella for activities in the capital market with regulations that is clear and binding and has firm action against anyone who violates the existing rules in the capital market sector. In addition, the existence of investment activities by way of buying and selling shares is also very profitable for Indonesia, one of which is the entry of foreign investors into our country. This indirectly adds to our country's foreign exchange. Therefore, it is important that the regulations regarding the capital market are really paid attention to. In activities in the capital market, the most important principle is the principle of information disclosure or the so-called disclosure principle, which is "all information regarding the state of its business which includes financial, legal, management, and company assets to the public."

Given that almost all investments involve risk, there is always the possibility of investors experiencing losses. In this case, trust is the main thing in the implementation of the capital market, namely "public trust in the value of shares, the truth of reports from a company, prospects for future profits, government policies that support the capital market, to the guarantee process that the law will be obeyed by the parties." "Regularity in securities trading in the capital market is not enough to be seen only in the regulations but also from the prevailing practice in the capital market itself, especially the consistency of enforcement of the regulations of the stock exchange itself. This

regularity reflects the behavior of the parties involved in securities trading, the behavior of securities companies and their organs,

In that order, insider trading interferes with the principle of openness that exists in securities trading. The existence of insider trading can be said to violate the principles of openness which is the main issue in the capital market. Insider trading in Article 98 of the Capital Market Law is not defined explicitly, but is only defined as “transactions that are prohibited, among others, namely insiders from issuers who have information, insiders are prohibited from selling or buying transactions on the securities of the issuer or other companies that conduct transactions with the issuer. or the public company concerned.”

Insider Trading is a crime in the Capital Market that is very difficult to prove, even in developed countries such as the United States and the European Union. The existence of Insider Trading causes delays in the development of the capital market. In addition, it also indirectly causes the stock exchange to be quiet due to fraud committed by the insider. Insider Trading is the activity of corporate insiders or the practice of corporate insiders who carry out securities transactions or trading activities by utilizing the exclusive information they have or inside nonpublic information or what is known as inside information (Nindyo Pramono, 2013). Insider Trading is one type of capital market crime which can legally be categorized as a white color crime or white collar crime, meaning that it is a form of crime committed by people who are smart, experienced, capable in many things and are usually sophisticated in making the modus operandi of crime. what he will do (Nindyo Pramono, 2013). Because the definition of crime is behavior that results in harm to society. According to Sutherland's expert opinion, the characteristics of a crime are that the state prohibits the act because it is considered to cause harm to the state (Topo Santoso and Eva Achjani Zulfa, 2015).

The existence of insider trading causes unfair information that is only obtained by a certain number of people with the aim of obtaining profits that are not their rights. This is contrary to the transparency principle adopted by Article 48 paragraph (1) and Article 95 of the Capital Market Law, which requires that every capital market participant in every share offering must contain material information that is correct and does not provide a misleading picture.

This writing includes 4 (four) similar studies, namely, the legal writing entitled 'Insider Trading in the Perspective of Capital Market Law in Indonesia (legal study of the case of the sale of shares of PT. BANK CENTRAL ASIA TBK)' by Yunial Laily Mutiari, Irsan and Muhammad Syahri Ramadhan published in the journal Juridical Vol. V/ No. December 2/2018. In this journal, insider trading is discussed in the perspective of capital market law in Indonesia with a case study that occurred at PT. BANK CENTRAL ASIA TBK. The things discussed in this study are more or less similar in this paper, such as a discussion of the practice of insider trading in the Indonesian capital market. However, this paper focuses on the case study that was raised, namely the sale of shares in PT BANK CENTRAL ASIA TBK. While this paper focuses on the injustice of information obtained due

to the practice of insider trading crimes in the Indonesian capital market. Furthermore, there is a similar study, namely 'Insider Trading Practices as a Form of Violation of the Principles of Information Disclosure in the Capital Market in Indonesia' by Fisuda Alifa Mimiamanda Radinda, Monika Ardia Ningsi Massora and Ricka Auliaty Fathonah published in the journal *Cakrawala Hukum* Vol. XI/No. April 1/2020. The journal discusses the practice of insider trading as a violation of the principle of disclosure of information in the capital market in Indonesia and how legal protection is for investors against insider trading practices in the capital market in Indonesia. while in this study more specifically discusses the existence of information injustice due to the practice of insider trading. Similar related research is 'Legal Protection for Investors Against Criminal Practices of Insider Trading in the Capital Market in Indonesia' by Fadilah Haidar published in *Cita Hukum Journal* Vol.3/No. 1 June/2015. This article discusses legal protection for investors due to insider trading practices and how to monitor and investigate the capital market. Next, the last one is an article with the title 'The Authority of the Financial Services Authority Regarding Legal Protection for Investors Against Tippee's Acts of Insider Trading in Stock Trading' by Made Dwi Juliana which is contained in the *Journal of Magister Hukum Udaya* Vol. 4/ No. 2 July/2015. The article discusses the tippee's actions against insider trading in stock trading in Indonesia. While this article does not discuss at all about tippee actions against insider trading practices.

II. RESEARCH METHOD

The method used in this research is legal research, namely the activities of legal science in order to find legal issues faced by using legal identification and reasoning (Peter Mahmud Marzuki, 2016). This study uses normative juridical because in this study it is necessary to study the sources of law that regulate insider trading and the principle of information disclosure in the Capital Market in Indonesia.

III. RESULTS AND DISCUSSION

3.1. Insider Trading in the Indonesian Capital Market

According to Black's Law Dictionary, Insider Trading has a definition, namely where private information is used to create more profit. Sometimes this is considered a crime and punished. Refer to gun jumping. Based on the provisions of Article 1 number 13 of the Capital Market Law, it is stated that the definition of the capital market as an action related to the existence of bargaining, sale of securities (shares), public companies related to the issuance of securities itself and also the professions that support these fields. Disclosure of information in the capital market is an important element, because it is very helpful for investors and potential investors and minimizes the occurrence of elements of public distrust of the capital market which causes capital flight or capital flight which will later cause the Capital Market to be destroyed (Sare Intan A. Sinaga, 2014). So that they are free

to make choices and then invest in securities that have been offered on the capital market. Based on the principle of openness or known as the principle of disclosure, the trust of securities companies or issuers also depends on the speed with which information is spread evenly to all investors. Because if you are slow in conveying information, besides having an impact on domestic investors, it will also have an impact on distrust of foreign investors (Wisnu Satrio Hariono, 2018). The underlying problem to become the soul and part of this capital market is the principle of openness. The existence of this principle provides a function for investors in the form of easy access to information, so that investors can think better about selling or buying securities. With regard to information disclosure, there are still many violations of these principles, resulting in insider trading practices (Made Dwi Juliana, 2015). Insider trading is an expression technically within the scope of the capital market which refers to the practice where "insiders in the company" use confidential internal company information to buy and sell shares (inside non public information) (Ivan Yustiavanda, 2014). Inside non-public information here means important information that is not known by the public or is private which contains factors that affect the price of securities (Sofyan A. Djalil, 1997). SEC's means that parties who may be classified as insiders are parties who have the opportunity to access confidential company information. Because if only ordinary traders will not be able to have internal company information.

The absence of a complete definition of the meaning of insider trading itself which is regulated by the Capital Market Law (or Capital Market Law). The Capital Market Law only provides an explanation regarding transactions that cannot be carried out, namely those carried out by "insiders" of issuers who have inside information, they are not allowed to carry out securities buying and selling transactions, both issuers and other companies that transact with the public company or issuer concerned. Insider trading is strictly prohibited, on the grounds that company information is spread among the public (or investors) evenly, fairly, and simultaneously because the information has a very important role in changing a person's mindset to invest or not. So that way, neither party will benefit, especially if they have company access (Fadilah Haidar, 2015).

Article 98 of the Capital Market Law does not clearly define the term insider trading. The insider trading referred to in the article is only about an explanation of the existence of transactions that may not be carried out, namely those carried out by "insiders" of issuers who have inside information; the issuer concerned. This raises conflict, because insider trading is considered not to provide fairness of information. The information is only obtained by certain parties who have bad intentions to take advantage even though it is not their right. This problem contradicts Article 48 paragraph (1) and Article 95 of the Capital Market Law concerning the principle of openness.

There is an opportunity for outsiders or outsiders who are not classified as "insiders" to transact at the company concerned, this is explained in Article 95 of the Capital Market Law. In the explanation, what is said to be an "insider" is like (1). Company leaders such as commissioners,

directors; (2). Public company or issuer employee; (3). The largest shareholder in a public company or issuer; (4). Individuals who have opportunities such as factors of authority or position or have relationships with issuers or public companies to seek information; (5). Lastly, parties who within a certain period of time (minimum 6 months) are no longer a part as referred to in the previous point.

Cases of insider trading are common in this world. As was the case in the events of 2001 which were shocked by reports that said the occurrence of insider trading and also acts of influencing behavior or what was called market manipulation to sell shares of PT. Bank Central Asia Tbk (hereinafter referred to as PT. BCA) (Yunial Laily Mutiasari.dkk, 2018). By looking at the transaction motive, it is strongly suspected that insider trading has a tendency to shape the share price of PT. BCA that reaches at a certain price. The rise and fall of stock prices is certainly triggered by various factors. Stocks that experience a decline usually occur because of the dominance of sales by the sell initiator. Sell initiator is a term for members of the exchange. This incident occurred on 13 – 29 June 2001 which is expected to be a step in the formation of BCA's share price. Meanwhile, BCA's stock price which increased after the stocks split occurred due to the purchase mastery factor from the initiator buyer. The initiator buyer is a member of the exchange. And stocks split is the splitting of the number of shares into a larger number of shares by using a lower nominal value per share proportionally. For more details regarding the calculation or example of the flow of insider trading as follows, there is someone who is said to be a trader. This trader buys shares in a company at a price of 150 rupiah/share, then the price increases to 300 rupiah/share. Then one day there is an event that can lower the price, but only known by the "insider trading" or the insider. That information is then conveyed to a certain "trader", so that traders who get this information will sell shares at a price of 300 and get more profits, namely 150 rupiah. Unlike other traders who just start selling when the stock starts to fall, let's say for example to 250 so he only gets 100 rupiah.

Another case regarding the practice of insider trading occurred in 2007, with the problem stemming from the existence of a gas pipeline project for the South Sumatra – West Java Region which was delayed but was not reported to the public as soon as possible. On January 12, 2007, the share price decreased by 23.32% to 7,400 rupiah/share. The problem is that the project was delayed and not reported immediately, allegedly related to the element of interest in the divestment of PGN's 5.32% stake on December 15, 2006, as if the price at the time of the divestment did not decrease (Fadilah Haidar, 2015).

From this explanation, the term *insider trading* or insiders can be interpreted according to fiduciary duty theory is where one party is bound by a legal relationship with another party (Fisuda Alifa Mimiamanda Radinda, 2020). The fiduciary duty theory does not capture insider trading practices carried out by non-insiders, who obtain information indirectly or unintentionally from insiders. Furthermore, the explanation of Article 95 letter a does not explain further regarding who is meant by an employee of the issuer. This ambiguity causes different interpretations of the meaning of

issuer employees, whether they are permanent employees or non-permanent employees. If what is meant in the article only includes permanent employees, then the Capital Market Law cannot reach non-permanent employees who may carry out securities transactions based on material facts that have not been disclosed to the public by accident, which means that they were obtained by accident. Indirectly by insiders (Sudwijayanti, 2017).

Insider trading is divided into two categories based on the technique, which are as follows:

1. Parties who carry trust directly or indirectly from issuers or public companies and who have access to inside information are fiduciary positions or also known as first parties.
2. Parties who receive inside information from the first party (fiduciary position) otherwise known as Tippees.

Partyfiduciary positions as described in Article 95 of Law 8/1995 are commissioners, directors, employees, major shareholders of issuers/public companies, individuals who because of their position or profession or because of their business relationship with issuers or parties who within the last 6 (six) months have not become a party as previously mentioned. Still, sanctions for insider trading actions are not only imposed on fiduciary positions. It is further stipulated in Article 97 of the Capital Market Law that any party who intentionally tries to unlawfully obtain and ultimately obtain inside information is subject to the same prohibition as the provisions of Article 95 and Article 96 of the Capital Market Law.

The beginning of the practice of Insider trading is that there are insiders who play an important role in this practice because insiders are parties who know and have insider information that does not meet the requirements to be disseminated to the public, is not yet available to the public or not. disclose. Insiders disseminate inappropriate information to parties or people outside the company, either intentionally or unintentionally, resulting in information leakage. Sometimes insider trading occurs on purpose with the cooperation of outsiders.

For the survival of the capital market, the practice of insider trading has a major impact. Even Insider Trading can be equated with a theft case according to M. Irsan Nasarudin and Surya Indra in their book entitled Legal Aspects of the Indonesian Capital Market. The difference between conventional theft is that the object is an object or something that is owned by another person and controlled by the other person, while in insider trading the stolen object is still someone else's object but the information used is information that is public property, profits are obtained from the use of that information. In terms of losses incurred in theft, it can be the owner of the object who loses, while insider trading causes losses that have an impact on many parties and are very broad, investors experience huge losses due to insider trading practices. So that insider trading can change people's views on regulators and also a sense of trust in the credibility of the capital market. So that cooperation between government and community actions is needed so that the law can be the foundation. Legal certainty is a means that aims to increase public trust. The Indonesian economy

will be more advanced if the capital market runs well, especially for insider trading problems. Even though this crime is difficult to solve, then The Indonesian economy will become more advanced if the capital market runs well, especially for insider trading problems. Even though this crime is difficult to solve, then The Indonesian economy will become more advanced if the capital market runs well, especially for insider trading problems. Even though this crime is difficult to solve, then need a harmony of legal provisions (Prawitra Thalib dan Anwar Rachman, 2012).

3.2. The Principle of Transparency in the Capital Market

The existence of transparency or openness is very important in the functioning of the capital market. This is the basis for guidelines for potential investors to be able to make their choices. Munir Fuady said that the Capital Market Law provides a solid legal framework to ensure transparency. It is said that transparency or openness is a form of protection for the investor community, in terms of substance, transparency, enabling the public to gain access to important information related to the company (Sofyan A. Djalil, 1997). With the existence of a legal rule in the form of the Capital Market Law, it is hoped that it will become a legal basis that can provide legal protection for investors in the event that investors have the right to obtain complete and accurate information. The guarantee of the Capital Market Law which includes the principles of transparency and openness is fundamental to building trust in the capital market system.

Following are the functions of openness in the capital market:

1. Maintain public confidence in the market. If the company information is complete and clear, the level of investor confidence will be higher and the desire to invest in the capital market will also increase because of the guaranteed transparency in the capital market.
2. Openness in the capital market is expected to create an efficient market mechanism. What is meant here is efficient if the stock price in the market is fully a reflection or description of the available information. This information is used by the public to evaluate the existing products in the capital market.
3. Preventing fraud is also one of the important functions of the principle of transparency, because the information available to investors can be protected from fraudulent practices.

There is practice *insider trading* resulting in the existing information being unfair because it can only be obtained by certain people with the aim of obtaining benefits which are basically not their rights. This is contrary to the principle of transparency as regulated in the Capital Market Law. Insider trading is a violation of the principle of openness in the capital market.

The principle of absolute transparency is implemented in the capital market in line with the objectives of the principle of openness itself. The purpose of the principle of transparency is to maintain investor confidence, create an efficient market and protect investors. A thing is a material factbased on the measure that if a rational investor considers that fact substantially important in

making a decision. In the sense that there must be a sincere desire that the disclosure of these facts is seen by investors so that it results in significant changes to the overall information available. Investor confidence in any information that can affect nutrients is categorized as material information. According to the provisions of Article 1 point 7 of the Capital Market Law, it is stated that material information or facts are important and relevant information or facts regarding events, events, or facts that can affect the price of Securities on the Stock Exchange and or decisions of investors, prospective investors, or other parties with an interest in the information. or the fact.

Regarding the main purpose of *Insider trading* is to gain profit through the existence of information that has not been published to the public, so that the perpetrators can be subject to sanctions in the form of compensation. By providing information based on the principle of openness, it can be anticipated that the possibility of investors or stakeholders or stakeholders in the capital market can obtain information or material facts that are in accordance with the truth. This information is very important because it contains material facts. Insider trading is information that is only controlled by a group of people, which should be disseminated but is held by a certain group of people and it is done with a specific purpose. In legal parlance, this is an unlawful act of enriching oneself, or possessing what is not actually one's right. The practice of insider trading is a clear violation of the principle of openness in the capital market. The regulation on the prohibition of insider trading is intended to create an efficient and fair securities trading mechanism.

In view of the practice of crime *insider trading* can be prosecuted civilly regarding propriety or appropriateness but can also be prosecuted criminally. This is as regulated in the Capital Market Law. As a result of insider trading, it has an effect on investors and also on the development of the capital market so that the sanctions that can be imposed for such unlawful acts are not enough with compensation, but a deterrent effect is needed, namely criminal sanctions.

IV. CONCLUSION

Law Number 8 of 1995 concerning the Capital Market does not provide a clear definition of insider trading. Insider trading begins with the presence of inside information or inside information relating to the company or issuer. The existence of insider trading causes unfair information that is only obtained by a certain number of people with the aim of obtaining profits that are not their rights. It can be said that the main element of insider trading is the presence of insiders who have information that has not been published. The practice of insider trading is a violation of the principle of openness in the capital market. Although the purpose of the principle of disclosure of information itself is to ensure transparency in the capital market.

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