

Law Enforcement of *Insider Trading* in the Capital Market in Indonesia

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ABSTRACT

The purpose of this study is to analyze: 1) How law enforcement criminal acts *Insider Trading* in the capital market in Indonesia? 2) What is the legal protection for investors who are harmed by the practice; *Insider Trading* in Indonesia?. The research method used is normative juridical with a statutory approach, concept approach, and case studies.

The results showed that: 1) Law enforcement in the Indonesian capital market has not run effectively as a result of weak completeness of regulations, commitment, and coordination among law enforcement, so a new orientation and paradigm are needed that have more aggregate power in capital market management, as an effort to create an orderly and transparent capital market. Investor protection is one of the main principles of activities in the modern capital market, where economic activities carried out by investors must run under the umbrella and supervision system (market surveillance), and law enforcement that can determine the degree of market confidence, because philosophically business in the capital market itself is a trust business. 2) The form of legal protection for investors for *Insider Trading* actions is through UUPM, UUUJK and all laws and regulations related to *Insider Trading*.

Keywords: Enforcement, Law, Crime, Insider Trading, Capital Market, Indonesia

INTRODUCTION

Background

Insider Trading in the Capital Market is a crime that is very difficult to prove, even in developed countries such as the United States. It is not easy to bring the perpetrators of these crimes to criminal justice. *Insider Trading* is very dangerous because of its extraordinary impact in a capital market, because this crime can cause the development of the capital market to be hampered and can also indirectly cause the stock exchange to become quiet and not passionate because of the frauds of the people responsible for *Insider Trading*.¹

The capital market has the principle of openness as the soul of the capital market which aims to maintain public confidence in the market, create efficient market mechanisms, and also to provide protection to investors.² One way to realize the principle of information disclosure in the capital market is that public companies assisted by supporting professions must provide the correct prospectus, namely written

¹ Prawitra Thalib, "Crime Handling Mechanism *Insider Trading* Capital Market in Indonesia," *Journal of Juridika* 27, no. 2 (2012): 173.

² Ade Hendra Jaya and I Nyoman Gatrawan, "The Legal Effects of Misleading Information on the Prospectus in terms of Capital Market Law," *Kertha Semaya Journal* 2, No. 1 (2013).[2]

information in connection with the public offering.³ Actually, what is traded in the capital market is trust.
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Insider Trading is a technical term known only in the capital market. This term refers to the practice where *corporate insiders* (*corporate insiders*) conduct securities transactions (*trading*) using exclusive information they have (*inside non-public information*) meaning all information that is important and can affect the price of securities and the information has not been announced to the public.⁵ *Insider Trading* is one of the most sophisticated crimes in the world that is generally carried out in a very complicated mode and is very difficult to track.

Insider trading *actors* are generally also educated or educated people. Even though Article 104 of the UUPM states that the practice of *Insider Trading* is included in criminal crimes. The practice of *Insider Trading* has a major influence on the development of the Indonesian capital market as a whole, therefore it requires special attention from the government because *Insider Trading* has a bad influence on the investment climate that can harm investors who invest in Indonesia. In these conditions, the law in Indonesia should be present and provide firm protection to investors related to the practice of *Insider Trading*.⁶

Capital market crimes, especially related to *Insider Trading*, are one of the most sophisticated crimes in the world that are generally carried out with a very complicated *modus operandi* and are not easy to track. In addition to its sophisticated *modus operandi*, *Insider Trading* actors also generally consist of educated people so it is said that *Insider Trading* crimes include white collar crimes or often referred to as *white collar crimes*.⁷ Therefore, *Insider Trading* crimes tend to be difficult to prove and uncover, plus if law enforcement still uses conventional methods in conducting *law enforcement* on *Insider Trading* cases. The development of law enforcement, which is an important part in maintaining investor confidence, is strongly influenced by various internal and external factors.

Law enforcement is an effort to make ideas about legal certainty, social benefit, and justice a reality. *Insider Trading* law enforcement requires a clear legal foundation to make it easier for law enforcement to implement laws and regulations. In Law No. 8 of 1995 concerning Capital Market (UUPM), precisely in Articles 95 to Article 99, it has contained provisions that *Insider Trading* is included in one type of capital market crime, which means that these actions can be subject to sanctions, both administrative sanctions and criminal sanctions.

The provisions regarding sanctions, one of which is in the form of criminal sanctions, have been specifically regulated in Article 104 of the UUPM that "Any party who violates the provisions as referred to in Article 90, Article 91, Article 92, Article 93, Article 95, Article 96, Article 97 paragraph (1), and Article 98 shall be threatened with a maximum imprisonment of 10 (ten) years and a maximum fine of Rp. 15,000,000,000.00 (fifteen billion rupiah)." Crime reduction using criminal law is part of criminal policy which is considered the most rational legal remedy.⁸ In the UUPM, it is stated that *Insider Trading* as it is known that besides being prosecuted civilly or sanctions for unlawful acts, it can also be prosecuted

³ I Ketut Westra Ni Putu Purwanti, Inocencio Arya Wahyudi Karditha, "The Responsibility of Public Accountants in Making Prospectuses on Activities in the Capital Market," *Kertha Semaya Journal* 1, no. 1 (2013).[1]

⁴ Pande Putu Mega Rahma Wulandari and Gede Made Swardhana, "Responsibility for Violations of the Principle of Openness in the Capital Market Related to Stock Trading," *Kertha Semaya Journal* 5, No. 2 (2017).[4]

⁵ Munir Fuady, *Modern Capital Market* (Bandung: Citra Adithya Bakti, 2001).p. 167

⁶ *Ibid*

⁷ *Ibid*

⁸ Ida Ayu Nyoman Mahayani Dewi and I Wayan Suarbhha, "Combating Insider Trading (*Insider Trading*) in the field of capital markets viewed from the perspective of criminal law," *Journal of Criminal Law* 3, no. 2 (2014).p. 4

criminally, but OJK tends towards compensation or fines / administrative sanctions, even though it is known that *Insider Trading* has a very large influence both on investors and on the development of the capital market as a whole.

Problem Statement

1. How is the enforcement of *Insider Trading* in the capital market in Indonesia?
2. What is the legal protection for investors who are harmed due to *Insider Trading* practices in Indonesia?

Theoretical Framework

1. Law Enforcement Theory

Law enforcement is an effort to make the ideas of justice, legal certainty and social benefit a reality.⁹ Criminal law enforcement is an effort to realize the ideas of fairness in criminal law in legal certainty and social benefit into legal reality in legal certainty and social expediency into legal reality in every legal relationship.¹⁰

According to Soerjono Soekanto, said that law enforcement is an activity to harmonize the relationship of values described in steady rules and attitudes of action as a series of final stage value elaboration. To create, maintain and maintain social peace.¹¹

2. Theory of Legal Protection

Legal Protection is to ensure the continuity of the employment relationship system without pressure from strong parties to weak parties. According to Fitzgerald, legal protection aims to integrate and coordinate various interests in society because in a traffic of interests. Protection of certain interests can only be done by limiting various interests on the other hand.¹² Legal protection according to Satjipto Raharjo, namely providing protection for human rights (HAM) harmed by others and protection is given to the community in order to enjoy all the rights given by law.¹³

Research Methodology

The approach in this study uses a normative juridical approach. The normative juridical approach is an approach that is carried out based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this research. This approach is also known as the literature approach, namely by studying books, laws and regulations and other documents related to this research.¹⁴ The specification in this study is analytical descriptive research. Descriptive analytic according to Sugiyono¹⁵, which is a method that serves to describe or provide a picture of an object under study through data or samples that have been collected as they are without conducting analysis to make conclusions that apply to the public. Data collection techniques in this study were obtained based on *library research*. The study conducted was a literature study (*library research*) using secondary data. Secondary data in this

⁹ Satjipto Rahardjo, *Law Enforcement Issues*, Bandung : Sinar Baru, 1987, p.15

¹⁰ Peter Mahmud Marzuki, *Introduction to Law*, Jakarta : Kencana Prenada, 2012, p.15

¹¹ Soerjono Soekanto, *Factors Influencing Law Enforcement*, Jakarta: UI Pres, 1983, p. 35

¹² Fajar Alamsyah Akbar. "Legal Protection of Copyright According to Article 12 of Law Number 28 of 2014 concerning Copyright in Indonesia". *Journal: JOM*. Vol. 3 No.2. 2016. p. 4

¹³ Satjipto Rahardjo. 2000. *Legal Science*. Bandung: PT Citra Aditya Bakti. p. 54

¹⁴ Johnny Ibrahim, *Theory and Methodology of Normative Legal Research* (Malang: Banyumedia Publishing, 2006), p. 299.

¹⁵ Sugiyono, "Quantitative, Qualitative and R&D Research Methods," 26th, 2018.

study were obtained through literature studies, by seeking information as complete and as much as possible with journal literature, newspapers, articles, scientific papers and laws and regulations related to the problem under study.

RESEARCH RESULTS

Law Enforcement Insider *Trading* in Capital Market in Indonesia

In practice, activities carried out in the capital market involve various parties who generally aim to seek profit. In such a concept, it does not mean that the parties are free to take advantage of various circumstances for their purposes in the capital market, including committing fraud or violations. Violations of the rules of the game in securities transactions are often caused by weak supervision systems carried out by exchange managers and exchange supervisors, so that if there is a violation of securities transactions either due to manipulation, misleading information or *Insider Trading* (Insider Trading) it is difficult to detect early.¹⁶

This ban on insider trading was introduced with the enactment of the Decree of the Minister of Finance number 1548/KMK/013/1990 concerning Capital Market as amended by the Decree of the Minister of Finance Number 284/KMK.010/1995, which was later strengthened by the enactment of the Law.

Law Number 8 of 1995 concerning Capital Market, contains prohibited acts in capital market activities, which in principle can be grouped into 3 (three) major groups, namely:

1. Market Manipulation.
2. Criminal Acts of Fraud (*Fraud*).
3. *Insider trading*.¹⁷

Technically, *Insider Trading* actors can be divided into two types, namely parties who carry trust directly or indirectly from issuers or public companies or also referred to as parties who are in a *fiduciary position*, and parties who receive inside information from the first party (*fiduciary position*) or known as *Tippee*.¹⁸

In Indonesia, the UUPM has regulated (normative) and provided a technical format on how legal fences format the prohibition of *Insider Trading*. This prohibition on *Insider Trading* is regulated by Article 95, Article 96, Article 97 and Article 98 of the UUPM. Article 95 has explained the scope of *Insider Trading*, namely: Commissioners, directors, or employees of the issuer; Major shareholder of the issuer; An individual who, because of his or her position or profession or because of his or her business relationship with an issuer or public company, enables such person to obtain information; or Parties who within the last 6 (six) months are no longer parties as referred to in letter a, letter b, or letter c above.¹⁹

Article 96 of the Law explains the obligation of *Insiders* who are assumed to know material information to be careful in disseminating information so that such information is not misused by the Party receiving the information (referred to as *Tippess I*) to make purchases or sales of Securities. The prohibited actions include influencing other parties to conduct such securities transactions and/or providing insider information to other parties who are suspected of using the information to purchase and/or sell Securities. This shows that information in the Capital Market can be traded and information has a value and price that if obtained by cooperating with insiders in public companies or issuers is qualified as *Insider Trading*.

¹⁶ Munir Fuady, *Modern Capital Market (Law Review)*, Bandung: Citra Aditya Bakti, 1996, p. 4

¹⁷ Asri Carel Alice Rengkung, et al., "Legal Aspects of Prohibited Acts in the Capital Market Field According to Law Number 8 of 1995 concerning Capital Market", *Lex Privatum*, Vol. IX/ No.10, 2021, p. 14

¹⁸ M. Irsan Nurdin and Indra Surya, *Op.cit*, p. 268

¹⁹ Agus RIyanto & Suardi, "*Insider Trading* and Its Constraints in the Capital Market", <https://business-law.binus.ac.id/2021/07/18/insider-trading-and-its-constraints-in-the-capital-market/>

Article 97 of the Law stipulates that for anyone (its subject) who seeks to obtain material information unlawfully (Categorized as Tippet II), among others by stealing, inducing insiders and by means of violence or threats, a prohibition as stipulated in articles 95 and 96 applies. However, there is no prohibition on persons obtaining material information unlawfully. That is, the material information has become public consumption and the general public has officially known from the company that will buy and sell shares.²⁰

Article 98 of the Law is a basic rule that must be held by a securities company or a party working in a securities company that has inside information, not to conduct securities transactions solely for the benefit of its customers (if carried out categorized as Tippet III), unless the transaction is carried out at the behest of its customers and the securities company also does not provide recommendations to its customers regarding the securities concerned. For Securities Companies violating this provision, prohibitions as referred to in Article 95 and Article 96 apply.²¹

Insider Trading *law enforcement* requires a clear legal foundation to make it easier for law enforcement to implement laws and regulations. In the UUPM, precisely in Articles 95 to 99, it has contained provisions that *Insider Trading* is included in one type of capital market crime, which means that these actions can be subject to sanctions, both administrative sanctions and criminal sanctions. The provisions regarding sanctions, one of which is in the form of criminal sanctions, have been specifically regulated in Article 104 of the UUPM that "Any party who violates the provisions as referred to in Article 90, Article 91, Article 92, Article 93, Article 95, Article 96, Article 97 paragraph (1), and Article 98 shall be threatened with a maximum imprisonment of 10 (ten) years and a maximum fine of Rp. 15,000,000,000.00 (fifteen billion rupiah)." Crime reduction using criminal law is part of criminal policy which is considered the most rational legal remedy.²²

Insider Trading *law enforcement* includes three things, namely administrative, civil, and criminal enforcement, law enforcement can be said to be a form of protection for every violation. Basically, the UUPM has laid the foundation for law enforcement as a form of protection for any violations of capital market activities, namely administrative sanctions (Article 102 UUPM), criminal sanctions (Articles 103-110 UUPM), claims for civil compensation (Article 111 UUPM).²³

Law in the Capital Market is aimed at securing the investment activities of investors who meet the following elements. The meaning of the *first*, securities liquidity is securities that can and are easy to sell or make money through being traded on the stock exchange (actively traded). The *second*, security when investing directly or through (*principal*) deposited or invested. Furthermore, the *third*, namely about how much profit or form of rehabilitation as a form of principle (*rate of turn*), as well as rewards for capital owners or called (*return of investment*). Based on the above elements, juridical targets of legal regulation of the Capital Market can be formulated, namely:

1. Form of information disclosure;
2. Professional attitude and responsibility of actors in the Capital Market;
3. Application of orderly and modern market principles;
4. As well as efficiency;
5. Fairness; and

²⁰ Ibid

²¹ Ibid

²² Ida Ayu Nyoman Mahayani Dewi and I Wayan Suarba., Op.Cit., p. 4

²³ Ardian Junaedi, "Insider Trading Crime in Indonesian Capital Market Practices", *Media Iuris* Vol. 3 No. , 2020, p 314

1) Guarantee protection to the investor.

Finally, the various principles and will of Law Enforcement are formulated in the laws and regulations between the PM Law and the OJK Law. Rules that must be obeyed and affirmed regarding information disclosure include:

1. Providing information that is not true at all.
2. Provide information that is incomplete or half-truthful.
3. Provide incomplete or lacking information.
4. Completely silent or non-disclosure of material information and facts.²⁴

In the UUOJK on Information Openness, it is not described in detail compared to Article 180 of the UUPM which has determined the parties. In this case it illustrates the decline of Law Enforcement, but it can also be said to be an expansion of the form of liability because it can be imposed on anyone according to the UUOJK. If there is a violation in the form of providing information not in accordance with the principle of openness, Bapepam-LK will impose administrative sanctions. Thus it appears that any parties incurring losses shall be liable for the consequences of incorrect submission of information.²⁵ Regarding in the field of Law Enforcement, the authorized institution, namely Bapepam, which can conduct actions in the form of examinations of suspected perpetrators or parties involved in violations of the Law, among others, requires parties to carry out or not carry out certain activities, in the form of checking records, and / or books or other documents. After the inspection, Bapepam is also authorized to conduct investigations due to indications of violations of the UUPM. The authority to do so is PPNS within Bapepam (Kemenkeu) as a special investigating officer for criminal acts in the capital market sector based on the provisions of the Criminal Procedure Code.

How is the legal protection for investors who are harmed due to the practice of *insider trading* in Indonesia

In capital market activities, investors have a weak position. Because, in general, most companies that offer their securities through the capital market, before offering their shares to the public, the company is a family company whose shares and management are controlled by several people (Family Company), and after offering shares, generally still adhere to the same management pattern. There are two reasons capital market investors get protection, including:²⁶

1. Ownership Composition

In general, the composition of share ownership of companies that have gone public is still not balanced between the Founder and public shareholders. Around 70% of the shares are still controlled by the Founder and the remaining 30% are owned by the Public, thus the composition of the share ownership is weaker.

2. Access to Information and *Financial Resources*

At this time, the position of the board of commissioners and directors of companies that have gone public is still dominated by the Founder. This gives rise to wider access to financial information than with public shareholders.

The capital market that is taken into account is a capital market that strongly protects the interests of investors in addition to being measured by transaction value or market capitulation value. Another measure

²⁴ Ibid

²⁵ Arman Nefi, *Insider trading* Indications, Evidence, and Law Enforcement, (East Jakarta: Sinar Grafika, 2020) p. 272.

²⁶ Neni Sri Imantiati and Diana Wiyanti. LEGAL PROTECTION OF INVESTORS AND BAPEPAM'S EFFORTS IN OVERCOMING MARKET VIOLATIONS AND CRIMES. PulpitNo. 4Th.XVI Oct.–Dec.2000. p 351

concerns the existence of legal instruments that underlie the development of the market itself.²⁷ It is understood that investors are a process that involves risk. Therefore, the protection that can be provided by the government in a business activity, must include guarantees to investors to obtain complete information about the investment risks faced.

In Law Number 8 of 1995 concerning Capital Market, investor protection is contained in article 4 of Law Number 8 of 1995 Capital Market, it is stated that "*Guidance, regulation, supervision as referred to in Article 3 are carried out by Bapepam with the aim of realizing the creation of orderly, fair, and efficient Capital Market activities and protecting the interests of investors and the public*".

The regime of Law Number 8 of 1995 concerning Capital Market (hereinafter referred to as UUPM) determines and regulates that the authority in charge of the capital market is Bapepam-LK. This authority is under the Ministry of Finance to foster, regulate, and supervise the capital market. In its activities, Bapepam-LK is under and responsible to the Minister of Finance. It is Bapepam-LK that has the authority to carry out preventive and repressive capital market legal protection.²⁸ In the UUPM regime, Bapepam-LK is the embodiment of institutions to restore public confidence in markets that have experienced depression since the emergence of financial crises in a number of Asian countries. In the end, this financial crisis also became one of the factors in the formation of OJK as a financial services supervisory institution in Indonesia.²⁹

To protect investors, issuers who will sell securities in a Public Offering must provide an opportunity for investors to read the prospectus regarding the securities issued, before ordering or when the order is made. In the end, after Bapepam-LK paid attention to the completeness and clarity of the issuer's documents to conduct a Public Offering in order to meet the principle of capital market openness. This is important because the prospectus on securities is the initial door and time to consider for investors whether to decide to buy or not on a security.³⁰

In regulations outside the Law, OJK also has a role in enforcing financial services consumer protection in Indonesia. Consumer protection in the capital market will hereinafter be referred to as capital market investor protection because consumers in the capital market sector are investors or investors. Therefore, the aspect of protection for capital market investors is the authority of OJK.

Regarding consumer protection, it is contained in Article 28, Article 29, and Article 30 of the OJK Law, which are provisions that explicitly regulate consumer and public protection of the financial services industry. The form of legal protection carried out by OJK to consumers is preventive or preventive and sanctions or repressive, considering that OJK's task is to carry out regulatory and supervisory functions in the financial services sector.

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²⁷ Hilda Hsains Dimiyati. LEGAL PROTECTION FOR INVESTORS IN THE CAPITAL MARKET. Journal of Legal Mind, Vol. I No. 2 December 2014 - 347

²⁸ Hilda Hsains Dimiyati. LEGAL PROTECTION FOR INVESTORS IN THE CAPITAL MARKET. Journal of Legal Mind, Vol. I No. 2 December 2014 - 347

²⁹ Ibid

³⁰ Ibid

1. provide information and education to the public on the characteristics of the financial services sector, services, and products;
2. ask Financial Service Institutions to stop their activities if these activities have the potential to harm the community; and
3. Other actions deemed necessary in accordance with the provisions of laws and regulations in the financial services sector. Specifically, Article 29 of the OJK Law states that OJK conducts consumer complaint services which include:
 - a) prepare adequate tools for the service of complaints of consumers who are harmed by actors in Financial Service Institutions;
 - b) create a complaint mechanism for consumers who are harmed by actors in Financial Service Institutions;
 - c) facilitate the resolution of complaints of consumers who are harmed by actors in Financial Service Institutions in accordance with laws and regulations in the financial services sector.

Another form of legal protection that is repressive is if there is a dispute between consumers and financial services industry companies, OJK is authorized to conduct legal defense for the benefit of consumers and the public. The legal defense includes ordering financial services companies to resolve complaints made by consumers who feel aggrieved through;

- 1) order or take certain actions to the Financial Service Institution to resolve consumer complaints that are harmed by the Financial Service Institution;
- 2) file a lawsuit to recover the property of the injured party from the party who caused the loss, whether under the control of the party who caused the loss or under the control of the other party in bad faith; and/or to obtain compensation from parties that cause losses to consumers and/or Financial Service Institutions as a result of violations of laws and regulations in the financial services sector.³¹

CONCLUSION

The results showed that;

- a. Law enforcement in the Indonesian capital market has not run effectively as a result of weak regulatory completeness, commitment, and coordination among law enforcement, so a new orientation and paradigm that has more aggregate power in capital market management is needed, as an effort to create an orderly and transparent capital market. Investor protection is one of the main principles of activities in the modern capital market, where economic activities carried out by investors must run under the umbrella and supervision system (market surveillance), and law enforcement that can determine the degree of market confidence, because philosophically business in the capital market itself is a trust business.
- b. The form of legal protection for investors for *Insider Trading* actions is through UUPM, UUUJK and all laws and regulations related to *Insider Trading*.

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³¹ Jimly Asshiddiqie, "Regarding the Law", cet.II, (Jakarta: PT. Rajagrafindo Persada, 2011), pp. 133-135.

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