



Insider Trading in Indonesian Legal Settings

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Abstract. Besides giving birth to a new phenomenon that provides many benefits to the economy, the development of the capital market has also led to the emergence of various forms of white-collar crime that have the potential to harm society at large. In contrast to crimes in general which have the potential to cause direct losses, crimes in the capital market are often considered not to cause harm that can be seen clearly and felt directly. The losses caused by this form of crime are not even considered to be calculated with certainty. One of the crimes in the capital market is insider trading or known as Insider Trading. In relation to this research, what will be examined and studied is the legal regulation in Indonesia in relation to the crime of insider trading in the Capital Market. To get answers to existing legal problems, the normative legal research method is used, which is one of the commonly known study methods in the field of legal science to examine the substance of positive law textually (not only on norms, but also principles, even values). Values contained therein).

Keywords: Legal Arrangement · Insider Trading

1 Introduction

The globalization process that is growing faster, especially in the financial industry sector, accompanied by the emergence of increasingly complex business risks as a consequence of the combination of advances in information technology and financial innovation that produces various financial products with a high level of complexity and conglomeration of financial institutions, has become an issue. Which is always discussed at the domestic, regional and global levels [1]. One of the developments in the financial industry sector is the capital market.

In a modern economy, the existence of a capital market is a necessity. In countries with advanced economic conditions, the existence of the capital market as manifested in the stock exchange institution plays an important role as does a bank. The capital market is a guide and a place for interaction between entrepreneurs and investors through an economic activity. The entrepreneurs represented by the company have a need to seek capital by entering the capital market. Meanwhile, investors or financiers enter the capital market to invest their funds [2].

Many securities companies invest in the capital market, entrepreneurs or investors often face risks, including insider trading. Insider trading is an illegal practice in the investment world, where an investor gets definite information about profit opportunities

in buying and selling shares. Certainty of the information comes from 'insiders' in the related company. Such practice is said to be illegal because there is injustice in the giving and receiving of information which is only limited to people who are connected to each other. In a sense, the information shared is not information that is widely known to the public.

The practice of insider trading is a practice that violates the principle of openness in the capital market. In addition, this practice is also an unfair stock trading practice because the inside trader's position is better in holding informational advantages compared to other investors [3]. In fact, insiders buying company shares and then selling them when the price rises is a common occurrence. What makes it unusual is that when the insider makes the purchase and sale, the insider bases his or her actions on the presence of material information about the company that has not been made public, for example, about the company's plans to merge, or plans to acquire other companies that will create value. The company went up [4]. If this happens, not only is the act unusual, it will even result in the insider being charged with committing a capital market crime called insider trading. The so-called insiders are directors, commissioners, major shareholders or people who have close relations with the management of the issuer. This term refers to the practice in which corporate insiders conduct securities transactions (trading) using their proprietary information [5].

Insider Trading is a crime in the world of capital markets, where this case is very difficult to prove legally due to the lack of role of a regulation that regulates insider trading. With the existing legal system in each country, there is hope to be able to provide a legal regulation that can completely and clearly address this issue regarding insider trading, but it must also be in line with international rules so that there are no limits when evidence is carried out to perpetrators who come from outside country.

The legal arrangement of this insider trading case is still not getting enough attention in every country, this can be seen from the difficulty of proving this insider trading case even in developed countries such as the United States. It is realized that insider trading is very influential in the world of capital markets and the economy both nationally and internationally. However, the lack of legal regulation against insider trading can reduce the interest between countries to cooperate with each other in the economic field. Other things that also affect the reduced interest between these countries include ethics and transactions based on information from unethical insiders that are carried out and it is certain that there will be other parties who have the potential to be harmed, while the main purpose of these insiders is to seek maximum profit for himself [6]. From the description of the background above, the problems in this research are: What is the legal arrangement for insider trading in Indonesia?

2 Research Methods

This study uses a normative legal research method, which is one of the most widely known studies in the field of legal science to examine the substance of positive law textually (not only on norms, but also on principles, even the values contained therein) [7]. In this study, the approaches used are the statute approach and the conceptual approach.

The technique of collecting legal materials used in this research is through library research, namely collecting, studying and reviewing legal materials that have relevance

to the problem formulated, both for primary legal materials, secondary legal materials and tertiary legal materials.

In this study, the legal materials obtained are presented, categorized, and arranged systematically and then analyzed by abstracting the existing laws and regulations in order to answer questions or solve problems in this study. Analysis of legal materials is descriptive analysis. In the qualitative juridical analysis method, the legal materials or research objects used are not only described as they are, but also will be given legal arguments.

3 Discussion

3.1 Insider Trading Concept

Insider trading literally means insider trading. In terms of capital market law, insider trading is securities trading carried out by those who are classified as “insiders” of the company (in a broad sense), where the securities trading is based on the existence of “inside information” that is important and contains facts. Material, where insider trading actors expect economic benefits, directly or indirectly.

According to Munir Fuady, the practice of Insider Trading can be interpreted as securities trading carried out by those who are classified as “insiders” in the company (in a broad sense), trading which is based on or motivated by the existence of important and important “inside information”. Not yet open to the public, with which trades, the insider trader expects to get economic benefits personally, directly or indirectly, or which is a short swing profit [8].

Regarding who is meant by an insider, the Capital Market Law defines the following:

- a) Commissioners, directors or employees of issuers or public companies;
- b) The main shareholder of the issuer or public company;
- c) An individual who because of his position or profession or because of his business relationship with an issuer or public company allows that person to obtain inside information;
- d) A party which within the last six months is no longer a party as stated in the aforementioned letters a, b, c.

Insider Trading is one of the big problems in the world of Capital Markets, both international and domestic. With this violation, it will create a false price of securities in the capital market, so that investors and the public will be harmed. If so, then the level of investor confidence will decrease and will shift their investment to other financial institutions.

Insider trading has been closely watched by the SEC (Securities and Exchange Commission) since the stock crash in the 1930s. Insider trading is legal as long as it complies with the SEC’s 1934 Security Exchange Act. The essence of these rules is that insiders cannot trade on non-public information. Most insider trading offenses dare to violate this rule because the SEC does nothing about it. Regarding insider trading, if it is assumed in Indonesia, it must be admitted that this crime is not easy to find out, let alone solve, this is because it is not supported by the current legal system in any country.

Therefore, it is necessary in the future a harmonization of existing legal provisions with the development of the need itself.

This is possible given that the legal system is constantly changing, but parts of the legal system change at different rates, and each part that changes is not as fast as certain other parts. This is the structure of the legal system, its framework or framework, the part that survives, the part that gives some form and limitation to the whole. [9].

3.2 Legal Theory

In the practice of trading securities in the Capital Market based on the Common Law legal system, there are 3 (three) theories related to the existence of inside information, namely: [2]

1) Disclose or abstain theory,

Based on this theory, insiders who have information that is not yet available to the public can choose to disclose the information to the public (disclose) or not disclose the information with the consequence that the person concerned is prohibited from conducting transactions on the stock exchange by utilizing the inside information.

2) Fiduciary duty theory,

In this theory, anyone who has an employment relationship with receiving wages from the company to carry out a job, then the person concerned has a duty (duty) to the company to carry out that task as well as possible based on high ethical and economic standards. Thus, for an insider who has inside information where the person concerned does not disclose it to the public for the reason of preventing losses to the company, the insider must refrain from making transactions.

3) Misappropriation theory.

This theory was born because the two theories above cannot be used to ensnare perpetrators who have no relationship based on fiduciary duty to the company so that they cannot be subject to insider trading provisions.

According to this theory, for transactions carried out by outsiders of the company who inadvertently obtain material non-public information, the actions taken by outsiders are considered the same as insider trading.

This third theory is a very comprehensive theory because it is able to reach the practice of securities transactions carried out by a person based on material non-public information obtained from insiders.

3.3 Insider Trading Regulations According to Indonesian Law

In Indonesia, insider trading is equated with the term insider trading, although in fact the use of the term is not entirely correct. This is because the Capital Market Law does

not only regulate the use of inside information, it not only regulates the use of inside information by insiders (insiders) but also regulates the use of inside information by non-company insiders.

The regulation that regulates Insider Trading is the Law of the Republic of Indonesia Number 8 of 1995 concerning the Capital Market (abbreviated UUPM), but this Law does not provide a strict limit on the term insider trading. The Capital Market Law only provides restrictions on prohibited transactions, including, among others, company insiders who have information on people who are prohibited from selling or buying the securities of the issuer or other company that conducts transactions with the issuer or public company concerned. Other matters related to insider trading have not been further regulated.

Regarding the prohibition on insider trading in Law Number 8 of 1995 concerning the Capital Market, it is contained in Articles 95 - 98. In addition, the prohibition is also in the form of influencing other parties to buy or sell the said securities or provide inside information to other parties. Anyone who reasonably suspects may use the information to make a purchase or sale of securities. The legal loophole used by insiders lies in Article 95 which reads: "Insiders and issuers or public companies that have inside information are prohibited from buying or selling securities:

- a) the Issuer or Public Company concerned; and
- b) Other companies that conduct transactions with the Issuer or Public Company concerned".

From the description of the article, it appears that this article only reaches insiders, in its capacity as fiduciary duty theory, so that the perpetrators who fall into the category of misappropriation theory will almost certainly be protected from the threat of criminal sanctions as stipulated in the provisions of article 104. The concept of fiduciary duty, emphasized that people within the company should carry out work activities for the company to the maximum and full of loyalty above their personal interests, so that the person concerned is prohibited from conducting securities transactions because the material information he has is not yet open to the public.

Furthermore, in the provisions of the Capital Market Law, it appears that "information" especially "material information" is a very important element not only related to the prohibition of insider trading but also related to activities in the capital market in general.

As for the term insider information, in this case it refers to the notion of material information held by insiders that is not yet available to the public. In addition, the information referred to is also information that exists and is involved or related to the company or issuer. Thus, not all available information relating to capital market activities is inside information. Information regarding monetary and political policies taken by the Government can have an impact on public companies or issuers but such information is not inside information. [10] However, it should be noted in practice, developments regarding activity information that may be obtained exclusively by company insiders from a government official where such information can affect the price of securities.

In the Capital Market Law, in particular which regulates insider trading, there are several things that need special attention, including:

- 1) Insider trading regulations in the Indonesian capital market which are based on fiduciary duty theory are not able to reach and determine insider trading practitioners outside the insider category as stipulated in the Capital Market Law, such as other parties outside the company using non-public information in securities transactions in the Indonesian Capital Market.
- 2) Based on research that refers to the legal doctrine of the United States of America through court decisions in insider trading cases, the application of the theory of abuse can reach and determine the perpetrators of insider trading practices based on the theory of fiduciary duty. The application of this abuse theory can be a legal model to be used as a basis for capital market authorities in determining the perpetrators of insider trading practices.
- 3) Regulations prohibiting insider trading based on the theory of abuse have not been regulated in the Capital Market Law and its implementing regulations.
- 4) Because the legal construction of the Indonesian capital market which regulates the prohibition of insider trading is only based on the fiduciary duty theory, the Indonesian capital market authorities have not yet maximally sued parties suspected of practicing insider trading through the courts [5].

With regard to insider trading, it turns out that there are parties who reject and support the ban on insider trading, namely:

- 1) Those who support the prohibition of insider trading have an argument that insider trading in general has a negative impact from an economic and non-economic perspective. From an economic point of view, this action will harm investors (investors), harm issuers (parties who issue information) and violate the intellectual property rights of analysts who have worked hard to collect information, analyze and summarize it. From a non-economic perspective, this act violates the principle of confidentiality of information before disclosure and is an unfair transaction. Therefore, insider trading must be regulated in a regulation.
- 2) The party rejecting the prohibition on insider trading assumes that basically everyone wants confidential information before the information is disclosed, if given the opportunity. Of course they think that the information is important and can benefit them. The reason for rejecting this prohibition is that insider trading can make markets and prices efficient, is a good scheme of compensation for the management of the company, and it is a public choice. Therefore, there is a need for regulation of transactions [5].

The legal regulation of insider trading is indeed a crucial matter in the continuity of the business and investment world, a manifestation of the legal arrangement itself in the form of legal structure and legal substance where both of them synergize in providing legal certainty and protection. In the absence of legal regulations against insider trading crimes in the capital market, illicit profits will arise, create unfair markets and untrustable markets that are detrimental to investors and other parties. So this is very important and interesting if a juridical study is carried out by outlining the regulations that have been issued by the Indonesian government with the principles of international economic development.

Even though arrangements have been made with the issuance of the Capital Market Law in Indonesia, in practice it is still experiencing difficulties in proving for the discovery of crimes in the capital market until now because what is found is that the perpetrators are outside the territory of Indonesia, which means that it is difficult to reach the law in Indonesia.

4 Conclusion

Legal arrangements regarding insider trading which is a form of crime in the Capital Market sector, based on Indonesian law, have been regulated in Articles 95–98 of Law Number 8 of 1995 concerning Capital Markets, but the regulations in this law are still limited and have weaknesses. so that if the provisions in Article 95 of this Capital Market Law are related to the three legal theories in capital market activities as described above, there are still legal loopholes that can be exploited by insiders (*tipper*s) and outsiders who obtain material non-public information from outsiders. Inside (*tippee*) to do insider trading. Article 95 of the Capital Market Law is only able to reach out or legally ensnare insiders, in the capacity of fiduciary duty. So based on this, it is necessary to immediately update and revise the laws and regulations in the Capital Market sector.

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References

1. Thoha, Mahmud, 2002. Globalisasi Krisis Ekonomi dan Kebangkitan Ekonomi Kerakyatan, Jakarta : Pusaka Quantum.
2. Rahadiyan, Inda. 2014. Hukum Pasar Modal di Indonesia, Pengawasa Pasar Modal Pasca Terbentuknya Otoritas Jasa Keuangan.
3. Wijayani, Dianing Ratna. 2016. Insider Trading dalam Perspektif Fraud Diamond. Proceeding Seminar Nasional, H. 633–642
4. Sitompul, Azril. Insider Trading: Kejahatan di Pasar Modal
5. Qamariyanti, Tavinayati dan Yulia. 2009. Hukum Pasar Modal di Indonesia. Jakarta: Sinar Grafika
6. Susilo, Arief Zuliyanto . 2014. Insider Trading: Isu Etika, Peraturan dan Sudut Pandang Trader.
7. Abdul Kadir Mohammad. 2004. Hukum dan Penelitian Hukum. Bandung: Citra Aditya Bakti
8. Munir Fuady, 2006. Pasar Modal Modern, Tinjauan Hukum.
9. Friedmann, Lawrence M. American Law an Introduction
10. Balfaz, Mahmud M. 2012. Hukum Pasar Modal di Indonesia. Jakarta: PT Tata Nusa, Pasar Modal Modern

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