

Insider Trading Analysis of the Indonesian Capital Market

Nilvany Hardicky

Universitas Islam Riau, Indonesia

Email: nhardicky@gmail.com

Correspondence: nhardicky@gmail.com*

KEYWORDS

Insider trading; Investor;
Capital Market

ABSTRACT

Insider trading is one of the crucial issues in the capital market that can have a significant impact on market integrity and stability. In Indonesia, the practice of insider trading not only causes losses for investors who do not have access to insider information but can also reduce investor confidence in the capital market as a whole. Research This article will analyze and explain Insider Trading in the Indonesian Capital Market. This study uses notative juridical methods or normative law. The results of this study explain that Insider Trading in the Indonesian Capital Market is contained in Articles 95, 96, 97, 98, 99, and Article 104 which explain that insiders from an issuer of public companies that have inside information are prohibited from buying or selling affects, or companies that make transactions with issuers where they work. The prohibition on the use of insider information is more due to unfair actions against others who are completely unaware of the existence of the information. Investor protection is one very important way because if investors do not get enough protection, they are reluctant to make transactions on the exchange. Without a large number of investors, capital market activities will be weak, and the function of the capital market will not develop, the principle of openness as one of the efforts to protect investors. Such protection efforts will be realized if the implementation of information transparency or full disclosure obligations containing material facts in activities that take place in the capital market in accordance with the purpose of the principle of openness itself, namely to create a fair, efficient and orderly market that protects Investors and helps determine accurate market prices which are all intended for the benefit of Investors or potential Investors.

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1. Introduction

This article will analyze and explain *Insider Trading* on the Indonesian Capital Market and Legal Protection for Investors. In the history of the formation of capital markets in Indonesia began during the VOC era until today's modern times, after Indonesia became independent in 1945, Indonesia began to carry out post-old order development. Concentrate on it methodically within the late 1960s. The capital showcase may be a bridge as a contact between financial specialists and companies or government teach through exchanging long-term money related disobedient such as bonds, stocks, and others (Martalena, 2019). The capital showcase makes the government exceptionally curious about the improvement and advance of the capital market, since it has the opportunity to raise

reserves enormously so that it can be utilized to extend the amount of advancement exercises, various efforts are made by the government to create an ideal capital market for the community, so that people are interested in investing in the capital market by buying a number of securities from companies or institutions. The ownership of securities of companies by the community turns out to provide opportunities to improve welfare as a positive impact of company performance (Ahmad et al., 2018; Nasarudin, 2004).

The capital market can be interpreted as a forum for meeting demand and supply for capital in the form of equity and long-term debt. In the Capital Market Law (Chapter I, Article 1, Number 13, UURI No. 8 of 1995 concerning Capital Market) is defined as activities related to public offerings and securities trading, public companies related to the securities they issue, and institutions or professions related to securities. The capital market is a place to find funds used by both companies and also an alternative investment vehicle for the community. Capital market in the classical definition can be interpreted as a field of business trading securities such as stock certificates, stocks, bonds securities in general (Gisymar, 1999; Jonkarlo et al., 2022).

In capital market activities, there is a principle of openness and information or called *disclosure detailple*, that almost all investments have risks, so there will be the possibility of investors experiencing losses, in this capital market activity, trust is the main thing in the implementation of the capital market, namely public confidence in the value of shares. In capital market activities, there must be protection by law to ensure the certainty of the principle of openness. The principle of openness is present in securities transactions involving all aspects of finance, management, law and assets of a company (Ilyasa et al., 2021). The impact of openness will occur for investors will be able to understand and also decide about the investment to be run. The function of the presence of the principle of openness is to create efficiency in transactions in the capital market, so that transactions in the capital market can be carried out easily. In capital market activities, of course, accompanied by various dynamics, one of which is a violation of the law. One of the violations that are often committed by participants in the capital market is *Insider Trading*.

Trading is a transaction process that takes place in the financial market where the working system is often to sell and buy assets in a short time. This is when traders get a profit, which is to sell the asset at a higher price than before buying it. The purpose of *trading* is to collect profits from the difference in buying and selling prices, in general, traders take advantage of trend changing moments in stocks whose prices vary greatly to make profits. *Trading* activities can be done through intermediaries or commonly called *brokers*. *The broker* who will be the liaison between traders and the market can also be an advisor on the current state of the market to help traders with making decisions. *Insider Trading* is an illegal activity or practice based on electronic transactions. Securities trading transactions conducted by *corporate insiders*, *companies*, their management, directors or majority shareholders who hold private information. *The Security Exchange Commission* (SEC) requires that investors who have ownership greater than 10% of a company's stock must report their securities transaction activities to the SEC on a monthly basis. The purpose of *Insider Trading* itself is to get a shortcut profit (*short swing profit*), securities trading (selling or buying) carried out by a person or group of people based on information or material facts that have been known in advance before the information is informed to the public. The laws and regulations governing *Insider Trading*, namely Law Number 8 of 1995 concerning Capital Market, *Insider Trading* are discussed in Articles

95 to 99 and Article 104. That is: (Indonesia, 1995)

1. Article 95 which reads, insiders of issuers or public companies that have insider information are prohibited from buying or selling securities. The issuer or public company in question or other companies that conduct transactions with the issuer or public company concerned.
2. Article 96 which reads, insiders as referred to in article 95.
 - a. It is prohibited to influence other parties to buy or sell such securities.
 - b. Provide insider information to any party that reasonably suspects may use such information to make purchases or sales of securities.
3. Article 97 which reads, paragraph 1 any party who obtains inside information from an inside person unlawfully and subsequently obtains it is subject to the same prohibition as applicable to insiders as stipulated in articles 95 and 96. Paragraph 2 Any party who attempts to obtain insider information and then obtain it without contravening the law shall not be subject to the prohibitions applicable to insiders referred to in articles 95 and 96. As long as information is provided by issuers or public companies without restriction.
4. Article 98 reads, that securities companies that have inside information about issuers or public companies are prohibited from conducting securities transactions of the issuer or public company, except if:
 - a. The transaction is carried out not at his own expense, but at the behest of his customer.
 - b. The securities company does not provide recommendations to its customers regarding the securities concerned.
5. Article 99 which reads, BAPEPAM can determine securities transactions that are not included in prohibited securities transactions as referred to in Article 95 and Article 96.
6. Article 104 reads, that any 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 imprisonment of 10 (ten) years and a maximum fine of Rp.15,000,000,000.00 (Fifteen billion rupiah).

The consequences of *Insider Trading* crime are detrimental to capital market participants, investors, the company itself, and prospective shareholders. This is because the price of shares purchased can harm parties who do not get information from insiders, where people have received information from insiders and have known the information in advance (non-public *information*). Therefore, it is necessary to take firm action from BAPEPAM-LK in cracking down on *insider trading criminals*.

2. Materials and Methods

The method of approach in this article research is normative juridical or normative law, which aims to explain and analyze Insider Trading in the Indonesian Capital Market. In normative legal research, several approaches are used, namely the statute approach, conceptual approach, and comparative approach (Aziz et al., 2021; Ibrahim, 2005). Berkaitan dengan hal yang diatas, maka yang menjadi fokus pada kajian tilisan ini adalah menganalisis Insider Trading di Pasar Modal Indonesia. The research in this paper is included in descriptive research. Descriptive research is a method aimed at describing existing phenomena which occur in the present or conditions in the past. The data used in this study are secondary data; secondary data consists of primary legal material, secondary legal

material, and tertiary legal material; primary legal material is legal material that is authoritative which means it has authority (Sunggono, 2003). In this case, the primary legal material consists of laws and regulations and judges' decisions (Sunggono, 2003). Secondary legal material is research legal material obtained from legal readings, which in this case are books, scientific journals, and papers, and tertiary legal material is a large Indonesian dictionary (KBI).

3. Results and Discussions

1. The Occurrence of *Insider Trading* in the Indonesian Capital Market,

Insider Trading is an offense that is categorized as a criminal offense in the capital market. Capital market laws designate *Insider Trading* as a criminal offense. The handling of insider trading cases that have been resolved is expected to increase investors' confidence in investing in the capital market. Insider trading settings serve to create confidence in investors. Legal provisions and law enforcement regarding *Insider Trading* apply the enforcement of sanctions as a legal form as stipulated in the capital market law (Christensen et al., 2016; Nefi, 2021).

In the Capital Market Law Number 8 of 1995 concerning Capital Market, the practice of *Insider Trading* occurs because insiders trade using inside information that has not been submitted to the public (non-public information material). This means that *Insider Trading* has a stock price. A better *Insider* position compared to other Investors in stock trading transactions can lead to unfair stock trading, because the practice of *Insider Trading* creates distortions in stock prices, therefore the stock price is not a reflection of efficient market information.

One of the visit components of *Insider Exchanging* in Indonesia is the shortcoming within the capital showcase law, one illustration in article 104, in article 104 it is clarified that the culprits of *Insider Exchanging* violations will be sentenced to 10 a long time in jail and a fine of 15,000,000,000.00 (Fifteen Billion Rupiah). This clearly will not make a obstruction impact on *Insider Exchanging* offenders since in case the culprits get more benefits than the desired fines and the culprits as it were pay a little fine than the profits obtained by numerous *Insider Exchanging* criminals. *Insider Exchanging* within the capital showcase is contained within the Capital Advertise Law No. 8 of 1995 concerning Capital Advertise which disallows insiders from an guarantor or open company that has insider data to purchase or offer securities of guarantors or companies that make exchanges with backers where they work.

Insiders in open companies or backers are denied from affecting others or giving data to other parties who sensibly anticipate to utilize such data to purchase or offer securities of open companies or backers submitted to them. The forbiddance of the utilize of insider data is more critical since this activity is an out of line activity against others. Who knew completely no such data. Within the utilize of insider data by Insiders or other parties who have connections with insiders can cause money related advantage to the party by causing misfortunes to financial specialists.

There are many factors why *Insider Trading* crimes often occur, both within themselves and from the company environment itself. The cause of fraud committed by someone is based on the fraud *triangle* theory first proposed by Cressey in 1953. The fraud triangle proves that fraud is caused by three factors, namely pressure, opportunity, and rationalization. Along with the development of time and situation, it turns out that there is a change in views about the causes of fraud, which initially the fraud triangle turned into diamond fraud. Diamond fraud was initiated by Wolf and Hermanson

(2004), and it is a form of refinement of the fraud triangle theory by Cressey (1953) (Schuchter & Levi, 2016). Diamond fraud adds one qualitative element believed to have a major influence on fraud: capability. So, broadly speaking, *diamond fraud* is a refinement of the *fraud model* initiated by Cressy. There are also elements of *fraud diamond theory*, namely: *pressure, opportunity, rationalization and capability*.

The practice of *insider trading* can occur when an Insider conducts a trading action using material fact information that is not yet known to the public, which is feared to affect stock prices. Based on article 95 of the UUPM, in fact, several elements can be derived that *Insider Trading* is said to occur if it has fulfilled three elements, namely: (Dimiyati, 2014) 1. There are insiders, 2. The information obtained from the insider has a material nature and has never been published to the public, 3. There are trading transactions that occur in insiders based on this information.

2. Investor Protection Against *Insider Trading* Crime According to Capital Market Law Number 8 of 1995

Lawful assurance within the capital advertise cannot be isolated from the lawful arrangements of companies, particularly restricted risk companies, because basically lawful security within the modal showcase includes capital showcase players, particularly guarantors, speculators, and capital advertise supporting teach where these parties are overwhelmed by legal subjects within the shape of legal entities within the shape of constrained risk companies. In ensuring Investors within the Capital Market Law Number 8 of 1995, must apply the rule of openness to supply assurance to Investors from wrongdoing within the capital showcase, one illustration is Insider Exchanging and guarantors who will offer securities in open offerings must be able to supply openings for Financial specialists to examined the outline with respect to the securities to be issued, at the time of booking or some time recently the booking is made.

Within the conclusion, after Bapepam-LK paid consideration to the completeness and clarity of the issuer's archives to conduct a open advertising in arrange to meet the principle of openness within the capital showcase. Usually exceptionally critical since considering the outline of securities is the beginning entryway and time for financial specialists to choose whether or not to purchase a security. To ensure speculators, lawful assurance is required, specifically giving security of human rights hurt by others, and lawful assurance is given to the community to appreciate all the rights given by law (Raharjo, 2002). Financial specialist Assurance could be a exceptionally vital column, since on the off chance that Speculators don't get satisfactory security, at that point they are hesitant to form exchanges within the capital showcase.

Without numerous speculators, capital advertise exercises will be exceptionally powerless, and capital showcase capacities will not create. The rule of openness (full revelation) is one of the endeavors to ensure Speculators. Such security endeavors can be realized in the event that the usage of data straightforwardness or full disclosure commitments containing fabric actualities in each movement that takes put within the capital advertise. Hence, the realization of a capital showcase condition that's reasonable, productive, efficient, and can be ensured by the interface of the open or speculators from activities that can harm the community and speculators. This can be in agreement with the reason of the rule of openness itself and makes a difference in setting exact advertise costs

which are all pointed at the advantage of the open or Speculators and potential Speculators (Nefi, 2021).

4. Conclusion

The occurrence of *Insider Trading* in the capital market According to the Capital Market Law Number 8 of 1995, *Insider Trading* practices occur when *Insiders* (insiders) trade using material fact information that can not be conveyed to the public (*non-public information* material), which is feared to affect the stock price. From the provisions of article 95 of the UUPM, it can actually be derived from several elements that *Insider Trading* is said to occur if three elements have been met. First, there is an insider. Secondly, the insider information is material and has not been made public. Third, the power of securities trading transactions by insiders based on such information.

Legitimate assurance for financial specialists concurring to Law Number 8 of 1995, To secure speculators within the capital advertise law Number 8 of 1995, it must apply the rule of openness to protect investors from wrongdoing within the capital showcase, for illustration Insider Exchanging and backers who will offer securities in a open advertising must give an opportunity for speculators to examined the plan with respect to the securities issued, sometime recently booking or at the time the booking is made. Within the conclusion, after Bapepam-LK paid consideration to completeness. On the off chance that legitimate security isn't connected, it'll result in a misfortune of speculator certainty in exchanges within the capital showcase, and in the event that the misfortune of speculator certainty will result in a frail capital advertise.

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