Syntax Literate: Jurnal Ilmiah Indonesia p–ISSN: 2541-0849
e-ISSN: 2548-1398
Vol. 9, No. 5, Mei 2024

PROTECTION AND ENFORCEMENT OF LAW AGAINST INSIDER TRADING CRIMES IN THE INDONESIAN CAPITAL MARKET

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Abstract

Criminal practices in the capital market are commonly known by the terminology insider trading, a long-standing crime that is not well-known to the public. Insider trading constitutes a legal violation as well as an ethical breach that can pose serious risks to market integrity and harm investors who do not have specific information access. This journal will explore the legal protection and enforcement framework that explains the Indonesian legal framework governing transactions in the capital market in an effort to protect the public from insider trading. Legal protection includes the enforcement of provisions found in laws, regulations, and supervisory mechanisms applied by financial authorities, which is essential to create a fair and efficient market. Therefore, understanding the effectiveness of existing laws and enforcement of rules is crucial to protecting the public from insider trading crimes. This journal is expected to provide knowledge to enhance and develop legal science, particularly related to the analysis of insider trading law enforcement in the capital market in Indonesia. This journal is hoped to provide input and recommendations for authorities and stakeholders involved in providing legal protection to the public for the enforcement of laws in accordance with the provisions of the Indonesian Capital Market Law.

Keywords: Legal Protection, Capital Market, Insider Trading.

Introduction

The capital market serves as an effective means to drive a country's development because it is the place where the community in need of funds (companies) connects with investors seeking profits through various types of capital financing (Soumaré et al., 2021). Businesses in need of funding for their operations seek capital through the capital market, where sellers and buyers converge in the sale of securities and the purchase by capital owners or funders. The Capital Market Law No. 8 of 1995 on the Capital Market defines the capital market as "activities related to Public Offering and trading of Securities, Public Companies related to the Securities they issue, as well as institutions and professions related to Securities" ("Undang-Undang No. 8 Tahun 1995 Tentang Pasar Modal," 1995).

The capital market is not only a platform for the meeting of sellers and capital owners in the context of financing but also serves as a means to enhance the welfare of society (Panait et al., 2022). Companies seeking capital (capital sellers) for financing meet with capital buyers in the capital market, where the traded commodities are capital or funds. This can be done by individuals or institutions or businesses with excess funds that can be used for productive purposes (Raffles, 2011). The sellers of capital/funds are companies in need of additional capital for their business purposes. The capital market is a long-term financing tool for companies, serving not only as a source of funding but also as a means for the community to improve their well-being (Chu et al., 2017). Emitting

How to cite:	Gani, E. N., & Dragono, V. (2024). Protection and Enforcement of Law Against Insider Trading Crimes in The Indonesian Capital Market. *Syntax Literate*. *(9)5*. http://dx.doi.org/10.36418/syntax-literate.v9i5
E-ISSN:	2548-1398
Published by:	Ridwan Institute

companies wishing to increase their capital can conduct a public offering (go public) and sell their shares through the stock exchange with the assistance of securities companies.

On the other hand, investors with excess funds can invest in the stock exchange by buying shares, bonds, derivative products, or mutual funds. Financial products traded on the stock exchange have the potential for greater profits compared to banking products (such as savings and deposits) (Musonera & Safari, 2008). However, these products also carry the risk of losses, including the risk of losing the entire invested amount. In ensuring that all transactions and rules are adhered to by market participants, legal protection plays a crucial role. Legal involvement is not only needed in case of violations but also in the daily operational implementation of the capital market to make it a safe investment space for investors (Ratu, 2019).

The capital market has four roles, namely:

1) Bringing together sellers of securities (those in need of funds for business capital, i.e., issuing companies) with buyers of securities (those offering funds, i.e., investor communities or funders).
2) Acting as an intermediary institution in the efficient, transparent, and accountable allocation of community funds.
3) Providing a variety of investment instruments that enable portfolio diversification.
4) The Capital Market's Role in Inviting Investor Participation and Ensuring Legal Protection (Tavinayati, 2009).

The capital market plays a crucial role in encouraging the public, including company founders, to participate in owning healthy and promising public companies.

The Capital Market industry offers six benefits, which can be explained as follows:

a) Providing Long-Term Funding Sources: It facilitates long-term financing for businesses while enabling optimal allocation of funds.
b) Offering Investment Opportunities: It provides an investment platform for investors, allowing for portfolio diversification.
c) Widespread Ownership: It spreads ownership of companies to the middle class.
d) Opportunity to Own Healthy Companies: It provides the opportunity to own thriving and prospective companies.
e) Creating a Healthy Business Climate: It fosters a healthy, open, and professional business environment.
f) Generating Employment Opportunities: It creates job opportunities and attractive professions (Ratu, 2019).

The primary objective of the Capital Market Law is the implementation of the principle of transparency or the provision of material facts to prevent fraudulent activities in stock trading. The openness principle is a fundamental issue in the capital market and is the soul of the capital market based on the existence of openness that allows the availability of considerations for investors (Stulz & Williamson, 2003). This rational decision-making process enables them to buy or sell stocks. Various types of crimes commonly occur in the capital market, including fraud, market manipulation, and insider trading. Law No. 8 of 1995 on the Capital Market explicitly prohibits securities trading activities involving fraud, manipulation, and insider trading. This prohibition is designed to protect the interests of investors and ensure honest and healthy securities trading, maintaining public trust in the Indonesian Capital Market industry for the long term.

Information transparency is a form of legal protection for investors. Substantively, transparency is required by the public to access crucial information related to companies. A capital market is considered fair and efficient when all investors receive information

simultaneously with equal quality (equal treatment) in information access. Legally, transparency ensures the public's right to continuously access essential information, with sanctions for obstacles or omissions made by companies. Among several crimes in the capital market, insider trading is the most common and challenging to prove. Insider trading is an illegal practice where an investor obtains information about opportunities and profits in stock transactions. This information certainty originates from insiders (inside information) of a company conducting a buy or sell transaction, using material facts not yet available to the public. The perpetrator gains profit from the transaction due to their actions. Insider trading remains a complex issue in capital market transactions, as stated by Najiib A. Gisymar.

Insider trading refers to the practice where corporate insiders conduct securities transactions using executive information they possess, which is not yet available to the public or investors. The Capital Market Law No. 8 of 1995 does not specifically define insider trading; it only restricts transactions by insiders of issuers with information. Insiders are prohibited from engaging in sales or purchases of securities issued by the issuer or other public companies conducting transactions with the concerned issuer. Insider trading is a violation that requires sanctions, as emphasized by Becelius Ruru. Protection for investors and the public is achieved through legal certainty and enforcement, market supervision, information transparency, efficient trading systems, clarity, and professional standards. Equally important is the improvement or perfection of institutions by regulators, market participants, and supporters of the capital market.

According to Najib A. Gisymar, "Insider trading is the trading of securities conducted by insiders based on information, either directly or indirectly, about non-public information from insiders. It is suspected that this information is material and can influence the disputed securities' prices." From the above understanding of insider trading, it can be noted that insider trading involves the following elements (Rahadiyan, 2017):

a) Existence of securities trading
b) Conducted by insiders of the company
c) Presence of inside information
d) Inside information not yet disclosed to the public
e) Trading triggered by the existence of inside information
f) Aimed at gaining unfair profits (Gisymar, 1999).

Regarding insider trading, similar opinions are also expressed by Asril Sitompul, Zulkarnaen Sitompul, and Bismar Nasution. They state that insider trading has been happening for a long time. Although insiders of a company are not prohibited from trading the company's stocks they hold, if an insider plans to conduct a transaction based on material information within the company, they must have already publicly disclosed that material information (Ruru, 2023). Regarding law enforcement issues in the capital market, it is a complex problem. In practice, insider trading never reaches investigation, and court decisions are not made, resulting in no legal resolution of insider trading crimes (Nefi, 2020). Considering this, it becomes worthwhile to delve into the following questions: What is the legal framework regulating insider trading in the Indonesian capital market? To what extent is the legal protection effective against insider trading crimes within the Indonesian capital market legal system? And what are the mechanisms for supervision and law enforcement against insider trading practices in the Indonesian capital market?

Research Methods

This research is a Juridical Normative study referring to the formulation of the problems and research objectives stated above. Therefore, this research is conducted using normative or juridical normative research. This research focuses on the analysis of legal norms or theoretical legal regulations, emphasizing the examination of legal documents, legislation, legal rules, legal systematics, and legal principles used to understand and explain legal issues. The nature of normative juridical research itself is always limited by problem formulations, the object under study, and legal scholarly traditions. Normative juridical research includes research on legal principles. According to Peter Mahmud Marzuki, legal science is a study of law that cannot be classified into social sciences with empirical truth. Normative research is taken as the main approach in this study because the main focus is on the provisions regulating law enforcement in cases of insider trading in the capital market.

Approach Used

Normative juridical research requires a legislative approach, a method in legal science that focuses on the analysis and application of written legal regulations. This approach concentrates on legal texts, legal principles, legal systematics, and other legal documents as the primary sources of legal understanding. Here are some characteristics and key points of the legislative approach:

a) Analysis of Legal Norms:
   The legislative approach emphasizes the analysis of legal texts, whether laws, government regulations, or court decisions. The study is conducted by examining the words and phrases used in legal regulations.
b) Legal Interpretation:
   In this approach, the process of legal interpretation becomes crucial. Interpretation of legal texts is carried out to understand the true meaning of the words used by lawmakers.
c) Legal Comparison:
   This approach may also involve legal comparison, either with other laws domestically or with laws from other jurisdictions. The aim is to gain a more comprehensive understanding of a legal issue.

Conceptual Approach

This approach refers to the philosophical aspects of law by exploring ideas such as Ethics, Justice, Truth, and fundamental values that shape the law. Understanding the structure of the law, including the relationship between legal norms, becomes the focus of discussion, including how the law is structured and how legal elements are interconnected.

The capital market, as a vital component of a nation's economic landscape, plays a pivotal role in fostering development. It serves as a nexus where companies seeking funds intersect with investors eager to garner profits through diverse forms of capital financing. Facilitated by the Capital Market Law No. 8 of 1995, the capital market encompasses activities related to public offerings, securities trading, and entities associated with securities. Beyond its function as a financing platform, the capital market functions as a conduit for societal well-being. This intricate interplay involves capital sellers, typically companies in need of funding, engaging with capital buyers – individuals, institutions, or businesses with surplus funds seeking productive deployment.

Roles of the Capital Market:
1) Matching Buyers and Sellers: The capital market acts as a meeting ground for sellers (companies in need of capital) and buyers (investors or funders).
2) Intermediary Institution: It serves as an intermediary for the efficient, transparent, and accountable allocation of community funds.
3) Diversification through Investment Instruments: By providing various investment instruments, the capital market enables portfolio diversification.
4) Encouraging Investor Participation and Ensuring Legal Protection: It plays a pivotal role in inviting public participation and providing legal safeguards.

The capital market plays a crucial role in driving a country's development by facilitating the connection between companies in need of funds and investors seeking profits through various types of capital financing. It serves as a platform where sellers and buyers converge to trade securities and allocate capital. The Capital Market Law No. 8 of 1995 on the Capital Market defines the capital market as "activities related to Public Offering and trading of Securities, Public Companies related to the Securities they issue, as well as institutions and professions related to Securities."

Benefits Offered by the Capital Market:
a) Long-Term Funding Sources: Facilitates long-term financing for businesses, optimizing fund allocation.
b) Investment Opportunities: Provides a platform for investors to diversify their portfolios.
c) Widespread Ownership: Spreads ownership of companies to the middle class.
d) Opportunity to Own Healthy Companies: Allows ownership of thriving and prospective companies.
e) Healthy Business Climate: Fosters a healthy, open, and professional business environment.
f) Generating Employment Opportunities: Creates job opportunities and attractive professions.

The primary objective of the Capital Market Law is to enforce transparency, ensuring the provision of material facts to prevent fraudulent activities. Transparency is fundamental to the capital market, facilitating rational decision-making for investors. Insider trading, a prevalent challenge in the capital market, involves the illegal practice of investors using non-public information to gain advantages in stock transactions. Law No. 8 of 1995 explicitly prohibits securities trading activities involving fraud, manipulation, and insider trading to protect investors' interests and maintain public trust.

Insider Trading: Insider trading, as described by Najib A. Gisymar, involves corporate insiders conducting securities transactions based on non-public information. It comprises elements such as securities trading, insider involvement, non-disclosure of inside information, and trading aimed at gaining unfair profits. Legal protection against insider trading relies on information transparency, safeguarding investors' rights, and imposing sanctions for violations. Despite the legal framework, insider trading remains a complex issue, and law enforcement faces challenges. The capital market lacks effective mechanisms for investigating and resolving insider trading crimes, raising questions about the regulatory framework's efficacy and the adequacy of legal protection.

Insider trading is a complex phenomenon that poses significant challenges to the integrity and fairness of the financial markets. It involves corporate insiders, such as executives or board members, leveraging privileged information to gain an unfair advantage in securities transactions. This practice is considered unethical and illegal in

most jurisdictions, as it undermines the principles of transparency, fairness, and equal opportunity for all investors. From a conceptual standpoint, addressing and preventing insider trading requires a multi-faceted approach that encompasses various aspects. Let's delve into some key components of this approach:

a) Legal Framework: A robust legal framework is essential to combat insider trading effectively. The Capital Market Law No. 8 of 1995, although not explicitly defining insider trading, restricts transactions by insiders with information. Strengthening and refining these regulations can enhance the effectiveness of enforcement measures and provide clear guidelines for market participants.
b) Enforcement and Sanctions: Effective enforcement mechanisms and appropriate sanctions are crucial to deter insider trading. Authorities need to actively investigate and prosecute instances of insider trading, imposing penalties that are commensurate with the severity of the offense. This approach sends a strong message that insider trading will not be tolerated, fostering a culture of compliance among market participants.
c) Market Supervision: Ensuring effective market supervision is essential for detecting and preventing insider trading. Regulatory bodies should have the necessary authority, resources, and expertise to monitor trading activities, identify suspicious patterns, and promptly investigate potential cases of insider trading. Collaborative efforts between regulators, exchanges, and other market participants can enhance surveillance capabilities and facilitate information sharing.
d) Information Transparency: Promoting transparency in the disclosure of corporate information is crucial to mitigate the potential for insider trading. Companies should adhere to strict reporting requirements, ensuring timely and accurate dissemination of material information to the public. This transparency reduces information asymmetry between insiders and other market participants, promoting a level playing field.
e) Efficient Trading Systems: The implementation of efficient and technologically advanced trading systems can help detect and prevent insider trading. These systems can monitor trading patterns, identify abnormal trading activities, and generate alerts for further investigation. Automated surveillance tools, coupled with machine learning algorithms, can enhance the effectiveness of monitoring efforts and aid in the early detection of potential insider trading.
f) Clarity and Professional Standards: Clear guidelines and professional standards are essential to guide market participants on ethical and legal practices. Providing comprehensive training, fostering a culture of compliance, and promoting ethical behavior within organizations can contribute to reducing the occurrence of insider trading. Additionally, promoting research and educational initiatives on insider trading can raise awareness among investors and professionals, further reducing the likelihood of such activities.
g) Institutional Improvement: Regulatory bodies, market participants, and supporters of the capital market should continuously strive to improve institutions and practices. Regular review and enhancement of regulations, market rules, and surveillance techniques are necessary to adapt to evolving market dynamics and emerging risks. Collaboration between stakeholders can lead to the development of innovative solutions that address the challenges posed by insider trading effectively.

Combating insider trading requires a comprehensive and multi-faceted approach that encompasses legal, enforcement, market supervision, transparency, efficient trading systems, professional standards, and institutional improvement. By implementing and

strengthening these measures, the aim is to create a fair and transparent market environment that protects the interests of investors and the public.

Legal Protection and Transparency in the Capital Market : Legal protection and transparency are crucial aspects of the capital market to ensure the interests of investors and maintain public trust. The Capital Market Law emphasizes the principle of transparency, which involves providing material facts to prevent fraudulent activities in stock trading. Transparency allows investors to make rational decisions based on available information. Information transparency is a form of legal protection for investors. It ensures that all investors have equal access to essential information and are treated fairly. The Capital Market Law prohibits securities trading activities involving fraud, manipulation, and insider trading to protect the interests of investors and maintain a healthy securities trading environment. Insider trading is a common and challenging crime in the capital market. It involves the trading of securities based on non-public information obtained by insiders of a company. The Capital Market Law restricts transactions by insiders with information and requires the public disclosure of material information before insiders can conduct transactions.

Mechanisms for Supervision and Law Enforcement : Supervision and law enforcement are essential to ensure the integrity and fairness of the capital market. Regulators, market participants, and supporters of the capital market play a crucial role in improving and perfecting institutions to enhance investor protection and market efficiency. Law enforcement against insider trading is a complex issue. While the Capital Market Law prohibits insider trading and emphasizes legal certainty and enforcement, in practice, insider trading cases often do not reach investigation or result in court decisions. This lack of legal resolution highlights the need for more effective mechanisms for supervision and law enforcement against insider trading practices.

Results and Discussion

Criminal activities in the capital market are widespread, and although these crimes may not directly cause individuals to feel harmed or experience wealth loss, their impact on the market is significant. The distinctive characteristics of this crime include the object being information. Furthermore, the perpetrators of this crime do not rely on physical abilities but rather on the ability to understand and read market situations for personal gain. Proving crimes in the capital market is challenging, but the resulting consequences are severe and widespread.

In the capital market, securities trading becomes insider trading if it meets three elements:
1) The presence of insiders.
2) Material information not yet available to the public or undisclosed.
3) Executing transactions based on material information.

The prohibition of insider trading in capital market transactions is a distinctive violation, with the perpetrators being the participants in the capital market itself, known as insiders. Article 95 of the Capital Market Law Number 8 of 1995 provides limitations that can classify individuals as insiders, namely:
1) Commissioners, directors, or employees of issuers or public companies.
2) Major shareholders of issuers or public companies.
3) Individuals whose positions, professions, or business relationships with issuers or public companies allow them to obtain insider information.
4) Parties who, in the last 6 (six) months, are no longer parties as mentioned in points 1, 2, and 3 above.

Prohibition of Insider Trading

The prohibition of insider trading in stock trading is essential because the practice of insider trading can disrupt the order of the capital market, affecting the economy. Considerations for prohibiting insider trading include the following:

1) Insider Trading is Dangerous for Fair and Efficient Market Mechanisms : insider trading occurs, the mechanism of a fair and efficient market will be threatened. This is because:
   a) Unfair prices: In the case of insider trading, there will be no fair transactions due to a lack of information about the fair condition of the goods. This lack of fairness serves as an accurate signal about the amount of goods that need to be allocated.
   b) Unfair treatment for market participants: In a fair market, all market participants will be treated equally and fairly. Similarly, in the capital market, all market participants are entitled to the same information. Insider trading causes only certain individuals to have market information.
   c) Dangerous impact on the sustainability of the capital market: If the market is not fair, people will undoubtedly leave the capital market, threatening its sustainability.
2) Negative Impact of Insider Trading on Issuers : The consequences of insider trading will reduce investor confidence in issuers. On the other hand, stock prices will fluctuate, and insider traders will benefit from it.
3) Material Loss for Investors : Insider trading will directly cause investors to suffer losses. Investors will buy shares at a higher price than the actual price, and when selling, the price will drop.
4) Confidentiality : Based on the principle of recognition of intellectual property rights, confidentiality belongs to the company. Therefore, it is not appropriate for the company's secrets to be used by others for their benefit.

Law enforcement against Insider Trading perpetrators in Indonesia is carried out by the OJK (Financial Services Authority), the public prosecutor's office, and the judiciary. However, in reality, the enforcement of the rule of law in the Capital Market environment is still very confusing. According to the Capital Market Law (UUPM), it is stipulated that the investigator in the event of a criminal act in the Capital Market environment is a Civil State Investigator within the authority of Bapepam (OJK). However, according to the Criminal Procedure Code, Article 1 states that the investigator is a State Police Officer of the Republic of Indonesia and certain Civil State Officials authorized by law to conduct investigations. In this regard, according to Article 101 paragraph 6, the position of the Indonesian National Police (Polri) is only an assistant investigator to Bapepam in the event of a criminal act in the Capital Market environment. Therefore, the investigation and prosecution of criminal acts in the capital market have been minimal and rarely reach the court.

Especially concerning violations in the Indonesian capital market, the legal sanctions remain unclear. The prevalence of Insider Trading practices in the Indonesian capital market is partly due to conflicts of interest and high levels of affiliation or individuals classified as insiders. Consequently, the capital market system still adheres to a friendship system, where affiliations or relationships among cronies prevail. This gives the impression that the Indonesian capital market is designed with a system suitable for the mentality of market participants who are cronies and friends.

Regarding the sanctions imposed on Insider Trading practices in the Indonesian capital market, they often consist only of administrative penalties and fines. Although the Capital Market laws (UUPM) state that Insider Trading is a criminal offense, the actions of Insider Trading should receive more than just administrative penalties and fines. Regarding the sanctions imposed on insider trading practices in the Indonesian capital market, it is mentioned that they often consist only of administrative penalties and fines. Although the Capital Market laws (UUPM) state that insider trading is a criminal offense, it is argued that the actions of insider trading should receive more than just administrative penalties and fines. However, specific details about alternative sanctions or punishments for insider trading in the Indonesian capital market were not found in the provided search snippets. It is important to note that insider trading is a serious offense that undermines the integrity and fairness of the capital market. Many jurisdictions around the world have implemented strict regulations and penalties to deter and punish insider trading activities. These penalties can include fines, imprisonment, disgorgement of profits, and civil penalties. To ensure effective deterrence and enforcement, it is crucial for regulators and authorities to have a comprehensive approach that combines administrative penalties with criminal sanctions when appropriate. This can help to send a strong message that insider trading will not be tolerated and can lead to severe consequences.

Additionally, efforts should be made to enhance regulatory frameworks, improve market surveillance and detection mechanisms, and promote investor education and awareness about the risks and consequences of insider trading. By strengthening these aspects, the capital market can better protect investors and maintain its integrity. Criminal sanctions are essential to have a deterrent effect on the perpetrators. The Capital Market Law regulates both administrative sanctions and criminal sanctions. However, in practice, companies only impose administrative penalties and fines on offenders, failing to report them to the authorized officials responsible for addressing these issues. The Capital Market Law, Article 102, along with Government Regulation No. 45 of 1995, specifies administrative sanctions, including written warnings, fines, business activity restrictions, business freezing, revocation of business permits, cancellation of approvals, and cancellation of registrations. The lack of reporting to the competent officials is due to the use of light administrative sanctions, such as a written warning and a small fine, as stipulated in Article 102 of the Capital Market Law.

Insider Trading, even though it occurs within a company, has individuals as its criminal subjects rather than the corporation itself. The criminal sanction for Insider Trading is regulated in Article 104 of the Capital Market Law, stating that anyone who violates the provisions as stipulated in Article 90, Article 91, Article 92, Article 93, Article 95, Article 96, Article 97 paragraph (1), and Article 98 is threatened with a maximum imprisonment of 10 (ten) years and a fine of up to IDR 15,000,000,000. Although the Capital Market Law No. 8 of 1995 has regulated who can be considered an insider and the sanctions that can be imposed in the event of a violation, the regulation on insider trading in this law is considered inadequate and not fully implementable, especially regarding criminal provisions.

One of the shortcomings in the Capital Market Law concerning insider trading is the definition of "insider" found in the explanation of Article 95 of the Capital Market Law, which only reaches actors who have a fiduciary relationship with the company. For actors who do not have a fiduciary relationship, such as those who accidentally obtain information, the Capital Market Law cannot clearly determine whether they can be considered insider trading perpetrators.

Another reason insider trading cases never reach the court is the difficulty in providing evidence, which is one of the main reasons serious investigations are not conducted, and consequently, these cases do not go to trial. Another issue is the difficulty faced due to the electronic trading system commonly used in the capital market, while Indonesian law has not fully accommodated electronic evidence. Complaints about the lack of prosecution for capital market crimes are due to the difficulty faced by authorities in investigating and handling crimes in the capital market. Authorities consider that investigating crimes like insider trading is challenging because insiders typically hide behind their brokerage accounts. Many believe that insider trading is challenging to trace and almost impossible.

Proof of Insider Trading

In proving the crime of Insider Trading, obstacles faced by the OJK in enforcing Insider Trading Law are the perceived suboptimal and ineffective implementation of the UUPM and UUOJK regulations. Enforcement of the law against Insider Trading, one of the financial crimes, needs improvement, updating, and strengthening. Proof of insider trading refers to the evidence and legal requirements necessary to establish that an individual engaged in trading securities based on non-public information. The concept of proof in insider trading cases can vary depending on the jurisdiction and legal framework in place.

In general, prosecutors or regulatory bodies must demonstrate that the defendant had access to material non-public information and used that information to trade securities. The burden of proof typically lies with the prosecution, and they must establish the elements of insider trading beyond a reasonable doubt. The standard of proof required in insider trading cases can vary. In some jurisdictions, such as the United States, the standard of proof is typically "beyond a reasonable doubt," which is the highest standard of proof in criminal cases. This means that the evidence presented must be strong enough to leave no reasonable doubt in the minds of the jurors or judge.

However, it is worth noting that proving insider trading can be challenging. Insider trading often occurs in a clandestine manner, making it difficult to obtain direct evidence. Prosecutors may rely on circumstantial evidence, such as suspicious trading patterns, communication records, or witness testimony, to establish a case.

Additionally, the concept of a personal benefit is often considered in insider trading cases. The personal benefit requirement refers to the need to demonstrate that the insider received some form of benefit, either financial or non-financial, in exchange for providing the material non-public information to another party. It is important to recognize that there are ongoing debates and differing opinions regarding the legality and enforcement of insider trading laws. Some argue that insider trading should be legalized, while others emphasize the importance of maintaining fair and transparent markets by prohibiting such practices.

Proof of insider trading involves establishing that an individual traded securities based on material non-public information. The burden of proof lies with the prosecution, and they must present evidence beyond a reasonable doubt to establish the elements of insider trading. The standard of proof and the specific requirements may vary depending on the jurisdiction and legal framework in place.

On the other hand, the Financial Services Authority (OJK) faces difficulties in collecting evidence during the examination of Insider Trading cases. Of the approximately 20 alleged Insider Trading cases (1995-2015) examined by the OJK

(Bapepam), none have been declared as Insider Trading practices (Gathan, 2024). The public prosecutor's office has difficulty accepting or recognizing evidence submitted by the OJK (Bapepam) as a basis for prosecution. The consequence is that if the evidence is incomplete and does not meet the requirements, the prosecution process cannot proceed, even though after the enactment of Law No. 11 of 2008 recognizing electronic. The Financial Services Authority (OJK) in Indonesia has faced difficulties in collecting evidence during the examination of insider trading cases. According to the information available, none of the approximately 20 alleged insider trading cases examined by the OJK (Bapepam) between 1995 and 2015 have been declared as insider trading practices.

One of the challenges faced by the OJK is the acceptance or recognition of the evidence submitted by them as a basis for prosecution by the public prosecutor's office (Anwar & Siswanto, 2015). If the evidence is incomplete or does not meet the requirements, the prosecution process cannot proceed. It is important to note that the specific reasons for the difficulties in collecting evidence and the challenges faced by the OJK in prosecuting insider trading cases are not explicitly mentioned in the search results provided. However, it can be inferred that the complexities of gathering sufficient evidence and meeting the legal requirements for prosecution may contribute to these difficulties. The enactment of Law No. 11 of 2008, which recognizes electronic evidence, may have implications for the collection and submission of evidence in insider trading cases. However, without further information, it is not possible to determine the extent of its impact on the challenges faced by the OJK in collecting evidence.

Conclusion

In conclusion, the intricate landscape of insider trading continues to pose challenges within the dynamics of the capital market. The fundamental principles of transparency and information disclosure stand as pillars of legal protection for investors, ensuring fair and efficient market practices. The Capital Market Law No. 8 of 1995, while not explicitly defining insider trading, places restrictions on transactions carried out by insiders based on undisclosed information, reflecting the regulatory intent to maintain market integrity. Insider trading, characterized by securities transactions executed by corporate insiders using privileged information, remains a prevalent yet elusive issue. The difficulty in proving such transgressions poses a significant hurdle for regulatory bodies, leading to a lack of successful prosecutions and resulting in a gap between the occurrence of insider trading and legal consequences.

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First publication right:
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