



Law Enforcement of Criminal Actions for Capital Market Insider Trading Carried Out by Corporations Based on Law Number 8 of 1995

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ABSTRACT

Corporations in Indonesia are legal subjects because they have rights and obligations. The capital market has high volatility so that insider trading is very detrimental to the implementation of the capital market which is one of the country's economic instruments. The issue of insider trading as an individual has been regulated in Law Number 8 of 1995, however the implementation of the imposition on corporate criminal sanctions has not yet been rigidly regulated or applied. This research aims to determine how criminal sanctions and insider trading regulations are carried out by corporations based on the Capital Markets Law. The method used is normative juridical. The results of this research found that insider trading regulations are located in articles 95 to 99 of the Capital Markets Law and investigation procedures are under BAPEPAM-LK. The crime of corporate insider trading can be punished because of Article 1 point 23 of the Capital Markets Law and the maximum fine is contained in Article 14, namely a fine of IDR 15,000,000,000.00.

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INTRODUCTION

Capital market has an important role as an economic instrument that brings together parties who offer and need long-term funds, such as shares and bonds. The capital market is also a source of long-term financing for the business world and a vehicle for investment for the community. On the other hand, the capital market is an activity related to securities trading and public offerings, public companies that issue their securities, as well as institutions and professions related to securities.(1) So sometimes activities in the capital market in a developed country are one of the institutions that is taken into account for the country's economic development, especially for developing countries. Therefore, the state or government has reasons to participate in regulating the dynamics of the capital market.(2)

The presence of Law Number 8 of 1995 concerning Capital Markets (hereinafter referred to as the Capital Market Law) is a regulation for the implementation of capital market activities in Indonesia. With this capital market activity, it aims to facilitate the implementation of national development in order to increase equality, national growth and national economic disabilities to fulfill the welfare needs of the people. In general, the capital market is a place to buy or sell various kinds of long-term financial instruments such as bonds, shares, derivative instruments, etc.(3) However, despite all the positive benefits arising from the capital market, it also does not escape the emergence of various crimes, one of which is insider trading.(4)

Information regarding the capital market must be distributed fairly and evenly so that no party benefits or suffers losses unfairly and against the law.(5) In actual practice, there are insiders who have the authority to hold confidential information and carry out trades based on this information with the aim of gaining personal gain, known as insider trading.(6)

Insider trading is a crime that is actually most often encountered in capital market activities.(7) Information in capital market activities is important, because people cannot see the objects they buy directly, because bonds, warrants and rights are not tangible goods, so many people are not experts in the field of investment and even those who are experts in the investment field often don't know what's going on behind the scenes. This is what perpetrators of capital market crimes often take advantage of to carry out their evil deeds, coupled with the fact that when there is manipulation of shares, it cannot be known directly and is often not strong enough.(8)

As previously stated, in trading activities in the capital market, the use of insider information is prohibited, because this can result in personal profits for insiders or financial insiders and can harm other parties. Manipulation by insiders can cause victims not to realize that they are selling their shares or buying at inappropriate prices. Insider trading is regulated in CHAPTER XI "Fraud, Market Manipulation and Insider Trading", namely in Articles 90 to 99 of the Capital Markets Law. Insider trading has also been explicitly regulated in Articles 95 to 98, where Article 95 of the Capital Markets Law states that. "Insiders of issuers or public companies who have insider information are prohibited from purchasing or selling securities: a. The issuer or public company in question; or b. Other companies that carry out transactions with the issuer or public company concerned."

Insider trading activities will have fatal consequences for the capital market because it will impact market mechanisms, stock ticker symbol and investors. In the capital market itself, losses are often not directly felt or can be calculated, so crimes in the capital market do not cause people who are actually harmed to feel financial loss. Therefore, through writing this paper, the author will discuss and analyze in more depth regarding "Law Enforcement Of Criminal Actions For Capital Market Insider Trading Carried Out By Corporations Based On Law Number 8 Of 1995."

METHODOLOGY

This scientific journal is compiled by means of qualitative methods. Type of Research on this journal is normative juridical research (9), this legal research in this case blurred norms (vague van normen) related to trade regulations Insider trading in Indonesia has several legal provisions such as the Criminal Code (KUHP) and Law No. 8 of 1995 concerning capital markets. The technique for collecting legal materials in this research uses systems techniques card, namely reviewing relevant regulations, books or reading materials or, scientific works of scholars and the results are recorded with card system, this is done to make it easier to decipher, analyze and make conclusions from existing concepts.

RESULTS AND DISCUSSION

Terms and Elements that Fulfill the Crime of Capital Market Insider Trading Based on the Provisions of Law Number 8 of 1995 concerning Capital Markets

The existence of insiders

Through Article 95 of the Capital Markets Law, it is explained that parties who are considered insiders include: 1) commissioner, director, or employee of an issuer or public company; 2) the main shareholder of the issuer or public company; 3) individuals who, because of their position, profession, or business relationship with issuers, securities companies, or public companies, enable them to obtain insider information; 4) parties who in the last six months have ceased to be parties as mentioned in numbers 1, 2 and 3 above.

In this article, the term "insider" is not only limited to commissioners, directors, major shareholders and employees. However, it also includes individuals, legal entities, or other parties who, based on their profession or relationship with the company (stock sticker symbol), are considered insiders. This includes lawyers, legal consultants, notaries, advisors, finance, investment, suppliers and contractors. There is no exception for those who in the last six months have had such a position or relationship with the company.(10) So, the basis for prohibiting insider trading is not only for those who are "insiders" but also for people outside the "insiders" of a company, thus there is a kind of fiduciary duty imposed on outsiders who have relationships with other people. inside or happens to have inside information.

The Capital Markets Law prohibits insider trading through Article 95, however this article does not provide further explanation regarding the elements of insider trading itself. Article 95 of the Capital Markets Law only states that insiders from issuers or public companies who have insider information are prohibited from purchasing or selling securities from the issuer or public company, or other companies that carry out securities transactions with the issuer or related public company.

Insider Information

In capital market activities, recognizing a fairly important principle is the principle of information disclosure or disclosure principle, namely all norms regarding the state of the business which includes aspects of finance, law, management and the company's assets to the public. Considering that almost all investments involve risk, there is always the possibility that investors experience losses. Public interest in share value, accuracy of company reports, prospects for future profits, government policies that support capital markets, as well as efforts to ensure legal compliance by all parties.(11)

The use of insider information is a prohibited or prohibited element in capital market activities. This phenomenon occurs due to the use of internal information by insiders or people who have relationships with them, which can benefit them financially at the expense of other parties. Article 95 of the Capital Markets Law explains that insider information is information that has important value and is owned by the individual concerned, but has not been announced publicly. The material information referred to is important and relevant information or facts regarding events, happenings or facts that influence securities prices on the stock exchange and/or decisions of investors or other parties who have an interest in the information or facts.(12)

Article 95 of the Capital Markets Law also places emphasis on prohibiting insiders from carrying out transactions on issuer shares without being directly related to the information they have. This article again emphasizes that the position of insiders should prioritize the interests of the issuer, public company or shareholders as a whole.(13)

Trade Occurrence

The third part of Article 95 of the Capital Markets Law is the conduct of business, this element is considered insider trading or actions based on information that has not been disclosed, this means that trading is clearly motivated or driven by insider knowledge about material information that is not yet in the public domain.(14)

Based on this material information, insiders can then decide whether to sell or purchase (securities trading) a number of securities that are not yet known to the public. If the information is considered good, then insiders will immediately eat the price, so that investors will immediately decide to buy at a low price. On the other hand, if the information is bad information that has the potential to reduce the price of the security, then investors will immediately sell once the price is high enough before the price of the security falls again.

Form of procedure for dealing with capital market insider trading crimes committed by corporations

Refers to the process of resolving capital market crimes of insider trading committed by corporations, where corporations as legal entities can also be held criminally responsible in accordance with the provisions regulated in the Capital Markets Law. Article 1 number 23 of the Capital Markets Law explains that a party is an individual, company, joint venture, association or organized group. In this way, corporations in capital market criminal acts are also legal subjects that can be held responsible for a criminal act they commit, in this case namely insider trading.(15)

The authority to examine and investigate criminal acts of insider trading is given to the Capital Markets and Financial Institutions Supervisory Agency (BAPEPAM-LK), this is as regulated in Article 100 and Article 101 of the Capital Markets Law. In this regard, Article 10 of the Capital Markets Law regulates that BAPEPAM-LK can conduct an examination of any party suspected of committing or being involved in a violation of this law and/or its implementing regulations. To carry out this inspection, BAPEPAM-LK has the authority to: a. request information and/or information from parties suspected of committing or being involved in violations of this law and/or its implementing regulations or other parties if deemed necessary; b. require parties suspected of committing or being involved in violations of this law and/or its implementing regulations to carry out or not carry out certain activities; c. examine and/or make copies of records, books and/or other documents, whether belonging to the party suspected of committing or being involved in a violation of this law and/or its implementing regulations or other parties if deemed necessary; And d. establish conditions and/or allow parties suspected of committing or being involved in violations of this law and/or its implementing regulations to take certain actions necessary to resolve the losses incurred.(16)

This article also regulates that every BAPEPAM-LK employee who is given the task or other party appointed by BAPEPAM-LK to carry out an inspection is prohibited from using for himself or disclosing information obtained based on this law to any party, other than in an effort to achieve BAPEPAM-LK purposes or if required by other laws. Investigations into criminal acts of insider trading are carried out with reference to the provisions of Article 101 of the Capital Markets Law, namely as follows: a. In the event that BAPEPAM-LK is of the opinion that a violation of this law and/or its implementing regulations results in losses to the interests of the capital market and/or endangers the interests of investors or the public, then BAPEPAM-LK determines the initiation of investigative action; b. Certain Civil Servant Officials within BAPEPAM-LK are given special authority as investigators to carry out investigations of criminal acts in the

capital markets sector based on the provisions in the Criminal Procedure Code.

The explanation above reflects that the institution is competent to carry out initial examinations and investigations of violations or criminal acts in the capital market by BAPEPAM-LK. Then it is important to know that insider trading within a corporation or company, as explained previously, generally involves parties such as commissioners, directors, major shareholders, company employees, and so on. Thus, a corporation or company that is proven guilty of insider trading can be punished in accordance with the provisions of Article 104 of the Capital Markets Law, which is threatened with a maximum imprisonment of 10 (ten) years and a maximum fine of IDR 15,000,000. 000.00 (fifteen billion rupiah).

CONCLUSION

Insider trading is included as one of the capital market crimes which has conditions and elements as a form of fulfillment involving the use of information that is important and not public, this is done to gain profits or avoid losses in the financial markets. In Indonesia, the rules regarding insider trading are regulated by the Capital Markets Law and related regulations of BAPEPAM-LK, while those specifically regulating insider trading are contained in Articles 95 to Article 99 of the Capital Markets Law. The procedure for handling the crime of insider trading begins with an examination and investigation whose authority has been granted by BAPEPAM-LK. Then, if the criminal act is committed by a corporation, Article 1 number 23 of the Capital Markets Law regulates that corporations are also designated as legal subjects in the capital markets, thus, corporations as legal subjects can be held responsible for the criminal acts of insider trading they commit. Then, in accordance with the provisions of Article 14 of the Capital Markets Law, corporations as perpetrators of insider trading capital market crimes can be subject to criminal penalties in the form of a maximum fine of IDR 15,000,000,000.00.

SUGGESTION

Articles 95 to Article 99 of the Capital Markets Law have provided sufficient sanctions and guidelines for capital market crimes of insider trading but do not provide sufficient guidelines regarding corporate crimes, especially regarding insider trading. Corporations as *rechtsperson* can only be subject to fines and cannot be punished in jail. Corporations during investigations should be closed first so as not to disrupt the progress of the investigation. Furthermore, additional sanctions in the form of adding 1/3 of the maximum penalty must be given in addition to corporations that carry out insider trading so that there is an accumulation of fines that can be imposed by the court.

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