Legal Consequences of Insider Trading in Limited Liability Companies

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Abstract

The background of this study focuses on insider trading practices and the legal consequences for insider trading perpetrators in limited liability companies. The specific target of this study is to explain the legal consequences for insider trading perpetrators. The insider trading phenomenon is pivotal to examining the limited liability companies' evolution, as insider trading may impact the company's prospects. Insider Trading provides many benefits for its perpetrators, including obtaining accurate information from insiders regarding the company's prospects in the future. This information can augment stock prices and can also decrease significantly. It allows the perpetrators to gain extraordinary profits by buying or selling earlier than other parties. Through insider trading, investors can earn profits that other parties may not enjoy. Indonesia classifies insider trading as a crime. This point is in line with Law Number 8 of 1995 regarding the Capital Market, which prohibits individuals possessing insider information about a company from purchasing or selling shares in the capital market.

1. Introduction

The phenomenon of insider trading is an intriguing topic to discuss in the development of limited liability companies as they may impact the company's prospects in the future. Insider trading contributes many benefits for its perpetrators, including obtaining accurate information from insiders regarding the company's prospects. This information may elevate stock prices or cause substantial declines. It permits the perpetrators to gain extraordinary profits by buying or selling earlier than other parties.

Insider trading enables investors to realize profits that may be inaccessible to other parties. Indonesia classifies insider trading as a crime. This statement is in accordance with Law Number 8 of 1995 about the Capital Market, which states that people in a company who have information about the company are prohibited from buying or selling shares in the capital market.

The capital market is an organization that aggregates public funds by offering venues for the convergence of sellers and buyers of long- term financial instruments known as security or shares. The history of capital market formation in Indonesia commenced during the VOC era and extends to modern times, particularly following Indonesia's Independence in 1945. Asnawi et al. (2024) added that the capital and financial markets sector, functioning as an economic indicator, observes hundreds of companies listing their shares on the stock exchange. Investors need information about a company's situation to buy or sell shares. The information that must be conveyed to the public must be accurate and complete according to the company's condition. Capital market/stock exchange/stock market, in the classical sense, is defined as a business field of trading securities such as stocks, stock certificates, bonds, or securities in general. The capital market is a place to seek funds for companies and an alternative investment vehicle for the public (investors) where there are public offering transactions and trading of securities from public companies (issuers) to the investor community. It has emerged as a domain of significant public interest for investment purposes.

The provision of information on the capital market to investors is derived from the principle of openness. Harahap et al. (2020) said that openness is one of the principles of good corporate governance in a company. With this openness of information, activities in the capital market may become more efficient10, to enable investors to evaluate and capitalize on opportunities to sell or purchase a security. However, if the information that has not been released is used by people in the company to gain personal gain, it may cause a crime.

The capital market has two functions: first, as a means for business funding or for companies to obtain funds from the investor community (investors). Funds from the capital market can be applied for expansion, business development, additional working capital and others; second, the capital

market becomes a means for the public to invest in financial instruments, i.e., stocks, bonds, mutual funds, and others. Moreover, the public may allocate their funds pursuant to each instrument's benefits, characteristics, and risks.

The provisions that regulate the continuity of the implementation of capital market activities in securities trading are expected to guarantee legal certainty and minimize the crimes that occur. Nonetheless, in practice, offences inside the capital market pertaining to securities trading frequently arise, particularly crimes involving insider information (insider trading) related to securities transactions. As cited by Krishnan et al. (2022) market manipulations may result in substantial financial losses, a decline in public trust, and heightened investor apprehension. When trust diminishes in the capital market, it may result in significant capital withdrawals and potentially precipitate a market crisis.

One type of crime in the principle of openness is insider trading. Proving the occurrence of insider trading in stock trading in capital market activities is quite complex. As stated by Melo et al. (2023), insider trading constitutes a criminal offence within capital markets, where legal proof is challenging due to the insufficient regulatory framework governing insider trading. This point is also due to the difficulty of determining the standard of material facts in the principle of openness and the omission of material facts both in stock transactions and in documents in other public offerings. The motive of an insider to purchase or sell stock based on confidential information not available to the public is crucial for identifying indicators of insider trading fraud20. He et al. (2021) added that they can strategically share this set of insider information, making it challenging for external investors to evaluate future crash risk as effectively as insiders can.

Insider trading is the most prominent among the several types of crimes often committed on the stock exchange. Asnawi et al. (2024) assumed that detecting insider trading in the capital market is challenging due to the vague criteria for substantial knowledge under the information disclosure principle. Herlina (2018) also conveyed that information disclosure in the capital market is unequivocal. Additionally, people who understand inside information and use it in trading are often considered "geniuses" in trading (since every transaction they make brings excellent profits). The

prohibition of insider trading aims to ensure that company information is accessible to every party (investors) equitably, asserting that no party gains an advantage, whether due to their association with the company or through illicit acquisition.

Insider trading often occurs in the capital market, so if mishandled, it may damage the capital market order built at no small cost. It is a serious infraction that can lead to considerable losses for the issuer and hamper investment in the capital market. Hilal et al. (2022) asserted that the financial repercussions of these crimes are generally borne by companies and merchants, who frequently assume full responsibility for all expenses resulting from the fraud. Referring to Law Number 8 of 1995 concerning Capital Markets, Fuady (1996) mentioned that insider trading is defined as the trading of securities carried out by those who are classified as insiders of a company, which trading is based on or motivated by the existence of crucial inside information that is not yet open to the public with which the insider trading party expects to gain economic benefits personally, directly or indirectly, or which is a shortcut profit (short swing profit).

2. Research Method

This research applied normative legal research, namely by studying or analyzing secondary data in legal materials, mainly primary and secondary legal materials, by understanding law as a set of regulations or positive norms in the legal system that regulates human life. Normative legal is conducted by examining library materials. This research aims to present a legal response to ascertain the morality of an occurrence and its legal implications. So, this research starts from a legal event, and references will be sought in the normative system, such as laws, regulations, and principles.

Derived from this study's scope, objectives, and approaches, the data collection technique used is a literature study, namely finding a theoretical basis for research problems by reading books and studying literature related to legal research, which is processed and formulated systematically. Secondary data for this research can be divided into primary and secondary legal materials. Primary data is acquired from the first source, whereas secondary data encompasses official documents, books, and study findings presented as reports and similar materials.

3. Results and Discussion

Insider trading frequently transpires in the capital market; if inadequately addressed, it can undermine the established order of the capital market, which has been developed at some expense. It may result in Referring to Law Number 8 of 1995 concerning the Capital Market, insider trading is defined as trading in securities carried out by those who are classified as insiders of the company, which trading is based on or motivated by the existence of important insider information that is not yet open to the public with which the insider trading party expects to gain economic benefits personally, directly or indirectly, or which is a shortcut profit (short swing profit).

According to Mukti and Achmad (2010), trading in securities can be classified as insider trading practice if it meets at least three elements, namely:

The presence of insiders;

Material information that is not yet available to the public or has not been disclosed;

Executing transactions based on material information Referring to the Provisions of Article 95 of Law number 8 of

1995 regarding Capital Market, insiders are classified as directors, commissioners, or supervisors of public firms, significant owners of public companies, individuals who possess positions, occupations or fiduciaries, responsibility, and others. If these people make purchases of company shares, especially in large quantities, then it can be for a reason, namely to expect or estimate that the price of the shares they buy may one day increase and can sell them shortly to gain a profit.

Insider trading has a horrendous impact on the credibility of the stock exchange. The Capital Market upholds the idea of transparency, necessitating Information Disclosure for Public Companies regarding all pivotal facts that may affect the decisions of the public or investors to buy or sell securities. Without transparency, trading in securities and/or shares is detrimental to most investors who do not own insider connections. Additionally, the decision of insiders to engage in trading based on anticipated crash risk is contingent upon their assessment of whether the potential benefits of such strategic trading outweigh the costs related to possible reputational damage and the risk of legal action. Nevertheless, the majority of investors typically do not perceive the ramifications of insider trading. Therefore, this study aims to examine the legal consequences for insider trading perpetrators in limited liability companies.

Capital Market Institutions are intermediary institutions that connect the interests of fund holders and fund owners. Law Number 8 of 1995 regarding Capital Markets has determined the types of criminal acts in the capital market sector, such as fraud, market manipulation, and insider trading. Violations in the capital market sector are the most frequent involving parties within the capital market.

Of the several crimes in the capital market, insider trading is the most known. This term is notable since it pertains to a specific concept (insider). Specifically, a crime that individuals within the organizational structure may alone perpetrate; they are considered to be of a particular class, both in their economic status and within the company itself. Insider trading distinguishes crimes committed on the stock exchange from other general crimes (criminal acts). Insider trading is a unique felony that exclusively pertains to the capital market, unlike other capital market crimes, which are very rare. The term insider trading, although inappropriate, is used by the Capital Market Law itself. The term described below does not explain the actual situation. After all, inside information is not solely used by people within the company.

Violation of Insider Trading Crimes in Law Number 8 of 1995 Concerning Capital Markets, there are three related Articles, namely Article 95, Article 96 and Article 97. This means anyone who obtains information without breaking the law is not subject to sanctions. For illustration, an individual who is not an insider asks for information from an Issuer or Public Company and receives it promptly without limits; that individual is not bound by the rules applicable to insiders. However, suppose the provision of insider information is accompanied by a requirement to keep it confidential or other restrictive requirements. In that case, the party that obtains insider information is subject to the prohibitions referred to in Articles 95 and 96.

Marune et al. (2023) added that the government of legislators have enacted rules that govern Capital Markets and have empowered organizations or authorities to oversee and take this action against insider trading participants. The factors outlined in the aforementioned regulations concerning insider trading may also be integrated with the stipulated presented in Article 232, paragraph (1) and paragraph (2) of the Criminal Code regarding the crime of leaking secrets/acts of revealing secrets, so law enforcement regarding capital market offences, including insider trading, necessitates administrative sanctions and the application of criminal penalties as an ultimum remedium to ensure compliance. Consistent law

enforcement against parties who commit violations can encourage other parties to always comply with the provisions and apply the principle of prudence in conducting their business or transactions. Traditionally, commissioners, directors, major shareholders, and company employees are included as insiders (traditional insiders). Commissioners and directors are classified as insiders and must have fiduciary obligations regarding their loyalty to the company. On the other hand, they are among those who can control and recognize the company's daily activities or operations. Moreover, they have the most sensitive corporate information. The insider category for major shareholders (controlling shareholders) is based on the provisions of corporate law, which stipulate a fiduciary obligation of fairness and loyalty to anyone who has a supervisor or controller of company activities based on the shares in the company they own, even though they do not occupy directors or officers. However, it does not mean they do not have a fiduciary.

The enforcement of insider trading law includes three points: administrative, civil, and criminal enforcement. Capital Market Act (known as Undang-Undang Penanaman Modal or UUPM) has laid the foundation for law enforcement as a form of protection for every violation of capital market activities, namely the existence of administrative sanctions (Article 102 UUPM), Criminal Sanctions (Articles 103-110 UUPM), Civil compensation claims (Article 111 UUPM). Violations in the capital market sector are technical and administrative violations. There are three common patterns of violations:

Violations committed individually.

Violations committed in groups.

Violations committed directly or indirectly based on orders or influence from other parties.

Hence, the legal consequences for parties who carry out insider trading can be imposed as civil, criminal, and administrative sanctions as described above. Meanwhile, parties disadvantaged by this insider trading, namely investors and/or other parties, can seek compensation claims. Violations and crimes in the capital market, especially insider trading in securities trading, have their characteristics; they are done by insiders who have access to the company, and usually, many parties are harmed by violation or crime. Accordingly, the legal consequences of the parties for the occurrence of insider trading in securities trading are that three types of sanctions can be imposed:

Civil Sanctions

The application of civil sanctions in the form of compensation payments is the leading choice for resolving capital market violation cases. In the event of a violation and crime that causes losses to the victim, Mar'ati (2012) elaborated a possibility of filing a civil lawsuit, there are:

1. Lawsuit based on unlawful acts using the legal basis of Article 1365 of the Civil Code;

2. Lawsuit using Article 111 of the UUPM states that each party, individually or together with other parties, files a claim for compensation to the party responsible for violating laws and regulations.

3. A default lawsuit requires violating the provisions of the agreement that the parties have made.

Criminal Sanctions

Article 103-105 UUPM provides sanctions for any party committing a crime in the capital market sector with imprisonment and/or a fine. If we look at the provisions in Articles 103 to 105 UUPM, Rohjadina (2018) stated that the criminal sanctions can be categorized as:

1. The maximum penalty is 10 years in prison and a maximum fine of 15 billion, intended for cases such as Fraud, Market Manipulation, Insider Trading of Securities, and Violation of the principle of transparency.

2. The maximum penalty is 5 years in prison or a fine of IDR 5.000.000.00, namely for cases:

a) Executing activities in the capital market without a business license, such as a business license for a stock exchange, LKP, LPP, Mutual Funds, Securities Companies, Investment Agents, or BAE;

b) Executing business activities as a custodian without approval from the Financial Services Authority;

c) Executing activities as a Trustee, Supporting Profession without registration;

d) Influencing other parties to commit violations.

3. The threat of a maximum prison sentence of 3 years and a maximum of 5 billion rupiah is intended for the following cases:

a) Not submitting a registration statement for a public company;

b) Defraud, misleading other parties and the Financial Services Authority, removing, destroying, deleting, changing, obscuring, hiding, or falsifying records from parties who have obtained permits, approvals, or registrations, including Issuers and Public Companies;

c) Influencing other parties to commit the violation. The threat of a maximum prison sentence of 1 year and a maximum fine of 1 billion is for the following cases:

- Organizing activities without a permit for representatives of underwriters, representatives of securities brokers, representatives of investment managers;
- Investment managers and affiliated parties who receive compensation that influences the investment manager to buy or sell securities;
- Influencing other parties to commit violations;
- Obstructing the implementation of the Financial Services Authority's inspection duties in case of a violation.

Administrative Sanctions

The party authorized to impose administrative sanctions is the Financial Services Authority if there is a violation of the law in the

capital market. Christanti & Mahastanti (2011) stated that the parties guilty of committing violations in the capital market that can be recognized as administrative sanctions are as follows:

1. Parties who obtain business licenses from the Financial Services Authority;
2. Parties who obtain approval from the Financial Services Authority;
3. Parties who register with the Financial Services Authority.

Based on the 1945 Constitution of the Republic Indonesia, the administrative sanctions imposed by the Financial Services Authority on parties guilty of committing violations are:

1. Written warning;
2. Fines in the form of payment of a certain amount of money;
3. Restrictions on business activities;
4. Revocation of business licenses;
5. Cancellation of approval;

6. Cancellation of registration.

According to Article 63 Jo. Article 64 of PP No. 45 of 1995, sanctions in the form of administrative fines consist of:

1. A fine of IDR 500.000 per day with a maximum fine of IDR 500.000.000;
2. A fine of IDR 100.000 per day with a maximum fine of IDR 100.000.000;
3. A maximum fine of IDR 500.000.000;
4. A maximum fine of IDR 100.000.000

Moreover, the legal consequences of the parties involved in Insider Trading actions in securities trading can be divided into two parties: the party conducting the Insider Trading action and the party feeling disadvantaged by it. The parties involved in this case have their respective responsibilities.

First, the party involved in Insider Trading actions and proven to have committed fraud, market manipulation, provided company information that should have been protected, and performed prohibited securities transactions, such as commissioners, directors, major shareholders (at least 10%), and company employees, they are referred to as "True Insiders." Hence, if a "true insider" has been proven to have committed Insider Trading, then they can be subject to a 10-year prison sentence and/or a maximum fine of IDR 15.000.000.00041. Parties who obtain information unlawfully or without contravening legal statutes should face prosecution. Violations and capital market crimes can cause chain and widespread consequences as losses are experienced by investors and suffered by issuers and other capital market players.

Both parties whom Insider Trading harms in securities trading are investors and priority shareholders (above 51% of shares) who are not involved in Insider Trading but directly impact them and/or other capital market players. Undoubtedly, the losses experienced by these parties are significant, as the value of their equity in the company may decline precipitously. Therefore, to provide legal protection to investors and/or priority shareholders, the parties in this case can file a claim for compensation and/or criminal charges based on unlawful acts from the Insider Trading action. The lawsuits are derived from the following:

1. Lawsuits regarding unlawful acts using the legal basis of Article 1365 of the Civil Code;
2. Lawsuits using Article 111 of the UUPM states that each party,

individually or together with other parties, files a claim for compensation to the party responsible for violating laws and regulations.

3. A lawsuit for breach of contract requires a violation of the provisions of the agreement that the parties have made.

Thus, parties proven to have committed Insider Trading in securities trading can be subject to sanctions. These sanctions can be in the form of criminal, civil, or administrative sanctions, where these sanctions have their differences. Subsequently, parties who perceive themselves aggrieved by this insider trading activity may initiate civil and/or criminal claims for restitutions, thereby seeking material compensation and/or establishing a deterrent impact from the litigation.

4. Conclusion

The insider trading in Capital Market Securities Trading activities in Indonesia is done by deceiving and/or manipulating the market in the Capital Market which is classified as Insider Trading practices must meet at least three elements, namely: The presence of an insider, Undisclosed material information that is not publicly available has not been revealed, and transactions based on this material information may involve numerous aspects of insider trading in securities: a). The presence of securities trading; b). Performed by individuals within the company; c). The existence of Inside Information; d). The Inside Information is not yet open to the public; e). The goal is to obtain improper benefits. Meanwhile, the legal consequences for parties can be imposed in the form of civil, criminal, and administrative sanctions based on existing provisions, and parties who feel disadvantaged by this insider trading, namely investors and/or other parties, can seek compensation.

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