

INSIDER TRADING CASE SETTLEMENT: STUDIES IN INDONESIA AND THE UNITED STATES

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<i>Info Artikel</i>	<i>Abstract</i>
<p>Masuk:14/01/2021 Revisi:22/02/2022 Diterima:25/02/2022 Terbit:28/02/2022</p> <p>Keywords: <i>Insider Trading, Capital Markets, Indonesia and United States</i></p>	<p><i>Insider trading is a term that refers to the practice in which corporate insiders conduct securities transactions (trading) using their exclusive information that is not yet available to the public or investors. Indonesia and the United States are 2 (two) countries that prohibit insider trading in the capital market. Through this article, the author wants to analyze the similarities and differences the regulation of insider trading in Indonesia and the United States, and explain the legal process for the settlement of Insider Trading cases in Indonesia and the United States. This research is a normative research, using the laws and regulations on the capital market originating from 2 (two) countries, there are the laws and regulations on the capital market of Indonesia and the United States. The analysis of this paper concludes that Indonesia and the United States prohibit the practice of insider trading in the capital market.</i></p>
<p>Kata Kunci: Perdagangan Orang Dalam, Pasar Modal, Indonesia dan Amerika Serikat</p> <p>P-ISSN:1412-310x E-ISSN:2656-3797</p>	<p>Abstrak</p> <p><i>Insider trading</i> atau perdagangan orang dalam merupakan suatu istilah yang mengacu kepada praktik di mana orang dalam perusahaan (<i>corporate insiders</i>), melakukan transaksi sekuritas (<i>trading</i>) dengan menggunakan informasi yang eksklusif mereka miliki yang belum tersedia bagi masyarakat atau investor. Indonesia dan Amerika Serikat merupakan 2 (dua) negara yang melarang adanya <i>insider trading</i> di pasar modal. Melalui tulisan ini penulis hendak menganalisis persamaan dan perbedaan pengaturan <i>insider trading</i> di Indonesia dan Amerika Serikat, dan menjelaskan proses hukum penyelesaian kasus <i>Insider Trading</i> di Indonesia dan Amerika Serikat. Penelitian ini merupakan penelitian normatif, dengan menggunakan peraturan perundang-undangan tentang pasar modal yang bersumber dari 2 (dua) negara, yaitu peraturan perundang-undangan tentang pasar modal Indonesia dan Amerika Serikat. Analisis tulisan ini menyimpulkan bahwa Indonesia dan Amerika Serikat melarang adanya praktik <i>insider trading</i> di pasar Modal.</p>

INTRODUCTION

The enactment of Law Number 8 of 1995 concerning the Capital Market (UUPM) is in principle intended to be a solid legal basis, in order to better guarantee legal certainty for parties conducting activities in the capital market. The law also aims to protect the interests of the investor community from harmful practices, [Law Number 8 of 1995 concerning Capital Markets, letter c], one of which is to protect investors from insider trading practices or better known as insider trading, which is a term that refers to the practice in which company insiders (*corporate insiders*) carry out securities transactions (*trading*) using their exclusive information that is not yet available to the public or investors. [Budi Untung, Capital Market Bidnis Law (Andi Offset 2011)] This exclusive information is also known as inside information, namely material information held by

insiders that is not yet available to the public. or important and relevant facts about events, occurrences, or f deed that can affect the price of securities on the stock exchange and or the decision of investors, prospective investors, or other parties with an interest in the information or facts. 8 of 1995 concerning the Capital Market]

Regarding insider trading, the regulations governing this matter are contained in articles 95, 96, 97, and 98 of Law Number 8 of 1995 concerning the Capital Market, which is a technical format that acts as a legal fence that regulates insider trading. [Iljam Rohjadina, et al., Determination of Insider Information in Insider Trading Practices in the Indonesian Capital Market: Comparative Study with the Texas Gulf Sulfur Case in the United States, USU Law Journal, Vol: 7: No. 4, 2019] In addition to regulating the prohibition of insider trading in the capital market, the Capital Market Law also regulates sanctions that can be imposed on parties who violate it. Based on the provisions of Article 104 of the Capital Market Law, [Article 104 of Law Number 8 of 1995 concerning the Capital Market states that any party 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 is threatened with imprisonment for a maximum of 10 (ten) years and a fine of a maximum of Rp. 15,000,000,000.00 (fifteen billion rupiah).] then insider trading itself is categorized as a crime in the capital market, namely: against any party who violates the provisions of insider trading, may be subject to criminal sanctions, in the form of imprisonment for a maximum of 10 (ten) years and a fine of a maximum of Rp. 15,000,000,000.00 (fifteen billion rupiah).

In addition, the Capital Market Law also regulates the mechanism for resolving insider trading cases, including the role of the Capital Market Supervisor (Bapepam), which is currently being replaced by the Financial Services Authority (OJK), [Article 55 paragraph (1) of Law Number 21 of 2011 concerning the Financial Services Authority. Finance stated that as of December 31, 2012, the functions, duties, and authorities of regulating and supervising financial service activities in the capital market, insurance, pension funds, financing institutions and other financial service institutions sectors were transferred from the Minister of Finance and the Capital Market and Institutional Supervisory Agency. Finance to OJK.] which is an independent institution that carries out the functions, duties, and authorities of regulation, supervision, inspection, and investigation as referred to in the OJK Law. Finance, hereinafter abbreviated as OJK, is an institution that is independent and free from interference from other parties, which has the functions, duties, and authorities of regulation, supervision, inspection, and investigation as referred to in this Law. integrated supervision of all activities in the financial services sector, [Article 5 of Law Number 21 of 2011 concerning the Financial Services Authority] of which is the capital market sector, [Based on article 6 of Law Number 21 of 2011, OJK carries out regulatory duties and supervision of: a. financial service activities in the banking sector; b. financial services activities in the Capital Market sector; and c. financial services activities in the Insurance, Pension Funds, Financing Institutions, and Other Financial Services Institutions sector.] and resolve cases related to criminal acts in the capital market including insider trading. One of the purposes of this paper is to examine the settlement of insider trading cases in Indonesia, given that the regulations related to dispute resolution, especially those related to the settlement of criminal disputes, require very high evidence requirements.

Seeing the success of the United States in dealing with insider trading cases as described above, the authors are interested in comparing them with Indonesia. Considering that the capital market is a vehicle for investment for the community and as a source of financing for the business world, it is appropriate that the capital market must be implemented in a transparent, safe and fair manner. For this reason, it is necessary to strengthen the eradication of insider trading in Indonesia, both in terms of regulation and resolution. Starting from the description above, this paper intends to examine in depth the settlement of insider trading cases in Indonesia and the United States. To

find out how to resolve insider trading cases in Indonesia and the United States.

RESEARCH METHOD

This research is a normative legal research. This study uses a statutory approach, namely by examining the existing laws and regulations related to the capital market, especially related to insider trading in Indonesia and the United States. As well as using a comparative law approach, namely comparing the insider trading arrangements in Indonesia and the United States to find out the similarities and differences in the settlement of insider trading cases in Indonesia and the United States.

Result and Discussion

In Indonesia, insider trading is a crime in the capital market. Thus, the settlement process is carried out in a criminal manner, which includes 3 (three) stages, including: 1) the examination stage; 2) the investigation stage; 3) and the prosecution stage. The settlement of criminal cases of insider trading, in principle, has several advantages, including the existence of strict sanctions in the form of imprisonment and fines, which can provide a deterrent effect on the perpetrators of insider trading. However, in its implementation, this process has not been implemented effectively. This can be seen from the absence of insider trading cases that have been successfully brought to court to be decided according to the proper provisions.

Of the various insider trading cases that have occurred in Indonesia, the settlement process has ended with the imposition of administrative sanctions. The imposition of administrative sanctions is a solution in resolving insider trading cases in Indonesia. However, the imposition of administrative sanctions has not yet provided a deterrent effect on insider trading actors. In addition, the imposition of administrative sanctions in the case of insider trading only prioritizes the aspect of law enforcement, has not touched the aspect of losses as a result of insider trading actions.

For this reason, OJK has created a new insider trading case settlement mechanism that has been designed by OJK. The mechanism for resolving this new insider trading case is more of an out-of-court settlement in the form of disgorgement. In the draft OJK regulation on Disgorgement and Disgorgement Fund, it is stated that, disgorgement is a form of OJK's efforts to give orders to parties who violate the laws and regulations in the capital market sector to return the money in the amount of profits earned/losses that were avoided illegally/unlawfully. . In this way, the process of resolving insider trading cases can be carried out out of court, namely by ordering the insider trading actors to return the profits or losses obtained from the insider trading actions.

Quoted from Arman Nefi, disgorgement is a kind of method used to prevent criminal acts by forcing perpetrators to surrender profits from the proceeds of their crimes. With the disgorgement mechanism, punishment is not limited to fines that can be given to the perpetrator, but disgorgement is not a punishment (punitive/punishment), but is more remedial. [Arman Nefi, Op. Cit 164.] Thus, the existence of disgorgement does not mean eliminating the existing criminal provisions, but this method is an alternative to resolve insider trading cases in Indonesia without having to go to the stage of investigation and prosecution. Through this mechanism, the party conducting insider trading is required to return the profit or loss that was obtained from the results of the insider trading carried out.

In the draft Disgorgement and Disgorgement Fund, it also regulates not only disgorgement but also disgorgement fund, which in essence is to regulate the allocation of funds from the results of the imposition of the disgorgement. In the sense that, each result of the imposition of the disgorgement is directed to the party who is harmed by the violation of the laws and regulations in the Capital Market sector, including the party who is harmed as a result of insider trading. Thus, OJK not only acts to enforce the law, but OJK is also present as a party representing the public (victims) of losses resulting from insider trading, to obtain compensation as a result of insider trading that is carried out.

Related to the process of resolving insider trading cases by imposing disgorgement. The author also believes that this disgorgement mechanism should also be included in the Capital Market Law or the OJK Law, by adding additional sanctions to provide a deterrent effect. In other words, in addition to disgorgement, additional sanctions are also needed, namely paying 2 times the profits obtained or losses avoided, or like the United States, in addition to disgorgement, also added civil penalties, namely paying 3 (three) times of profits earned or losses avoided. And coupled with other sanctions such as restrictions on carrying out his position as a director, or special positions in his company, etc. This method can be used as a way to prevent insider trading, as well as a way to prevent insider trading actors from repeating their actions, or other parties from doing the same thing.

CONCLUSION

The process of resolving insider trading cases in Indonesia is carried out using a criminal system. However, in several cases of insider trading that occurred in Indonesia, the settlement process was carried out by imposing administrative sanctions. The settlement process consists of 3 (three) stages, namely examination, investigation, and prosecution. While in the United States, using the stelsel criminal (criminal proceedings), civil (civil action), and administrative (administrative action). The criminal settlement process is under the authority of the Department of Justice (Department of Justice) or the Security Authority (state criminal authorities), and the Attorney General (Attorney General). Meanwhile, the civil or administrative settlement process is under the authority of the Securities and Exchange Commission (SEC).

1. There is a need for changes (revisions) to Law Number 8 of 1995, these changes are in line with the shift of the supervisory agency in the capital market, namely the shift of the Capital Market Supervisory Agency (Bapepam) to the Financial Services Authority (OJK).

2. In the spirit of disclose or abstain theory, fiduciary duty theory and misappropriation theory, it is necessary to make changes to the regulations regarding the current prohibition on insider trading, as regulated in the provisions of articles 95, 96, 97, and 98 of the Capital Market Law, and it is necessary to expansion of the scope of insiders as regulated in the elucidation of Article 95 of the Capital Market Law.

3. There is a need for a special law that regulates the settlement of insider trading cases in Indonesia.

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