

Legal Protection Of Investors In The Face Of Insider Trading Practices

¹Heny Prasetyo, ²Dedy Ardian Prasetyo, ³Tubagus Achmad Darodjat

^{1,2}Jayabaya University, Indonesia

³Rajamangala University of Technology Krungthep-Thailand

¹henyprasetyo73@gmail.com, ²deape.prasetyo@gmail.com, ³bagus2m@gamil.com

ABSTRACT

This research aims to analyse the legal protection of investors in the face of insider trading practices in the Indonesian capital market. Using the normative juridical method and analytical descriptive approach, this research examines the regulations governing the prohibition of insider trading in Law Number 8 of 1995 concerning the Capital Market, as well as the challenges in implementation and law enforcement against the practice. The results show that although the regulation on insider trading has been clearly regulated, its implementation still faces obstacles in terms of proving transactions and effective supervision. The Financial Services Authority (OJK) has sufficient authority to deal with this, but limited resources and technology utilisation in supervision are the main obstacles. This study recommends increasing supervisory capacity, updating evidentiary-related regulations, and utilising advanced technology to accelerate the detection and prevention of insider trading in the Indonesian capital market.

Keywords: Insider Trading, Investor, Legal Protection

Introduction

The capital market, in accordance with the provisions of Article 1 number 13 of Law Number 8 of 1995 concerning the Capital Market (UUPM), includes activities of public offering and trading of securities, as well as institutions involved in it. The capital market functions as a means of obtaining funds for companies and alternative investments for the public (Amalia, 2021). Securities traded include various financial instruments such as stocks, bonds, and other securities that can affect the economy.

The capital market must be run with the principle of openness, as stipulated in Article 1 paragraph (25) of the Capital Market Law, which requires the provision of material and relevant information to the public. This aims to ensure efficiency and transparency in the capital market, so that investors can make informed investment decisions. However, insider trading practices, where individuals use material information that is not publicly available for personal gain (Gathan, 2024; Junaedi, 2020; Patrianto & Hartono, 2021), continue to occur and undermine these basic principles.

Insider trading practices can create stock price distortions, as the price reflected in the market no longer reflects the same information for all investors. Therefore, it is important to analyse the existing legal protection for investors in the face of this practice. Although the Capital Market Law regulates the prohibition of insider trading, law enforcement against this practice in Indonesia still faces various obstacles, especially in terms of proof.

Legal protection for investors is essential to maintain the integrity of the capital market. Without adequate protection, investors may suffer losses that could potentially undermine confidence in the Indonesian capital market. Therefore, this study aims to evaluate the legal protection of investors in the face of insider trading practices in the Indonesian capital market and provide policy recommendations to improve the effectiveness of such protection.

This research aims to comprehensively analyse the legal protection provided to investors in the face of insider trading practices in the Indonesian capital market. Specifically, this study aims to identify weaknesses and strengths in existing regulations, as well as

evaluate the effectiveness of the implementation of legal protection for investors who are harmed by such practices. Furthermore, this research also seeks to provide constructive policy recommendations to improve legal protection in the Indonesian capital market, with the hope of creating a more transparent, fair and efficient market, and strengthening investor confidence.

The hypothesis of this research is that the legal protection of investors in the Indonesian capital market in the face of insider trading practices is still not optimal, both in terms of regulation and law enforcement. Although the Capital Market Law has regulated the prohibition of insider trading practices, weak implementation and supervision as well as limitations in proving this matter have resulted in market injustice and harm to investors. Thus, the effectiveness of existing legal protection is still lacking in creating a transparent, efficient, and fair capital market, so that improvement measures are needed, both in terms of regulations and law enforcement systems, to protect investors from such harmful practices.

This research is expected to make a significant theoretical contribution to the development of capital market law studies, especially in terms of legal protection of investors in the midst of harmful insider trading practices. Practically, this research also aims to provide applicable input for policy makers, capital market supervisory institutions, and market participants regarding the steps that need to be taken to improve the effectiveness of regulation and law enforcement in preventing insider trading. On the social side, this research can contribute to increasing the understanding and awareness of the public and investors regarding the importance of adequate legal protection to create a capital market with integrity and stability.

The conceptual framework in this study connects three main variables that are interrelated and influence each other, namely insider trading practices, legal protection for investors, and the effectiveness of law enforcement. Insider trading practices, which involve the use of material unpublished information for personal gain, create injustice in the capital market by undermining the principles of transparency and fairness in securities trading. Legal protection for investors is crucial to prevent such practices from occurring as well as to provide legal security for investors involved in unfair transactions. The effectiveness of law enforcement is a crucial element in ensuring that existing provisions are properly implemented and that insider trading practices are minimised, so that capital markets can operate efficiently and fairly, in accordance with the basic principles expected in a transparent capital market system..

Legal protection of investors in the capital market is a fundamental aspect in maintaining market integrity and transparency. According to legal protection theory, legal action taken aims to safeguard the basic rights of individuals, in this case, the right of investors not to be harmed by unfair practices. Legal protection in the Indonesian capital market is becoming increasingly relevant with the dynamics and potential for misuse of information that can harm investors, such as *insider trading* practices. Therefore, it is important to understand the theoretical foundations of legal protection in the context of the capital market, as well as how the law can be applied to protect investor rights.

Conceptually, legal protection for investors in the capital market can be understood through two main paradigms, namely preventive and repressive protection. Preventive protection focuses on efforts to prevent violations of the law (Arika & Disemadi, 2022), which are carried out by ensuring that the information provided by issuers and market participants is accurate, honest, and not misleading. The principle of *full disclosure* in the capital market is the main basis for this approach (Suardana, et al., 2020; Imaniyati & Wiyanti, 2000; Marbun & Sihotang, 2022). This concept requires issuers to disclose all relevant material information that can affect investment decisions, with the aim of preventing market manipulation that is

detrimental to investors (UUPM Article 4 and Article 8). Through this obligation, investors are expected to make rational investment decisions based on complete and transparent information.

On the other hand, *repressive* legal protection refers to law enforcement against violations that have occurred (Machmud, 2019). In this case, the law acts as a means to take action against perpetrators of violations that harm investors, such as *insider trading* practices. In the Capital Market Law, administrative sanctions that include warnings, fines, and suspension of business licences (Article 102) as well as criminal sanctions for serious offences such as *insider trading* (Article 111) provide evidence that the legal system in Indonesia is committed to upholding fair capital market rules. This concept of repressive legal protection is essential to ensure a deterrent effect and to maintain public confidence in the integrity of the capital market.

Furthermore, the existence of the Capital Market Supervisory Agency (Bapepam) and the Financial Services Authority (OJK) as supervisory institutions is also a key component in the legal protection system in the Indonesian capital market. Bapepam, now transformed into OJK, has the authority to regulate, supervise, and mediate dispute resolution between investors and companies. Through strict supervision, OJK is tasked with ensuring that the capital market operates efficiently, transparently, and is not distorted by fraudulent practices, such as *insider trading*. This confirms that the role of market supervisory institutions is vital in the implementation of legal protection in the capital market.

Overall, the legal protection of investors in the Indonesian capital market is established through a preventive and repressive legal framework, which complement each other to create a fair and efficient market. The Capital Market Law (UUPM) and OJK Law provide clear guidelines regarding the rights and obligations of investors as well as sanctions for violations. Through this protection effort, it is expected to create higher public confidence in the Indonesian capital market, which in turn will encourage healthier and more sustainable capital market growth.

Methods Research

This research uses a normative juridical method with an analytical descriptive approach, which focuses on analysing legal norms governing legal protection for investors against insider trading practices in the Indonesian capital market. The data used is secondary data obtained through literature study, including primary legal materials (laws and related regulations), secondary (academic literature and legal articles), and tertiary (other supporting documents). The analysis is conducted normatively qualitatively using deductive logic, starting from generally applicable legal theories and norms to then draw specific conclusions about the application of law in Indonesian capital market practices. This research aims to illustrate the extent to which the Indonesian legal system protects investors from insider trading practices and to provide constructive recommendations for the improvement of more effective legal policies.

Result and Discussion

The practice of insider trading, which involves the purchase or sale of securities based on material information that has not been made public, has the potential to undermine the integrity of the capital markets and undermine investor confidence. Therefore, the legal protection of investors in Indonesia relies heavily on the effective implementation and enforcement of laws against this practice.

In Indonesia, Law No. 8 of 1995 on the Capital Market provides the legal basis for regulating and tackling the practice of insider trading. Article 95 of the Capital Market Law states that:

"Insiders who are aware of material information that has not been published are prohibited from purchasing or selling securities related to such information."

With this provision, the prohibition of insider trading applies to individuals who have inside information, whether they work in public companies or in listed issuers. Article 96 extends the prohibition by stipulating that insiders are also prohibited from disclosing material unpublished information to other parties who may use it to their advantage in capital market transactions. Furthermore, Article 97 stipulates that parties who receive inside information are also bound by the same prohibition, i.e. they may not conduct transactions utilising such information.

While the Capital Market Law provides a strong legal foundation for investor protection, a key challenge in the application of this law is the substantiation of transactions conducted using inside information. As noted by Chen (2023), proving transactions recorded through electronic platforms is often difficult, as the identity of the perpetrator and the timing of the transaction cannot always be clearly ascertained.

Theoretical and Practical Analysis of Legal Protection

The legal protection of investors in the Indonesian capital market depends not only on formal regulations, but also on ethical dimensions and broader market dynamics. Kharisma and Hunaifa (2022) emphasise that effective protection can be achieved if all capital market principles work synergistically, maintaining fairness, transparency, and protection of human rights, including the rights of investors threatened by insider trading practices.

Johan and Ariawan (2021) revealed that in facing the challenges of the digital age, capital market regulations must be able to cope with the rapid and widespread dissemination of information. In this context, strict supervision of insider trading practices is essential to maintain market fairness and ensure that all market participants have equal access to information.

In addition, Blau et al. (2021) argue that traditional reasons for prohibiting insider trading, such as fairness and property rights, while important, are not sufficient to ensure the sustainability of a fair market. They suggest that a more robust legal framework be put in place to safeguard the fiduciary relationship between companies and shareholders, and ensure that information that is not publicly available is not used for private gain to the detriment of other investors.

Regulatory Effectiveness and Supervision of Insider Trading

Supervision of insider trading practices by the Financial Services Authority (OJK) is key to ensuring the successful implementation of regulations in the Indonesian capital market. OJK has the authority to guide, regulate, and supervise the capital market, as well as to enforce the law regarding insider trading practices, as stipulated in Article 3 Paragraph (1) of the Capital Market Law. OJK is responsible for ensuring that the capital market operates in a fair and transparent manner, and for protecting investors from harmful practices.

However, as described by Asnawi (2024), despite the existing legal framework, law enforcement against insider trading continues to face obstacles, mainly related to the lack of resources, inter-agency coordination, and commitment of law enforcement. In many cases, corroboration is a major challenge, as transactions occurring through electronic platforms often do not include evidence strong enough to identify the perpetrator or the time of the transaction, as stated by Mustika and Sawitri (2022).

In addition, Johan and Ariawan (2021) propose that digital technology can be utilised more optimally in supervision. The use of data analytics and machine learning in detecting

suspicious transaction patterns can speed up the process of identifying insider trading actors and increase the effectiveness of market surveillance.

The Role of Technology and Foreign Investment in Enhancing Legal Certainty

Despite the challenges, technology can play a pivotal role in improving the effectiveness of insider trading supervision and enforcement. By utilising data analytics, big data, and machine learning techniques, OJK can more quickly identify suspicious transaction patterns, which can speed up the investigation and prosecution process. In addition, as stated by Taduri (2021), the Indonesian government's efforts to provide legal certainty to foreign investors also have a positive impact on the domestic capital market. Strong legal certainty and clear protection of investors will increase the confidence of foreign and domestic investors, which in turn will increase the liquidity and stability of the Indonesian capital market.

Conclusion

This study concludes that the legal protection of investors in the Indonesian capital market in the face of insider trading practices has been expressly regulated in Law Number 8 Year 1995 on the Capital Market. Nevertheless, the effectiveness of legal protection still faces obstacles, both in terms of regulations that have not fully covered the times, as well as in terms of limited implementation and law enforcement, especially in proving and monitoring insider trading practices. The authority of the Financial Services Authority (OJK) in overseeing the capital market still needs to be strengthened with adequate technological support and capacity to deal with this issue more effectively.

Suggestion And Recommendation

Based on these findings, this study suggests that the government and OJK evaluate and improve existing regulations, especially those related to evidence in insider trading cases. In addition, OJK needs to strengthen supervision and law enforcement mechanisms through the use of digital technology and data analytics to improve detection and prevention of insider trading practices. Strengthening coordination between related institutions is also very important so that the handling of insider trading cases can run more effectively. This study recommends that the government and OJK update Indonesia's capital market regulations, especially regarding the evidentiary aspects of insider trading practices, to facilitate law enforcement. In addition, this recommendation also emphasises the importance of increasing education and socialisation on sound capital market practices to all market participants to create a fair and transparent market culture. The application of advanced technologies such as data analytics and machine learning in market surveillance also needs to be prioritised for faster and more accurate insider trading detection.

Reference

- Amalia, R. (2021). Tindak Pidana Pasar Modal yang Dilakukan Oleh Korporasi dalam Suatu Kejahatan Insider Trading. *Lex Renaissance*, 6(4), 664-676.
- Arika, D., & Disemadi, H. S. (2022). Perlindungan Pencipta Atas Pembajakan Novel Di Marketplace. *Jurnal Yustisiabel*, 6(2), 182-206.
- Asnawi, M. I., Fitriani, R., Isnaini, N., Mutiarani, R., Herlambang, M. H., & Martin, C. (2024). Legal review of the authority of financial services authorities in crime practices insider trading in capital markets in the development of information technology. *Mahadi: Indonesia Journal of Law*, 3(01), 10-15. <https://doi.org/10.32734/mah.v3i01.15762>

- Blau, B. M., Griffith, T. G., & Whitby, R. J. (2021). On the ethics of “non-corporate” insider trading. *Journal of Business Ethics*, 177(1), 79-93. <https://doi.org/10.1007/s10551-021-04739-x>
- Chen, J. (2023). Research on insider trading and legal regulation issues in china’s securities market. *Highlights in Business, Economics and Management*, 21, 820-825. <https://doi.org/10.54097/hbem.v21i.14775>
- Gangopadhyay, P. and Yook, K. C. (2021). Profits to opportunistic insider trading before and after the dodd-frank act of 2010. *Journal of Financial Regulation and Compliance*, 30(1), 43-59. <https://doi.org/10.1108/jfrc-02-2021-0018>
- Gathan, R. (2024). Pencegahan Praktik Insider Trading Melalui Metode Code of Conduct. *Journal of Law, Administration, and Social Science*, 4(2), 242-248.
- Imaniyati, N. S., & Wiyanti, D. (2000). Perlindungan hukum terhadap investor dan upaya bapem dalam mengatasi pelanggaran dan kejahatan pasar. *MIMBAR: Jurnal Sosial dan Pembangunan*, 16(4), 334-369.
- Johan, S. and Ariawan, A. (2021). Information-conneted approach in identifying capital market crime at information technology era. *Advances in Social Science, Education and Humanities Research*. <https://doi.org/10.2991/assehr.k.210805.035>
- Junaedi, A. (2020). Tindak pidana Insider trading dalam praktik pasar modal Indonesia. *Media Iuris*, 3(3), 299-318.
- Kharisma, D. B. and Hunaifa, A. (2022). Comparative study of disgorgement and disgorgement fund regulations in indonesia, the usa and the uk. *Journal of Financial Crime*, 30(3), 635-649. <https://doi.org/10.1108/jfc-01-2022-0022>
- Machmud, S. (2019). Tindakan Preventif dan represif non-yustisial penegakan hukum administrasi oleh eksekutif. *Jurnal Hukum Media Justitia Nusantara*, 7(2), 62-77.
- Marbun, D. R., & Sihotang, L. (2022). Perlindungan Hukum Terhadap Investor Melalui Penerapan Prinsip Keterbukaan Di Pasar Modal. *Nommensen Journal Of Business Law*, 1(1), 72-91.
- Mustika, K. A. P. and Sawitri, D. A. D. (2022). Pengaturan teknis pembuktian insider trading di indonesia. *Kertha Semaya : Journal Ilmu Hukum*, 10(10), 2267. <https://doi.org/10.24843/ks.2022.v10.i10.p06>
- Patrianto, F. H., & Hartono, D. (2021). Aspek Hukum Praktik Insider trading Terhadap Investor dalam Pasar Modal di Indonesia. *Jurnal Ius Constituendum*, 6(1), 200-212.
- Peraturan Otoritas Jasa Keuangan Nomor: 78/POJK.04/2017 tentang Transaksi Efek Yang Tidak Dilarang Bagi Orang Dalam.
- Peraturan Pemerintah Nomor 12 Tahun 2004 tentang Penyelenggaraan Kegiatan di Bidang Pasar Modal.
- Peraturan Pemerintah Nomor 45 Tahun 1995 tentang Penyelenggaraan Kegiatan di Pasar Modal.
- Peraturan Pemerintah Nomor 46 Tahun 1995 tentang Tata Cara Pemeriksaan di Bidang Pasar Modal.
- Suardana, I. N., Mahendrawati, N. L., & Astiti, N. G. K. S. (2020). Perlindungan Hukum Terhadap Investor Berdasarkan Prinsip Keterbukaan oleh Emiten di Pasar Modal. *Jurnal Analogi Hukum*, 2(2), 182-186.
- Taduri, J. N. A. (2021). The legal certainty and protection of foreign investment againsts investment practices in indonesia. *Lex Scientia Law Review*, 5(1). <https://doi.org/10.15294/lesrev.v5i1.46286>
- Undang-Undang Dasar Tahun 1945.
- Undang-Undang Nomor 8 Tahun 1995 tentang Pasar Modal.