

Intisari

Penentuan Fakta Material dan Pembuktian Praktek *Insider Trading* di Pasar Modal Indonesia

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Penelitian ini mengenai Penentuan Fakta Material dan Pembuktian Praktek *Insider Trading* di Pasar Modal Indonesia dengan menggunakan pendekatan yuridis normatif yang dilakukan melalui penelitian kepustakaan dengan studi dokumen atas bahan hukum primer, sekunder dan tersier. Selain itu, juga dilakukan penelitian lapangan untuk memperoleh bahan-bahan dalam rangka menunjang data yang diperoleh dalam penelitian kepustakaan. Penelitian ini bertujuan untuk mengetahui dan mencari jawaban atas permasalahan mengenai penentuan fakta material, pembuktian praktek *insider trading*, hambatan dalam pembuktian serta upaya dalam mencegah praktek *insider trading*.

Berdasarkan analisis data hasil penelitian diperoleh data yang memberikan gambaran bahwa penentuan fakta material meliputi fakta-fakta yang secara rasional dan objektif mempengaruhi nilai saham perusahaan. Dalam praktek Pasar Modal Indonesia, penentuan fakta material didasarkan pada jenis informasi atau fakta material yang diatur dalam Pasal 1 angka 7 UUPM dan Peraturan Bapepam Nomor X.K.I. tentang Keterbukaan Informasi yang harus diumumkan kepada publik.

Pembuktian terhadap praktek *insider trading* di Pasar Modal Indonesia, dilakukan melalui pemeriksaan setempat, pemanggilan para pihak dan pemeriksaan dokumen dan konfrontasi. Dalam pembuktian ini, mengalami beberapa hambatan yaitu Kebocoran informasi sangat sulit dibuktikan, hubungan para pihak yang melakukan transaksi sulit ditelusuri karena keterbatasan data serta keterbatasan kewenangan dalam melakukan pemeriksaan, tidak lengkapnya ketentuan mengenai orang dalam. Selain itu, indikasi keterlibatan pihak yang memiliki hubungan politis, lemahnya koordinasi dengan pihak-pihak terkait dan ketentuan alat bukti dalam proses persidangan di pengadilan juga menjadi hambatan dalam pembuktiannya.

Mengingat praktek *insider trading* merupakan kejahatan pasar modal yang memiliki karakteristik sendiri dari kejahatan lain, maka upaya yang perlu dilakukan dalam mencegah terjadinya praktek curang tersebut adalah peningkatan fungsi pengawasan pasar terhadap perdagangan saham, aktivitas anggota bursa dan investor serta aktivitas saham yang ditransaksikan, independensi Bapepam dan menjalin kerjasama dengan pihak yang memiliki kemampuan dalam mencegah praktek *insider trading*, pengaturan ketentuan *insider trading* secara tersendiri beserta petunjuk pelaksanaan penanganan kasusnya dan pemberlakuan sistem pembuktian informasi terbalik dalam kasus-kasus *insider trading* di Pasar Modal Indonesia.

Kata Kunci: Fakta Material, Perdagangan Orang Dalam dan Pasar Modal Indonesia.

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Abstract

Determination Material Facts and Proving Insider Trading in the Indonesia of Capital Market

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This research investigates evidence of insider trading, and practical methods of proving its occurrence, in the capital market in Indonesia. It takes the normative juridical approach, undertaking a review of existing literature, legislation and other legal documents. In addition to these legal sources, fieldwork was undertaken in order to ascertain whether this data would support the conclusions of existing research and literature. The goal of the research was to seek some answers to the problem of discovering and proving insider trading. In practice, the obstacles to proving insider trading have thus far limited its prevention.

The results of analysis of the research data illustrate that evidence of insider trading must consist of facts which influenced the value of a company's stock, in a rational and objective manner. In the capital market in Indonesia, determination of this evidence is classified according to the type of information or evidence, which is regulated by section 1 article 7 of the Capital Market Law and the Regulation of the Commission for the Supervision of the Capital Market (Bapepam) X.K.I concerning Transparency of Information, which must be made open and available to the public.

Methods of practically proving insider trading in the capital market in Indonesia included examining security companies, interviewing members of the stock exchange and shareholders, examining documents and cross-checking this information. A number of obstacles were experienced in the research; namely information leaks are very difficult to prove, the relationships of traders who make these transactions was difficult to investigate because of restrictions surrounding access to confidential data and the regulations on insider trading are still incomplete. In addition to these difficulties, indications of the complicity of parties who had political relationships, the weakness of coordination between relevant judicial parties and the uncertainty of proof in court also presented obstacles to proving insider trading.

Bearing in mind that the practice of insider trading constitutes capital market crime and therefore possesses different characteristics to other crime, more specific measures are required to prevent the occurrence of this fraudulent practice. Such measures may include increasing the level of surveillance and supervision in the stock exchange with regard to the trading of stock, the activities of stock exchange members and investors along with their stock transactions, maintaining the independence of Bapepam, creating cooperative networks with parties who have the ability to prevent insider trading, and enacting regulations which provide a framework for identifying insider trading and prosecuting this crime successfully, including the possibility for retroactive proof and action and creating a system of open information in the Indonesian Capital Market.

Key words: Material Facts, Insider Trading and Indonesia of Capital Market.

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