

# Legal Efforts to Protect Small Shareholders against the Negative Effects of Insider Trading Practices in Transactions Stocks in the Capital Market

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## Abstract

*The Indonesian capital market as one of the strategic economic instruments plays an important role in collecting public funds to support national economic growth. However, in its development, insider trading practices are still a serious threat to market integrity, especially detrimental to minority shareholders who own less than five percent of the company's total shares. Insider trading practices occur when parties within the company utilize material information that has not been published to conduct stock transactions, thereby creating systematic information injustice. This study aims to analyze the vulnerability of minority shareholders to insider trading practices and examine the effectiveness of available legal protection mechanisms. The research method used is normative legal research with a statutory and conceptual approach, analyzing Law Number 8 of 1995 concerning the Capital Market, UUPT, and other related regulations. The results of the study indicate that minority shareholders face structural vulnerability due to limited access to information, imbalance of power in corporate decision-making, and minimal understanding of their rights. Insider trading practices harm them through direct financial losses, decreased trust in the market, and the creation of an unfair market. Available legal protection mechanisms include the BEI Auto Rejection system, civil lawsuits based on Article 111 of the Capital Market Law, the active role of the OJK in defending consumers, and various special rights of minority shareholders in the UUPT. This study concludes that effective protection requires an integrated approach that combines preventive and repressive protection, strengthening investor education, and the application of progressive legal principles that prioritize justice and the welfare of minority shareholders.*

**Keywords:** Protection; Insider Trading and Capital Market.

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## I. INTRODUCTION

Legal efforts to protect small shareholders from the negative effects of insider trading practices in stock transactions in the capital market are a crucial issue that requires serious attention in the Indonesian financial ecosystem. As one of the pillars of the national economy, the capital market has developed into an investment vehicle that not only connects investors with securities issuing entities, but also becomes an indicator of the country's overall economic growth. However, behind this development, insider trading practices are still a significant challenge and threaten the integrity of the Indonesian capital market.

The capital market, like conventional markets in general, is a place where sellers and buyers meet for certain commodities or services, in this case securities or securities. In Indonesia, the capital market, also known as the stock exchange, is a means to obtain sources of financing and investment facilities that involve public funds widely, both from within and outside the country. The existence of the capital market is not only beneficial for the private sector, but also for the government that requires funds for development (Saliman, 2010).

Insider trading practices occur when a party within a company transacts securities using material information that has not been published to the general public. This exclusive information places the perpetrator in a much more advantageous position than other investors, creating unfairness on the stock exchange floor. This condition is very detrimental to small shareholders who generally do not have access to the same information, so they cannot make the right decision to buy or sell their shares (Yulia & Qamariyanti, 2009).

Minority or small shareholders, which can be defined as parties who own a small number of issuer shares and do not have control to determine the direction of company policy (generally owning shares of less than five percent of the total shares traded), are the most vulnerable group to the impact of insider trading practices (Andji & Piji, 2003). This vulnerability is further exacerbated by limited knowledge and information regarding the actions to be taken when facing such a situation, as well as to whom to report the incident.

Although Law Number 8 of 1995 concerning Capital Markets has provided a basis for law enforcement through three channels, namely administrative sanctions (Article 102), criminal sanctions (Articles 103-110), and civil compensation claims (Article 111), its implementation is still hampered by the complexity of evidence. Article 104 states that insider trading perpetrators can be subject to fines and a maximum prison sentence of ten years, but the lack of firmness in the application of the law is still a problem that results in losses for thousands of investors and has the potential to create an uncondusive market.

Adequate legal protection for small shareholders is an essential factor to ensure the sustainability and trust in the Indonesian capital market. Without adequate protection, insider trading practices will continue to create an unfair market, enable illicit profits, and destroy market trust (Nefi, 2020). The interrelated legal structure and legal substance are important elements in providing legal certainty and protection for investors.

The existence of minority shareholders investing in the Indonesian capital market actually reflects a good investment climate. They have put their trust in the Indonesian capital market even though they realize that their capital does not always generate profits if it is not accompanied by adequate market analysis capabilities. This condition shows that the Indonesian capital market has gained trust from various groups of people, not only limited to parties with large capital or strategic positions.

## II. METHOD

This study uses a systematic and structured legal research method. The research method is a way to do something by using careful thinking to achieve goals through the stages of formulation, data collection, analysis, and drawing conclusions. The terminology of methodology comes from the word "method" which means path or way, and is conventionally interpreted as a procedure or technique used in scientific research and studies. This study uses a normative legal research type (normative juridical), namely research conducted by reviewing applicable laws and regulations or applied to a particular legal problem (Soekanto & Mamudji, 2007). The focus of this study is to analyze legal protection for minority shareholders related to the implications of insider trading practices in stock trading on the capital market. This normative research was chosen because it allows researchers to examine aspects of applicable laws and regulations in the context of protecting small shareholders from insider trading practices.

The approach used in this study is the statute approach. This approach is carried out by examining all laws and regulations related to the legal issue being handled, especially Law Number 8 of 1995 concerning Capital Markets and related regulations governing the protection of minority shareholders and insider trading practices. This approach is important to understand the hierarchy and consistency of norms in laws and regulations related to the object of research. In addition, this study also uses a conceptual approach that starts from the views and doctrines that have developed in legal science to build legal arguments in resolving the issues faced, especially concepts regarding legal protection, minority shareholders, and insider trading practices.

This study uses several sources of legal materials. First, primary legal materials which are authoritative or have authority, including: Law Number 8 of 1995 concerning Capital Markets, related Financial Services Authority Regulations (POJK), especially POJK No.11/POJK.04/2017 concerning Ownership Reports or Any Changes in Share Ownership of Public Companies, Indonesia Stock

Exchange Regulations relevant to the protection of minority shareholders, and court decisions relating to insider trading cases in Indonesia. Second, secondary legal materials that provide explanations regarding primary legal materials, including: textbooks on capital market law and investor protection, legal and economic journals, scientific articles, research results, official reports from related institutions such as OJK and BEI, and official documents of relevant public companies. Third, tertiary legal materials that provide instructions or explanations for primary and secondary legal materials, such as legal dictionaries and encyclopedias.

The legal material collection technique used in this study is library research. Library research is conducted by collecting, studying, and analyzing various library materials related to the research object, either in the form of laws and regulations, books, journals, articles, or other written sources that are relevant to the problem being studied (Ali & Heryani, 2012). The steps in collecting legal materials include: identifying relevant sources of legal materials, collecting primary, secondary, and tertiary legal materials, recording and classifying the legal materials according to research needs, and organizing them systematically to facilitate analysis.

### III. RESULTS AND DISCUSSION

#### The Vulnerable Position of Minority Shareholders in Insider Trading Practices

Minority shareholders or small shareholders in the context of the Indonesian capital market are in a very vulnerable position to various detrimental practices, especially insider trading. This vulnerability is not only caused by the limitations of their share ownership, but also because of the unbalanced information structure in the capital market. According to Law Number 40 of 2007 concerning Limited Liability Companies, minority shareholders are defined as one or more shareholders who together represent 1/10 or 10 percent of the total number of shares with valid voting rights. In practice, most individual investors in Indonesia have share ownership that is much smaller than this limit, often even less than 1 percent of the company's total shares. This condition places them in a position that does not have significant influence in corporate decision-making.

*Insider trading* itself is a stock trading practice carried out by parties who have access to material company information that has not been published to the general public. This material information can be in the form of acquisition plans, unreleased financial statements, important management changes, or strategic company decisions that can significantly affect stock prices. When parties within the company such as directors, commissioners, or key employees use this information to transact stocks, they gain an unfair advantage over other investors.

The negative impact of insider trading practices on minority shareholders is very real and detrimental. First, they experience direct financial losses because they buy shares at manipulated prices or sell shares before positive information is released. For example, if the company's directors know that the company will announce a significant increase in earnings next week, they can buy a large number of shares before the announcement. When the information is released and the stock price rises, minority shareholders who bought after the announcement must pay a higher price.

Second, insider trading practices create distrust in the capital market. Minority shareholders feel that the game is unfair from the start, where they are always at a disadvantage because they do not have access to the same information. This condition can reduce public participation in the capital market, which ultimately harms the development of the Indonesian capital market as a whole.

Third, minority shareholders often lack the knowledge and ability to detect insider trading practices. They may not realize that sudden stock price movements or unusual trading volumes are indications of insider trading. Even if they do, they may not know who to report it to or how to prove the suspicion.

In corporate law, the principle of "Majority Rule Minority Protection" is known, which recognizes that although power in a company lies with the majority, this power must be exercised while still protecting the interests of the minority (Giysmar, 1999). However, in practice, this principle

is often difficult to implement because minority shareholders do not have adequate access to information and the power to monitor the actions of the majority or company management. The vulnerability of minority shareholders is also exacerbated by the structure of the Indonesian capital market which is still dominated by institutional investors and large shareholders. Institutional investors such as mutual funds, insurance, and pension funds generally have better access to company information through formal communication channels such as analyst meetings or investor relations. Meanwhile, minority shareholders only rely on public information published through the mass media or the company's website, which is often later than information that has been circulated among limited circles.

### **Legal Protection Mechanisms for Minority Shareholders**

Facing the various vulnerabilities experienced by minority shareholders, a comprehensive and effective legal protection mechanism is needed. This legal protection is not only reactive after a loss occurs, but also preventive to prevent insider trading practices. The Auto Rejection System implemented by the Indonesia Stock Exchange is one form of preventive protection that is quite effective. This system works by providing a limit on stock price fluctuations in one trading day, generally 35 percent for common stocks. When there is a sell offer or buy request that will cause the stock price to move beyond this limit, the system will automatically reject the transaction. Although this system cannot completely prevent insider trading, it can limit the profits obtained by the perpetrator and reduce the losses experienced by minority shareholders.

The advantage of the Auto Rejection system is its ability to react in real-time without requiring manual intervention. This system also gives the market time to absorb information and react more rationally. However, this system also has limitations because smart insider traders can make transactions in small increments to avoid triggering Auto Rejection.

The second legal protection path is through a civil lawsuit that can be filed by minority shareholders. Based on Article 111 of Law Number 8 of 1995 concerning Capital Markets, parties who are harmed due to violations of this law can sue for civil damages. This lawsuit can be filed either individually or collectively together with other shareholders who have suffered similar losses.

Civil lawsuits have several advantages over criminal proceedings. First, the standard of proof in civil cases is lower than in criminal cases. In criminal cases, the defendant's guilt must be proven "beyond reasonable doubt" or without a doubt, while in civil cases, "preponderance of evidence" or stronger evidence is sufficient. Second, civil lawsuits can provide direct compensation to the injured party through damages, while criminal proceedings only provide sanctions to the perpetrator without direct compensation to the victim. However, civil lawsuits also face significant practical challenges. Proving a causal link between insider trading and the losses suffered by minority shareholders is often complicated and requires specialized expertise in finance and capital markets. In addition, high lawsuit costs and lengthy processes are often prohibitive for minority shareholders who generally have limited resources.

The role of the Financial Services Authority as a regulator and supervisor of the financial services sector is very important in providing protection to minority shareholders (Balfas, 2012). Based on Law Number 21 of 2011 concerning the Financial Services Authority, the OJK has broad authority to protect consumers and the public. One of the important authorities of the OJK is to provide legal defense to the injured party, including filing a lawsuit to recover assets and compensation.

OJK also provides special services for cases with relatively small losses. For cases with losses below Rp 500 million, OJK provides legal assistance through the Legal Directorate which can assist minority shareholders in the lawsuit process. This service is very important because most minority shareholders experience losses in nominal amounts that are not too large but still significant to them.

In addition, OJK also has the authority to impose administrative sanctions on insider trading perpetrators. These sanctions can be in the form of written warnings, fines, restrictions on business

activities, freezing of business activities, or revocation of permits. Although administrative sanctions do not provide direct compensation to minority shareholders, they can provide a deterrent effect and prevent similar practices from recurring.

The Limited Liability Company Law also provides a number of special rights to minority shareholders that can be used as a protection mechanism. These rights include the individual right to sue directors or commissioners who commit negligence or violations, the appraisal right to request that their shares be purchased at a fair price when they disagree with a particular decision, and the right to be prioritized in purchasing new shares (pre-emptive right) (Yulia & Qamariyanti, 2009).

Derivative rights are another important right that allows minority shareholders to file a lawsuit on behalf of the company against a third party that harms the company, including directors or commissioners who engage in insider trading. The right to inquiry gives minority shareholders the authority to request an investigation of the company through the courts if they suspect any violations or negligence that is detrimental.

Although various protection mechanisms are available, their effectiveness is highly dependent on the understanding and ability of minority shareholders to exercise their rights. Therefore, education and socialization regarding minority shareholder rights are very important. OJK and BEI need to continue to improve investor education programs so that minority shareholders can protect themselves and contribute to creating a fairer and more transparent capital market.

#### IV. CONCLUSION

Minority shareholders are defined as parties who own shares below five percent of the total shares traded by an issuer in the capital market. Meanwhile, insider trading is a practice of trading securities carried out by parties who have access to exclusive information that is not yet available to the public. This practice allows the perpetrators to obtain unfair profits through the use of material information that is still confidential. The position of minority shareholders is very vulnerable to insider trading practices in stock trading in the capital market. This vulnerability is mainly caused by limited access to material information owned by small shareholders. The speed factor in obtaining material information is key in insider trading practices, where minority shareholders are often in a disadvantageous position due to the delay in obtaining such information. Legal protection efforts for small shareholders against insider trading practices in stock transactions in the capital market need to be implemented through an integrated approach. The application of Soerjono Soekanto's theory of legal effectiveness emphasizes the importance of paying attention to various interrelated factors, including laws and regulations, supporting facilities, the community, and law enforcement officers. The implementation of Philipus M. Hadjon's theory of legal protection through preventive and repressive protection is also very relevant to providing protection for minority shareholders. In addition, the application of Satjipto Rahardjo's progressive legal theory which places human interests and welfare as the main objective of law is very important to ensure that legal protection truly sides with small shareholders.

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