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Insider Trading in Indonesia: Supporting the Policy Implementation of the Capital Market Efficiency

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Abstract

As a developing country, Indonesia requires capital from domestic and foreign investors to realize its economic potential.¹ In order to gain the capital, Indonesia opened an opportunity for foreign investors to establish or own a company with Foreign Capital Investment (PMA).² In addition, foreign investors are able to buy and control the company's stocks that have been listed on the stock market.³ Capital obtained in the capital market will help companies develop their potential. Companies can pay operating expenses, including the salaries of directors, commissioners and other staffs. Investors, both domestic and foreign, as stockholders will benefit after operating expenses are paid in advance. With the capital, the potential of the company to pay for itself and provide profits for stockholders become the real potential of the company.

Keywords: insider trading, Capital Market Efficiency, Foreign Capital Investment.

JEL Classification: G14, G15, M21.

¹ Republic of Indonesia, Undang-Undang No. 25 of 2007 on Capital Investment. In its consideration, it is mentioned that in order to accelerate national economic development and realize the political and economic sovereignty of Indonesia is necessary to increase capital investment to process the economic potential into real economic strength by using capital derived either from domestic and foreign.

² *Ibid.* Article 1 paragraph (3) says: Foreign capital investment is the act of investment to conduct business in the territory of the Republic of Indonesia, made by a foreign investor, whether using foreign capital or joint capital with domestic investors.

³ Republic of Indonesia, Undang-Undang No. 8 of 1995 on Capital Market. Article 1 paragraph (13) says: Capital Markets is the activities concerned with the Public Offering and Trading of Securities, Public Company relating to the issuance of Securities, as well as institutions and professions related to Security.

As for the principle of *lex superior derogat legi inferior* could not be applied in the laws that have the same hierarchical level. Higher level laws disregard the enactment of lower level laws if both laws contain contradictory provisions. However a different chapter in the same law does not have a solution. Indonesian legal system has yet to find a solution for the contradictory chapters in the same law. Despite that, if the elements in administrative law are entirely fulfilled, the criminal laws should be applied last in terms of priority of use.

Thus the solution is as stated:⁸¹

'If the examination of a criminal case must be decided if there is a civil element involved in an item or on a legal relationship between two specific parties, then the examination of the criminal case should be delayed to wait for a court decision in that civil case examination of the existence or absence of the civil rights.'

The implementation of administrative violations is applicable in advance in overcoming the incidents which elements involved an administrative violation until the incident is decided with an administrative penalty by the Capital Market Law.

References:

- [1] Nasarudin, M. Irsan et al. 2004. *Aspek Hukum Capital Market Indonesia*, Jakarta: Prenada Media Grup.
- [2] Chemmanur, Thomas J., He, Shan, and Nandy, Debarshi K. 2005. *The Going Public Decision and the Product Market*, EFA 2005 Moscow Meetings;
- [3] AFA. 2007. Chicago Meetings Paper, July 20, 2009, p. 1. Available at SSRN: <http://ssrn.com/abstract=674241> or <http://dx.doi.org/10.2139/ssrn.674241>. (Accessed September 12, 2011).
- [4] Bainbridge, Stephen M, 1993. In Defense of the Shareholder Wealth Maximization Norm. *Washington and Lee Law Review*, 50: 1423. Available at SSRN: <http://ssrn.com/abstract=303780> or <http://dx.doi.org/10.2139/ssrn.303780>. (Accessed September 12, 2011)
- [5] Gardner, Bryan A. (Ed in Chief). 1999. *Black's Law Dictionary*, Seventh Edition, St. Paul, Minn: West Group, p. 1227.
- [6] John, Armour and Hansmann, Henry and Kraakman, Reinier, "The Essential Elements of Corporate Law", *Oxford Legal Studies Research Paper No. 20/2009*; *Yale Law, Economics & Public Policy Research Paper No. 387*; *Harvard Law and Economics Research Paper No. 643*;
- [7] *Harvard Public Law Working Paper No. 09-39*; *ECGI - Law Working Paper No. 134/2009*, p.12. Available at SSRN: <http://ssrn.com/abstract=1436551>. (Accessed October 21, 2012).
- [8] Coffee, John C. 2002. *Competition among Securities Markets: A Path Dependent Perspective*, Columbia Law and Economics Working Paper No. 192. (March 25, 2002), p. 1-2. Available at SSRN: <http://ssrn.com/abstract=283822> or <http://dx.doi.org/10.2139/ssrn.283822>. (Accessed December 11, 2013)
- [9] Butler, Eamon. 2011. *The Condensed Wealth of Nations and The Incredibly Condensed Theory of Moral Sentiments*, (United of Kingdom: ASI (Research) Ltd, 2011), p. 11. Cited from Adam Smith, *The Wealth of Nations*, Book I, Chapter II, pp. 26-7, Para. 12. <http://www.adamsmith.org/sites/default/files/resources/condensed-WoN.pdf>. (Accessed March 11, 2013)
- [10] Fama, Eugene F. 1970. Efficient Capital Markets: A Review of Theory and Empirical Work, *The Journal of Finance*, Vol. 25, No. 2, Papers and Proceedings of the Twenty-Eighth Annual Meeting of the American Finance Association New York, N.Y. December, 28-30, 1969 (May, 1970), p. 383, <http://www.jstor.org/stable/2325486> (Accessed August 20, 2012)
- [11] Jolls, Ch., Sunstein, Cass R. and Tper, Richard. 1998. A Behavioral Approach to Law and Economics, *Stanford Law Review*, 50: 1471 (May 1998), p. 1476. http://www.law.harvard.edu/programs/olin_center/papers/pdf/236.pdf. (Accessed February 2, 2011)

⁸¹ Republic of Indonesia, Peraturan Mahkamah Agung No. 1 of 1956 ("Perma 1/1956") in article 1 Perma 1/1956.

- [12] Bernard S, Black, The Core Fiduciary Duties of Outside Directors, *Asia Business Law Review*, pp. 3-16, July 2001, p. 1. Available at SSRN: <http://ssrn.com/abstract=270749> or <http://dx.doi.org/10.2139/ssrn.270749>. (Accessed March 11, 2013)
- [13] Parmono, Nindyo. 2013. *Hukum PT Go Public dan Capital Market*, Yogyakarta: CV Andi Offset, p. 237 and *Surat Keputusan Menteri Keuangan No. 1548/KMK.013/1990 on Capital Market*. Available at: <http://www.sidih.depkeu.go.id/fulltext/1990/1548~KMK.013~1990Kep.HTM>. (Accessed 20 May 2015)
- [14] Pramono, Nindyo. 2006. 'Kekayaan Negara Yang Dipisahkan Menurut UU No. 19 of 2003 on BUMN', in Sri Rejeki Hartono et al., ed, *Permasalahan Seputar Hukum Bisnis: Persembahkan kepada Sang Maha Guru*, Self-published, Jogjakarta, 2006, p. 142
- [15] Kharandy, Ridwan. 2009. Korupsi di Badan Usaha Miliki Negara Khususnya Perusahaan Perseroan: Suatu Kajian atas Makna Kekayaan Negara yang Dipisahkan dan Keuangan Negara, *Law Journal*, 1: 73–87, p. 75. Available at: <http://www.scribd.com/doc/31980111/BADAN-HUKUM#scribd>. (Accessed May 20, 2015)
- [16] Karsch, Michael. 1984. The Insider Trading Sanctions Act: Incorporating A Market Information Definition, *Journal of Comparative Business and Capital Market Law*, 6: 283.
- [17] MacLeod Hemingway, Joan. 2013. Willful Blindness, Plausible Deniability and Tippee Liability: SACS, Steven Cohen, and the Court's Opinion in *Dirks*, *Transactions: The Tennessee Journal of Business Law*, 15: 49.
- [18] Tamanaha, Brian Z. 2014. A Concise Guide to the Rule of Law. *Florence Workshop on The Rule of Law*, Neil Walker, Gianluigi Palombella, eds., Hart Publishing Company, 2007; St. John's Legal Studies Research Paper No. 07-0082. Available at SSRN: <http://ssrn.com/abstract=1012051>. (Accessed July 26, 2014)
- [19] Merryman, John Henry and Perez-Perdomo, Rogelio. 2007. *The Civil Law Tradition: An Introduction to the Legal System of Europe and Latin America*, Third Edition, (Stanford, California: Stanford University Press.
- [20] Sauveplanne, J. G. 1982. *Codified and Judge Made Law, The Role of Courts and Legislators in Civil and Common Law Systems*, Mededelingen Der Koninklijke Nederlandse Akademie Van Wetenschappen, AFD. Letterkunde Nieuwe Reeks-Deel 45 – No. 4, (Amsterdam/Oxford/New York: North-Holland Publishing Co, 1982), p. 100,
- [21] Satjipto, Rahardjo and Awaludin, Marwan (Editors). 2012. *Ilmu Hukum*, Bandung: PT Citra Adytia Bakti, p. 245.
- [22] Soeroso, R. 2010. *Yurisprudensi Hukum Acara Perdata*, Bagian 4, On Pembuktian, Jakarta: Sinar Grafika, p. xxxv.
- [23] Soerjono, Soekanto, and Purnadi, Purbacaraka. 1986. *Perundang-undangan dan Yurisprudensi*, (Bandung: Alumni, 1986), p. 55.
- [24] Hans Kelsen, *General Theory of Law and State*, Clack, New Jersey: The Law Book Exchange Ltd, 12009, p. 162.
- [25] Echols, John M. and Shadily, Hassan. 2002. *Kamus Inggris Indonesia*, Edition XXV, Jakarta: PT Gramedia Pustaka Utama, p. 324.
- [26] Robinson, Paul H. and Darley, John M. 2007. Intuitions of Justice: Implication for criminal law and justice policy, *Sothern California Law Review*, 81(1): 21.
- [27] Anwar, Jusuf. 2008. *Penegakan Hukum dan Pengawasa Capital Market Indonesia*, PT Alumni: Bandung, p. 49-50.
- [28] Nasarudin, M. Irsan et al. 2011. *Aspek Hukum Pasar Modal Indonesia*, Kencana Prenada Media Group: Jakarta, p. 269.
- [29] Franck, Thomas M., "Democracy, Legitimacy and the Rule of Law: Linkages" (1999). NYU Law School, Public Law and Legal Theory Working Paper No. 2. Legitimacy can be symbolized by Roberts' Rules of Available at SSRN: <http://ssrn.com/abstract=201054> or <http://dx.doi.org/10.2139/ssrn.201054>. (Accessed July 25, 2014)

- [30] Safitri, Indra. 1998. *Transparansi Independensi dan Pengawasan Kejahatan Pasar Modal, Kajian Kasus Kontroversial Insider Trading, Hostile Take Over dan Market Manipulation di Bursa Saham*, Jakarta: Go Global Book, Book Publishing Division Safitri & Co.
- [31] Anwar, Jusuf. 2008. *Penegakan Hukum dan Pengawasan Pasar Modal Indonesia*, Seri Pasar Modal 2, Bandung: PT Alumni, p. 37.
- [32] Posner, Richard A. 1980. The Value of Wealth: A Comment on Dworkin and Kronman, *Journal of Legal Studies* 9(2): 243–52.
- [33] Hardin, Russel. 1992. The Morality of Law and Economics, *Law and Philosophy*, 11: 336. Available at: <http://www.nyu.edu/gsas/dept/politics/faculty/hardin/research/MoralityLaw.pdf>. (Accessed September 24, 2013)
- [34] Zhou, Qi, *The Evolution of Efficiency Principle: From Utilitarianism to Wealth Maximization*, December 17, 2005. Available at SSRN: <http://ssrn.com/abstract=870748> or <http://dx.doi.org/10.2139/ssrn.870748>. (Accessed May 21, 2015)
- [35] Schafer, Han-Berd, and Caus, Ot, *The Economic Analysis of Law*, Northampton: Edward Elgar Publishing, Inc, 2004, p. 30.
- [36] Booth, Richard A. 2008. What is a Business Crime?. *Villanova Law/Public Policy Research Paper No. 2008-17*, p., 1.
- [37] Kenneth Mann, *Punitive Civil Sanctions: The Middleground Between Criminal and Civil Law*, 101 YALE L.J. 1795, 1809 (1992) in Richard A. Booth, “What is a Business Crime?” *Villanova Law/Public Policy Research Paper No. 2008-17*, p., 1.
- [38] Lynch, Gerard E. 1997. *The Role of Criminal Law in Policing Corporate Misconduct*, 60 *Law and Contemporary Probs.* 23, 31.
- [39] Wirjono, Prodjodikoro. 2003. *Asas-Asas Hukum Pidana di Indonesia*, Bandung: Refika Aditama, p. 17.

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