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Legal Review of Legal Protection for Capital Market Investors Against Insider Trading Practices at PT Jouska Financial Indonesia

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ABSTRACT

The practice of insider trading in Indonesia is still considered difficult to implement due to the process of enforcing the law and implementing sanctions against perpetrators. The absence of regulations that provide legal protection for public investors1 for losses due to insider trading practices, leaving public investors often confused about what legal remedies they need to take to obtain justice for the immaterial losses they experience. This thesis research uses a sociological research method. The research problem formulation of this study is how the legal review of legal protection for capital market investors regarding insider trading practices in Indonesia and how the problems of proving insider trading and solutions for legal protection against insider trading practices to provide legal certainty for investors in Indonesia. The conclusion of this study is that the form of OJK legal protection for investors from insider trading practices in the capital market is regulated in Law Number 21 of 2011 (OJK Law) concerning the Financial Services Authority as a prevention and imposition of sanctions or action. In the preventive stage, OJK takes further steps such as granting securities permits with strict requirements, stopping the activities of parties who have the potential to harm the public, and providing consumer complaint services (Article 29 of the OJK Law). Repressive legal protection for investors from insider trading practices, meaning in the form of inspections, investigations, and the application of sanctions, namely the existence of administrative sanctions (Article 102 of the Capital Market Law), Criminal Sanctions (Articles 103-110 of the Capital Market Law), Civil compensation claims (Article 111 of the Capital Market Law). The Securities Investor Protection Fund is an institution established to protect investor assets in the capital market from losses caused by the risk of insider trading carried out by securities companies.

Keywords: *Capital Market, Investor Protection, Insider Trading*

1. Introduction

The capital market is a securities trading market in the form of long-term financial instruments in the form of capital (equity) and debt and is a place for individuals to buy or sell newly issued securities.[1] Capital market investments involve purchasing products (instruments) traded on the capital market, such as stocks and bonds, with the expectation of generating future income. Meanwhile, capital sellers are companies that require capital or additional capital for their business purposes.[2] The capital market is a place for companies to seek capital and an alternative investment vehicle

[1] M. Irsan Nasarudin Surya and Indra, *Aspek Hukum Pasar Modal Indonesia* (Kencana, 2007).
[2] Munir Fuadi, *Pasar Modal Modern (Tinjauan Hukum) Buku Kesatu Cetakan II* (Citra Aditya Bakti, 2001).

for the general public (investors). It is a place where public offerings and trading of securities of public companies (issuers) take place. The Capital Market/Stock Exchange/Stock Market in the classical sense is defined as a business sector dealing with the trading of securities such as shares, share certificates, and bonds or securities in general.[3]

Article 1 number 13 of Law Number 08 of 1995 concerning Capital Markets states a more specific definition of capital markets, namely "*activities related to public offerings and trading of securities, public companies related to the securities they issue, and institutions and professions related to securities*". These activities are protected by law as a legal umbrella that highly upholds the principle of openness.[4] The principle of transparency in the capital market is the principle that underlies the thinking of capital market players in carrying out their investment activities. The provision of this information must be based on the principle of transparency. The principle of transparency is a central issue in the capital market and is also the soul of the capital market itself, as this principle is the basis for the considerations that must be taken by capital market players. However, many violations of the principle of transparency in capital market practices remain.[5]

One form of fraud in the capital market is insider trading, Human Trading or insider trading In Article 95, 96, and 97 of Law Number 8 of 1995 concerning Capital Markets, it is stipulated that people who have insider information, whether insiders or not, are prohibited from buying or selling securities from the issuer or public company concerned or vice versa. companies that conduct transactions with the issuer or public company concerned. In addition, it is strictly prohibited to influence other parties to buy or sell the securities in question or provide insider information to any party that allows that party to use access to the information to buy or sell securities.

Bismar Nasution defines insider trading as a practice that often occurs when people within a company trade using information that has not been disclosed, which contains information containing material facts that can be detrimental and influence share prices.[6] Meanwhile, Indra Safitri defines insider trading as an act carried out by a party classified as an insider using company information that has not been published. This information is material information that has an influence on the development of securities prices.[7] Munir Fuady provides a broad definition of insider trading, which is trading conducted by company insiders. This trading is based on material information that has not been made public, thus providing personal economic gain,

[3] Gisymar N.A, *Insider Tradding Dalam Transaksi Efek* (Citra Adhitya Bakti).
[4] Bismar Nasution, *Keterbukaan Dalam Pasar Modal* (Fakultas Hukum Universitas Indonesia, 2001).
[5] Andina Tampubolon, 'Praktek Insider Trading Dalam Transaksi Efek Di Pasarmodal Dan Upaya Pencegahannya Melalui Penerapan Prinsip Keterbukaan (Disclosure Principle)', *Tesis*, 2014, pp. 1–201.
[6] Donald Moody Pangemanan, 'Peraturan Insider Trading Dalam Pasar Mosal Indonesia : Studi Mengenai Penerapan Teori Penyalahgunaan Dalam Praktik Insider Trading', *Jurnal Hukum Dan Pasar Modal*, 2 (2005).
[7] Indra Safitri, *Transparansi Independensi Dan Pengawasan Kejahatan Pasar Modal* (Safitri& Co Go Global Book, 1998).

which is a shortcut to profit.[8]

The most recent case concerns alleged insider trading by PT. Keuangan Jouska Indonesia. The case involving Jouska began in July 2020 when several customers complained about being wronged. Jouska allegedly instructed his company's clients to purchase and re-collect stocks suspected of being "fried stocks," resulting in significant losses due to declining stock performance. Clients expressed their complaints on social media, including Twitter. Jouska's founder and CEO, Aakar Abyasa Fidzuno, was immediately summoned by several authorities, including the Investment Alert Task Force, the Investment Coordinating Board, the Financial Services Authority (OJK), and the Criminal Investigation Agency of the Indonesian National Police Headquarters. The OJK's Illegal Investment Alert Task Force stated that Jouska had engaged in investment advisory and/or securities brokerage activities without a permit. SWI then requested that the Ministry of Communication and Information Technology shut down PT. Jouska's website, applications, and social media accounts, as well as those of other related companies. Related companies include PT Amarta Investas Indonesia and PT Mahesa Strategis Indonesia, which are affiliated with Jouska.

Insider trading in Indonesia is still considered difficult to enforce and impose sanctions on perpetrators. The lack of legal protection for losses suffered by public investors due to insider trading activities often leaves them confused about the legal steps they should take to obtain justice for the invisible losses they experience. It is the government's responsibility to resolve legal protection issues arising within companies, specifically other public investors who invest in the organization or public company in question. As the supervisory authority responsible for the operation of financial institutions and capital markets, Indonesia has the Financial Services Authority (OJK). Civil sanctions that can be imposed on insider traders include compensation for actions that clearly harm the issuer and benefit only a handful of investors. These sanctions are imposed after an investigation by the OJK into the insider trading case. This compensation is contained in Article 111 of the UUPM, which states that "*Any Party who suffers losses as a result of a violation of this Law and/or its implementing regulations may claim compensation, either individually or jointly with other Parties who have similar claims, against the Party or Parties responsible for the violation*".

Civil litigation is a process where investors are given the opportunity to file a civil lawsuit when they experience losses caused by violations of capital market regulations, including insider trading. Parties aggrieved by a civil lawsuit can file a lawsuit with the competent court. Therefore, the judge's role is crucial in making breakthroughs, particularly in interpreting Article 1365 of the Civil Code, which is

[8] Munir Fuadi, *Pasar Modal Modern* (PT. Citra Aditya Bakti, 1996).

more flexible. This is because Article 1365 is the most appropriate way to sue insider traders. However, in practice, civil lawsuits face obstacles and are ineffective due to:

1) Difficulty in proving civil cases when insider trading occurs;
2) Less predictive court decisions;
3) It takes a long time and requires high costs, and
4) It has little deterrent effect on perpetrators due to the absence of a policy that allows the implementation of double or triple damages.

Seeing the potential growth of the capital market in Indonesia, the government recognizes its importance to national development. The capital market is one alternative that companies can utilize to meet their funding needs. The capital market's efforts in the development of the Republic of Indonesia include conducting public offerings (going public). Irresponsible parties often participate in stock exchange transactions. Legal protection for investors is crucial for the continuity of business and investment. This legal protection takes the form of legal structure and legal substance, both of which synergize to provide legal certainty and protection. The lack of legal protection for investors against insider trading in the capital market will create an unfair market, illicit profits, and an untrustworthy market, which is detrimental to investors. The difficulty in proving insider trading has resulted in uncertainty regarding legal protection for investors under the Indonesian Capital Market Law.

2. Research Method

This type of research is empirical research, also known as sociological legal research, which is carried out directly in the field[9], This study examines the legal protection provided to investors against insider trading practices at PT. Jouska Financial Indonesia. The research objective of this thesis is Legal Protection for Capital Market Investors Against Insider Trading Practices at PT. Jouska Financial Indonesia.

The data sources for this research are primary data, namely the results of direct interviews with research objects and secondary data in the form of books, journals and theses related to legal protection for investors against insider trading practices in Indonesia, laws and regulations that provide legal protection for investors against insider trading practices in Indonesia.

3. Result and Discussion

3.1 Perlindungan Hukum Bagi Investor Pasar Modal Terhadap Praktik Insider Tradding

Price determination in the Capital Market is heavily influenced by material information or facts, as information reflects a price. Article 1, number 7 of Law Number

[9] Bambang Sunggono, *Metode Penelitian Hukum* (Rajawali Pers).

8 of 1995 defines material information or facts as important and relevant information or facts regarding events, incidents, or facts that could influence the price of securities on the Stock Exchange and/or the decisions of investors, potential investors, or other parties with an interest in such information or facts. Mandatory information that must be disclosed to the public is accurate and complete, reflecting the company's condition. Insider trading is typically controlled by a group of individuals, conducted by concealing certain information for a specific purpose. The prohibition on insider trading activities is regulated in Chapter XI of the Capital Market Law, which also covers fraud and market manipulation. Provisions related to insider trading are regulated in Articles 95 to 99. Essentially, the prohibition on insider trading aims to achieve fairness in the capital market, based on the principle of transparency. The essence of the capital market is openness to all information regarding the company's condition. Violations and falsification of the transparency principle can lead to misunderstandings and losses for investors. One way to demonstrate this principle of transparency is for professionally supported public companies to provide accurate prospectuses, which are written information about public offerings, because capital markets and trading are based on investor trust. Investor trust is the value of a company in the capital market.[10]

Legal protection is crucial for investors when investing in the capital market. With legal protection, investors are confident in placing shares in the capital market, as legal certainty is a requirement for every Indonesian citizen. Legal protection means protecting human rights from violations by others, protecting the public, and creating conditions for them to enjoy all rights granted by law.[11] Laws can be an effective instrument for providing legal protection and monitoring all potential conflicts. According to Satjipto Rahardjo, laws can help ensure predictive and predictable protection, as well as adaptability and flexibility. Those who are socially, economically, and politically weak, as well as those who are not yet socially, economically, and politically strong, need the right to achieve social justice.[12]

The losses experienced by investors are more focused on the nature of physical protection. Investors will lose if investment risk is not a concern. As the saying goes, "high risk, high return, low risk, low return," meaning that every business activity, including investment in the capital market, inevitably carries risks. However, it is important to understand that losses that occur outside of investment or business risks represent a form of injustice and inequality for investors in the capital market. This disparity and injustice result from violations. Although investors play a crucial role in providing legal protection in the capital market, they remain vulnerable due to limited access to prospectuses. Some reasons why investors need protection include inequality in justice and access to financial information and financial resources.[13]

[10] 'Wawancara Langsung Dengan Kepala Perwakilan Bursa Efek Indonesia Riau, Emon Sulaeman'.
[11] Satjipto Rahardjo, *Ilmu Hukum* (PT. Citra Aditya Bakti, 2000).
[12] A Priyonggojati, 'Perlindungan Hukum Terhadap Penerima Pinjaman Dalam Penyelenggaraan Financial Technology Berbasis Peer To Peer Lending', *Jurnal Usm Law Review*, 2.2.
[13] I Putu Gede Ary Suta, *Menuju Pasar Model Modern* (Yayasan Sad Satria Bhakti, 2000).

In Law No. 8 of 1995 concerning Capital Markets which regulates criminal sanctions for insider trading, namely in Article 104 it is stated 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 shall be threatened with imprisonment for a maximum of 10 (ten) years and a maximum fine of Rp. 15,000,000,000.00 (fifteen billion rupiah)*". However, this Article only provides sanctions for the perpetrator, but not for the issuer. The issuer should also be subject to sanctions as a form of legal responsibility due to its negligence in allowing the practice of insider trading to occur and not taking any preventive measures at all.

In addition to criminal sanctions, the Capital Market Law also regulates administrative sanctions such as written warnings, fines, and measures to restore capital market conditions to the impacts of insider trading, ensuring a healthy capital market, enabling it to be properly managed and perform better in the future. Issuers are expected to pay close attention to insider activity. Furthermore, Article 102 regulates this:

(1) Bapepam imposes administrative sanctions for violations of this Law and/or its implementing regulations committed by any Party that obtains permission, approval or registration from Bapepam"
(2) The administrative sanctions as referred to in paragraph (1) may be in the form of:
    a. Written warning;
    b. A fine is an obligation to pay a certain amount of money;
    c. Restrictions on business activities;
    d. Freezing of business activities;
    e. Revocation of business license;
    f. Cancellation of consent; and
    g. Cancellation of registration.

In its explanation, it is stipulated that "In applying administrative sanctions as referred to in this paragraph, Bapepam needs to pay attention to the guidance aspect of the parties concerned. The parties referred to in this paragraph are Issuers, Public Companies, Stock Exchanges, Clearing and Guarantee Institutions, Depository and Settlement Institutions, Mutual Funds, Securities Companies, Investment Advisors, Underwriter Representatives, Broker-Dealer Representatives, Investment Manager Representatives, Securities Administration Bureaus, Custodians, Trustees, Capital Market Supporting Professionals, and other parties who have obtained permission, approval, or registration from Bapepam. The provisions in this paragraph also apply to directors, commissioners, and any party who owns at least 5% (five percent) of the shares of the Issuer or Public Company as referred to in Article 87 of this Law." Therefore, issuers can also be subject to administrative sanctions related to insider trading activities, because issuers are parties who have obtained permission, approval, or registration from Bapepam, which is now the Financial Services Authority. The application of administrative sanctions as a form of negligence in maintaining important information regarding securities activities in the capital market is of a

guiding and supervisory nature to create an orderly, effective, efficient, fair and effective capital market.

Civil sanctions can also be imposed on insider traders in the form of compensation for their actions, which actually harm the issuer, thus benefiting only a handful of investors. These sanctions are of course imposed after the Financial Services Authority has conducted an investigation into the case. This compensation is regulated in Article 111 of the Capital Market Law, which clearly states, "Any Party suffering losses as a result of a violation of this Law and/or its implementing regulations may claim compensation, either individually or jointly with other Parties with similar claims, against the Party or Parties responsible for the violation."

The Indonesian Capital Market Supervisory Authority is now under the Financial Services Authority (OJK), authorized by the Financial Services Authority (OJK), which is a transfer of authority from the Financial Services Authority (OJK). Article 4 of the Capital Market Law, guidance, regulation, and supervision as referred to in Article 3 are implemented by Bapepam with the aim of creating orderly, fair, and effective capital market activities and protecting the interests of investors and the public. This supervision can be repressive by issuing regulations, directives, guidelines and instructions as well as by conducting inspections, investigations and imposing sanctions if there are signs and strong evidence of violations in the capital market. The form of OJK legal protection for investors from insider trading practices1 in the capital market is regulated in Law Number 21 of 2011 (OJK Law) concerning the Financial Services Authority as a prevention and imposition of sanctions or action, as part of the OJK's mission to carry out its functions. Regarding the regulation and supervision of the financial services sector. The purpose of establishing the OJK is based on Article 4 of the OJK Law "*It is to ensure that all activities in the financial services sector are conducted in an orderly, fair, transparent, and accountable manner. This will help achieve a sustainable, stable, and growing financial system. It will protect the interests of consumers and the public.*" In the description of Article 4 (c), "*What is meant by "protecting the interests of consumers and society" includes protection against violations and criminal acts in the financial sector such as manipulation and various forms of embezzlement.*" In addition, Article 28 of the OJK Law "Providing legal protection in the form of preventing losses to consumers and the public, one of which is deemed necessary according to the provisions of laws and regulations in the financial services sector, includes other measures. Therefore, as the institution authorized to protect investors, the OJK has the authority to issue regulations binding on the financial services industry, including consumers within that industry." Based on Article 31 of the Financial Services Authority (OJK) Law concerning Consumer and Public Protection, these activities are regulated by OJK Regulations. Therefore, the OJK can issue dissolution regulations to carry out its supervisory function. The indemnity position is intended to provide a sense of security because investors are protected by legal protection against losses suffered by other parties.

Law No. 21 of 2011 concerning the Financial Services Authority (OJK), as the supervisory body for the financial services sector, strengthens investor protection

through three forms of legal protection: preemptive, preventive, and repressive. In the preemptive phase, the OJK focuses on public education and outreach regarding the financial services sector, its services, and products, in accordance with Article 28 of the OJK Law. This aims to instill positive values and reduce the intention to violate. Investor protection in the preemptive phase can be achieved through the provision of education and outreach, including information on investor rights, strategies for preventing fraud, investment risk management techniques, and procedures for submitting claims or complaints in the event of violations or problems in investing.

In the prevention phase, the Financial Services Authority (OJK) undertakes other measures, such as issuing securities company licenses with strict requirements, halting the activities of parties that could harm the company, and providing consumer complaint services (Article 29 of the OJK Law). This is done to ensure security and trust in the capital market. The law enforcement phase aims to minimize risks for investors and increase public confidence in the financial services sector through regulatory action. Under Article 30 of the OJK Law, the OJK has the right to protect the interests of consumers and the public in disputes between investors and companies in the financial services sector. OJK's legal defenses include ordering companies to resolve consumer complaints and filing lawsuits to recover lost assets or obtain compensation for regulatory violations.[14]

The Financial Services Authority (OJK)'s supervisory function utilizes an integrated supervisory system, requiring all activities in the financial services sector conducted by various financial institutions in Indonesia to be reported to the OJK, unless otherwise stipulated by law. The integration of policies established and implemented by the OJK is one measure of the integrity of the OJK's function. The right of an organization to create its own regulations is recognized as a Self-Regulatory Organization (SRO). In the Dictionary of Banking Terms by Ritch R, the meaning of SRO is "*business organization that sets its own rules for fair conduct, licences, or approves firm engaging in market makin activities, and supervisesthe activities of market participant.*" In Indonesian, it roughly means a business organization that establishes its own rules for fairness, licensing, or approving companies involved in market activities, and overseeing the activities of market participants. An SRO is an institution authorized by law to draft and establish rules regarding membership, transaction execution, and supervision of its members. Through rulemaking, an SRO must establish standards to prevent fraud and market manipulation, and impose penalties on exchange members who violate federal securities laws. Recognized SROs in Indonesia include the Stock Exchange, the Securities Clearing and Guarantee Institution (PT KPEI), and the Depository and Settlement Institution (PT KSEI).

[14] 'Wawancara Langsung Dengan Kepala Otoritas Jasa Keuangan Yang Di Wakili Oleh Pegawai Otoritas Jasa Keuangan Arief'.

3.2 Problematika Pembuktian Praktik Insider Trading PT. Jouska Financial Indonesia

Insider trading is difficult to prove because it is often difficult to uncover the legal relationship between the insider and other parties. Furthermore, the Capital Market Law only regulates the elements and sanctions without detailing how to prove insider trading, whether in criminal, civil, or administrative law. Some argue that losses due to insider trading fall solely on the issuer, as insiders sell important information to investors. However, can we simply say that the issuer bears the losses without investors being harmed? Investors are also disadvantaged by the impact of investment uncertainty. In this regard, the government continues to encourage the development of a trading system that is as efficient as possible, while maintaining adherence to international standards for capital market opening procedures. One notable insider trading case in Indonesia is the Jouska case, which began when PT. Jouska Finansial Indonesia allegedly coerced its clients into signing investment fund account management contracts (RDI) with an affiliated company of PT. Jouska. The affiliated company is PT. Mahesa Strategis Indonesia (MSI). Both companies are affiliated with Phillip Securities and MNC Securities. The contract contained a clause granting PT. MSI the right to operate by funding a number of investment portfolios. Client investment funds were used to purchase various stocks and mutual funds. One of these involved shares of PT. Sentral Mitra Informatika Tbk. with the encoder generator PT. LUCK. This large-scale acquisition caused LUCK's share price to soar significantly due to economic laws allegedly deliberately created by Aakar Abyasa Fidzuno (Aakar), the president director and shareholder of PT. Zeus Artha Mulia, PT. Amarta Janus Indonesia, PT. Jouska Finansial Indonesia, as well as a commissioner and shareholder of PT. Amarta Investa Indonesia and PT. Strategi Mahesa Indonesia. Aakar's actions created strong demand and increased prices. Therefore, the increase in share prices was not caused by a valuation or assessment of LUCK's financial situation, assets, or prospectus.

This practice is often referred to by the public as stock manipulation. Then, Aakar, Joséphine, Caroline, and Christine, as LUCK shareholders, entered into an illegal agreement. This partnership aimed to manipulate stock market prices and encourage large-scale purchases by exploiting previously undisclosed insider stock information for their own personal gain. Phillip Sekuritas and MNC Sekuritas played a corporate role, allowing current or former clients to open and deposit funds in Investor Fund Accounts (IRAs). RDI is suspected of providing access or collaborating with Amarta and Mahesa, who are not licensed investment managers. Problems arose when the stock value of PT. Mitra Infromatika Tbk. plummeted, and PT Jouska was later accused of harming its clients and investors.

The firm action taken by law enforcement officers has taken the form of a public prosecutor's demand for the PT. Jouska case, which was reported by PT. Jouska investors. The case has been tried twice, one through the District Court and the

final hearing at the High Court. All elements of *"Article 103 paragraph (1) in conjunction with Article 34 paragraph (1) of Law No. 8 of 1995 concerning Capital Markets in conjunction with". "Article 55 paragraph (1) point 1 of the Criminal Code" and elements of "Article 3 of Law No. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering" in conjunction with "Article 10 of Law of the Republic of Indonesia Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering"* have been fulfilled, and therefore the Defendants must be declared legally and convincingly proven guilty of committing the crime as charged by the Public Prosecutor. According to the panel of judges and prosecutors, the actions committed by PT Jouska constitute money laundering, and in general, insider trading crimes in the capital market sector are always associated with embezzlement or money laundering (TPPU). Money laundering is a crime that is a complementary or continuation crime (follow-up crime) of the main crime (core crime / predicate crime).

Insider trading is very difficult to prove criminally, because the evidence specified in Article 184 of the Criminal Procedure Code is insufficient to prove insider trading. According to Article 184 of the Criminal Procedure Code, there are five types of valuable evidence: letters, statements, complaints, confessions, and oaths. If we examine carefully, the evidence mentioned in this article means that insider trading cannot be proven because evidence of transactions conducted on the stock exchange is electronic, especially in printed form and documents are not included in the list of correspondence specified by law, although "*Law Number 11 of 2008 concerning Electronic Transactions*" Even though the law has been ratified, it does not rule out the possibility of difficulties in providing written evidence regarding insider trading. Because the perpetrator of the crime engaged in insider trading to gain financial gain, the criminal concept can shift from ultimum remedium to primum remidium, which is understood as the principle of ultimum remedium in cases of administrative and criminal sanctions. This will be used effectively if the enforcement of these sanctions is carried out fully.

There are also civil lawsuits, where investors have the opportunity to file civil lawsuits if they suffer losses due to violations of financial market regulations, including insider trading. Those who suffer civil losses can sue in the competent court. Therefore, in this case, the role of judges is crucial to achieving progress, especially in interpreting the law more actively than Article 1365 of the Civil Code. This is because Article 1365 is the most appropriate provision for prosecuting those guilty of insider trading. In the explanation of compensation for damages in the Civil Code, 1365 "*Every unlawful act that causes loss to another person, requires the person who caused the loss to compensate for the loss.*" The injured party files a lawsuit for compensation through the courts. The injured party has legal protection against any unauthorized activity, while under the Capital Market Law, responsibility will be borne by the parties referred to as Article 1 Number 23 of the Capital Market Law. *"Parties are individuals, companies, joint ventures, associations or organized groups"*. However, based on Article 1866 of the Civil Code/Article 164 of the HIR, permissible evidence in civil cases includes written

evidence, witness testimony, allegations, confessions, and oaths. Written evidence/documents/letters are prioritized. This is in line with the fact that in civil cases, letters/documents/manuscripts play a crucial role. The difficulty in proving this is that one element of insider trading is the existence of material insider information that has not been disclosed to the public.

In addition to the difficulty of proving it, it is also important to note that to determine the issuer's responsibility for insider trading practices in the capital market, it is also necessary to prove the element of investor loss, because it cannot be denied that many investors feel they have benefited, but behind that, there is actually an element of insider deception, including deceiving investors with promises of profit, even though it contains an element of loss. Information sold by insiders is often misleading regarding all material facts related to the company and the issuer's operations, sometimes half-truths and half-false because Capital Market Law No. 8 of 1995 does not explicitly regulate the maturity of information. This means that insiders who sell their information to investors are not necessarily trustworthy, and the information may be misleading and can harm investors. In fact, the concept of capital market information disclosure is regulated in Article 1 Number 25 of Law No. 8 of 1995 concerning Capital Market Regulations, namely "*The principle of transparency is a general guideline that requires issuers, public companies and other parties subject to this law to inform the public in a timely manner all material information regarding their business or its effects that may influence investors' decisions regarding the securities in question and/or the price of those securities.*" As the unlawful act referred to in Article 97 paragraph (1) of the Capital Market Law No. 8 of 1995 is "*obtaining inside information by stealing, persuading insiders by trickery and by violence or threats.*" If the liability model related to insider trading activities is regulated in Article 97 of the Capital Market Law Number 8 of 1995, then the civil liability used is liability for Unlawful Acts. In civil matters, sanctions for insider trading practices are regulated in Article 111 of the Capital Market Law, which states "*Any party who suffers a loss as a result of a violation of this Law and/or its implementing regulations may claim compensation, either individually or jointly with other parties who have similar claims, against the party or parties responsible for the violation.*" However, this requires effort, time, and expense, as well as a lengthy process. This was further reinforced by the issuance of the Draft Regulation by the Financial Services Authority (RPOJK) on March 18, 2019, concerning Disgorgement and the Disgorgement Fund, which is new to the Indonesian legal system, particularly in the field of business law. "*OJK Regulation Number 65/POJK.04/2020 concerning the Return of Illegal Profits and Investor Loss Compensation Funds in the Capital Market Sector*" The law, enacted on December 30, 2020, mandates the return of illegitimate profits or losses, not a lawsuit filed by an aggrieved investor. According to the Financial Services Authority (POJK), the return of illegitimate profits is intended to prevent the offending party from enjoying their illegitimate profits. To ensure that the offending party cannot enjoy their illegitimate profits through the transfer or liquidation of their assets held by a financial services institution, the Financial Services Authority (OJK) has the authority to issue a written order requesting a blocking order to the financial services institution in question, as well as a written

order requesting the transfer and liquidation of assets to the offending party and the financial services institution. Proving insider trading remains difficult because it is a criminal offense requiring proof beyond reasonable doubt, thus providing an opportunity for the perpetrator to be acquitted if the court cannot prove the perpetrator guilty. Therefore, regulations are needed regarding the technical aspects of proving insider trading in Indonesia, either through additional substance in the Capital Market Law or through implementing regulations in the form of government regulations (PP).

4. Conclusion

The OJK's legal protection for investors from insider trading practices in the capital market is regulated in Law Number 21 of 2011 (OJK Law) concerning the Financial Services Authority as a means of prevention and the imposition of sanctions or enforcement. 1 At the preventive stage, the OJK takes further steps such as granting securities licenses with strict requirements, stopping the activities of parties that have the potential to harm the public, and providing consumer complaint services (Article 29 of the OJK Law). This is done to ensure security and trust in the capital market. The repressive stage aims to reduce risks for investors and increase public trust in the financial services industry through legal action. In Article 30 of the OJK Law, the OJK is authorized to defend the interests of consumers and the public in disputes between investors and financial services industry companies. OJK's legal defense includes ordering companies to resolve consumer complaints and filing lawsuits to recover lost assets or obtain compensation for regulatory violations. Repressive legal protection for investors from insider trading practices takes the form of examinations, investigations, and the imposition of sanctions after an insider trading case occurs. Enforcing the law on insider trading can include three aspects: administrative, civil, and criminal enforcement. 1 Enforcing the law on insider trading includes three aspects: administrative, civil, and criminal enforcement. Essentially, the Capital Market Law has laid the foundation for law enforcement as a form of protection for any violation of capital market activities, namely administrative sanctions (Article 102 of the Capital Market Law) and criminal sanctions (Articles 103-110 of the Capital Market Law). Insider trading practices are indeed very difficult to prove because it is usually difficult to reveal the pattern of legal relationships between insiders and other parties. Insider trading is very difficult to prove criminally, because the evidence as referred to in Article 184 of the Criminal Procedure Code (KUHAP) is not sufficient to meet the proof of insider trading. According to Article 184 of the KUHAP, there are five types of valid evidence: letters, testimony, allegations, confessions, and oaths. If examined, the evidence referred to in the article, insider trading cannot be proven because the evidence of transactions conducted on the stock exchange is electronic, namely in the form of printouts and is not included in the category of documents as specified in the law. As for civil lawsuits, where investors are given the opportunity to file a civil lawsuit when experiencing losses due to violations of capital market regulations, including insider trading. A party

who has suffered a civil injury may file a lawsuit with the competent court. Article 1365 of the Civil Code is the most appropriate provision to sue an insider trading practitioner to avoid the burden of losses by the party who feels they have suffered a loss due to insider trading in the civil field. The evidence recognized in civil cases consists of written evidence, witness evidence, allegations, confessions and oaths. Written/written/lettered evidence is placed first. This is in accordance with the fact that in civil cases, letters/documents/deeds play an important role. The difficulty of proof is because one of the elements of insider trading is the existence of material insider information that has not been published to the public. In Article 1 number 7 of the Capital Market Law, what is meant by material information is important and relevant information or facts regarding events, incidents, or facts that can affect the price of securities on the stock exchange and/or the decisions of investors, prospective investors, or other parties interested in such information or facts. And this is what makes it difficult to prove that insider trading has occurred because it could be that prohibited insider information can be given verbally and there is no physical evidence that shows that the information was passed on from the insider to another party.

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