

Insider Trading Crime in the Sharia Capital Market from an Islamic Law Perspective

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ABSTRACT

Insider trading, or better known as "insider trading," is a form of trading that is prohibited in securities transactions in the Islamic capital market. Insider trading is a type of corporate insider or corporate insider practice that involves carrying out securities transaction activities using exclusive information known as "inside information." Juridically, the practice of insider trading can be categorized as a "white collar crime," a form of violation of the principle of openness, which is the soul of the capital market industry. The problem to be answered through this research is related to the review of Islamic law on the crime of insider trading in Indonesia. This study uses a normative-juridical approach. According to the findings of this study, in order for the Indonesian capital market to function optimally and bring economic benefits to the country, crimes in the Islamic capital market, such as insider trading, must be reduced through a review of Islamic law. Therefore, rules, settlement systems, and law enforcement, both normative and Islamic, are needed in the settlement of insider trading acts in the Islamic capital market in Indonesia.

Keywords: Insider Trading Crimes, Islamic Capital Markets, Islamic Law.

INTRODUCTION

The capital market is a market for various long-term financing commodities that can be traded in the form of debt (bonds), equities (stocks), mutual funds, derivative products and other products. The capital market is also a means of funding companies and other institutions (such as the government) and also functions as a vehicle for investment activities. Thus, the capital market facilitates various facilities and infrastructure for trade and other related activities (Martalena & Maya Malinda, 2011).

The capital market plays a very strategic role in the development of the country as a source of funding for the business world and a place of investment for the community (Sudiarta & Subawa, 2013). Capital market activities are very active and complex, requiring legal documents to regulate them so that the market runs in an orderly, reasonable and fair manner for all parties. To realize an orderly, fair and efficient capital market activity, the capital market sector requires requirements for stakeholders in the capital market sector and administrative sanctions for certain parties who violate the laws and regulations (Attijani, 2019).

The development of law is closely related to the development of society, which is in accordance with the saying "where there is society there is law", "Ubi Societas ibi ius". As a result of rapid activity in the economic field, the existing regulations in the economic field are no longer considered to meet the legal requirements in this field, so that new regulations in the field of commercial law are needed. In fact, various parties are involved in capital market activities, usually for the purpose of seeking profit. In such a concept, it does not mean that the parties are free to use various situations for purposes in the capital market, including fraud or violations. Violations of the rules of the game in securities trading are often caused by weak supervision by stock exchange managers and stock exchange supervisors, and are violated (Fuady, 1996).

In the current capital market activities, of course, accompanied by various dynamics, one of them is a violation. Violations were committed by perpetrators of activities in capital market on the rules that have been regulated in the capital market. One of the forms of violations in the capital market that is in the spotlight in this paper is insider trading. Insider trading is an action that refers to practices where insiders or corporate insiders conduct securities transactions by using an exclusive information and the information has not been available to the public or investors (Gisymar, 1999).

Insider trading is one of the most sophisticated crimes in the world and is generally very complex and very difficult to track down. Insider trading is usually an educated or educated individual. Article 104 of the Capital Marketing Law stipulates that doing insider trading is a crime. Insider trading has a significant impact on the development of the Indonesian capital market as a whole, so insider trading has a

negative impact on the investment environment and can affect investors who invest in Indonesia, so special attention is needed from the government. With these conditions, the law must be enforced in Indonesia in order to provide strong protection to investors related to this insider trading practice (Marzuki, 2011).

In reality, the practice of insider trading still requires legal doctrine as well as jurisprudence because until now there is still no jurisprudence that regulates insider trading (Nasution, 2021). This is based on many problems that arise as a result of insider trading practices. Based on the description of the background above, this study will examine what is meant by insider trading crime in the perspective of Islamic law in order to realize legal protection and certainty for investors in Indonesia.

THEORETICAL FRAMEWORK

Sharia Capital Market

The market is the total supply and demand for goods and services. Markets can be of two types, namely:

- a. The concrete market is a certain place, namely, a place of interest (a place where buyers and sellers meet), for example, the Monday market, the outboard market and others.
- b. Abstract market, which is an activity that causes a meeting between two things, namely, supply and demand in terms of investment.

From the above understanding, it is concluded that the capital market is a type of abstract market where the capital market is a place to bring together parties who have excess funds (surplus funds) with those who have a problem of lack of funds (deficit funds), where the funds traded are funds in the short term. long time (Manan, 2019).

The role and function of the capital market is very important in a country in terms of supporting progress in the country's economy. Where the role of the capital market is as a vehicle for efficient allocation of funds. Investors (investors) can invest in several companies through the purchase of securities that are recently offered or sold in the capital market, on the other hand, companies get the power they need by offering financial instruments in the long term and through the capital market. With the capital market, it will be easier for companies to obtain funds, so that it will advance the

national economy to be more advanced than before, which has a good impact such as creating wide employment opportunities, as well as increasing tax revenues for the government.

While the function of the capital market is divided into two parts, there is an economic function by realizing a meeting of two interests, namely from those who have excess funds and those who have lack of funds, and this is where the financial function is to provide the possibility and opportunity to get rewards for the owners of funds in investment. Funds obtained from the capital market can be channeled for business development, expansion, and so on. The second function of the capital market is as a means for the public to invest in financial instruments for a relatively long period of time, such as stocks, bonds, mutual funds and others (Andri, 2019). MM. Metwally also explained about the functions of the Islamic capital market more generally, namely (Andri, 2019).:

- a. Allows for the public to participate in business activities to get a share of the benefits and risks.
- b. Allows shareholders to sell their shares in order to obtain liquidity.
- c. Allows companies to raise capital from outside to build and develop their products.
- d. Separating the operations of business activities from the shorter-term fluctuations in stock prices that is a common feature of conventional capital markets.

The Islamic capital market is a capital market that is run with the concept of sharia, where every securities trade complies with the provisions of transactions in accordance with sharia provisions. The Islamic capital market does not only exist and develop in Indonesia but also in other countries, such as Malaysia. The first institution that paid attention to operating its portfolio with Islamic portfolio management in the Islamic market was the Amanah Income fund which was founded in June 1986 by members of The North American Islamic Trust based in Indiana, United States of America (Yuliana, 2010). The Islamic capital market in accordance with Law Number 8 of 1995 concerning the Capital Market (UUPM) is an activity related to public offerings and securities trading, public companies related to the issuance, as well as institutions and professions related to securities. Based on this understanding, it can be concluded

that the Islamic capital market is an activity in the capital market as regulated in the Capital Market Law which does not conflict with sharia principles (Iggi, 2000).

The Islamic capital market was developed in order to accommodate the needs of Muslims in Indonesia who wish to invest in capital market products that comply with the basic principles of sharia. With the increasing variety of investment facilities and products in Indonesia, it is hoped that people will have alternative investments that are considered to be in accordance with their wishes, in addition to investments that have been known so far and in the banking sector. The functions of the existence of the Islamic capital market are (Umam, 2013):

- a. It is possible for the community to participate in business activities by obtaining the benefits and risks.
- b. Allows companies to raise capital from outside to build and expand their production links.
- c. The stock price is a common feature in the conventional capital market.
- d. Allows investment in the economy to be determined by the performance of business activities as reflected in stock prices.

The Islamic capital market is one of the concrete implementations of Islamic economics. Like a sharia economic house, the sharia capital market is one room among several other spaces such as sharia banks, sharia accounting, sharia mutual funds, sharia insurance and others. Therefore, the Islamic capital market cannot be separated from the Islamic economy. The philosophical foundation on which the Islamic capital market operates is the Islamic economy. The instruments traded in the Islamic mass market are sharia shares, sharia bonds, sharia mutual funds, as well as collective investment contracts for sharia asset-backed securities and other securities in accordance with sharia principles. While the characteristics needed in forming the capital market are (Muhammad, 2015):

- a. All shares must be traded on the stock exchange
- b. Exchanges need to prepare post-trade where shares can be traded through brokers.
- c. All companies that have shares that can be traded on the Stock Exchange are required to submit information on the calculation (account) of profits

and losses as well as the balance of profits to the management committee of the stock exchange, not more than 3 months apart.

- d. The management committee applies the highest share price (HST) for each company at intervals of no more than 3 months.
- e. Shares may not be traded at a price higher than HST.
- f. Shares can be sold at prices below HST.
- g. The management committee must ensure that all companies involved in the stock exchange follow sharia accounting standards
- h. Stock trading should only take place within one week of the trading period after determining HST
- i. The company can only issue new shares within the trading period, and at the HST price.

A symptom in today's corporate world is that companies are no longer content to operate on a small scale, but on a large scale. For that, the company certainly needs capital (Nurhayati & Wasilah, 2013). From here there are several alternative choices that can be taken by the company as an effort to fulfill the capital, namely through banks, capital markets, or financial institutions as a source of trade. If voters fall on the capital market, the company will face investors in the capital market. Investors in the capital market are the public. From the community, the company will get additional capital which will be used to develop the company on a larger scale (Umam, 2013).

Insider Trading

The more well-developed the market for capital market operational activities in a country will encourage investors both domestically and abroad to invest their capital into that country. However, the advancement of a capital market must be accompanied by parties who have wanted greater profits so that they can encourage related parties to commit violations and crimes in the capital market. Insider trading is a form of law violation that is well known in the capital market. which is harmful to the development of the capital market. Insider trading or often called “insider trading”, is very common in the world's capital markets and if not managed properly, will damage the well-built capital market structure. It is difficult and does not require a lot of money. This is

because the Capital Article Law Number 8 of 1995 does not convey the meaning of insider trading. So to find out Insider trading can be collected from the income of scholars (doctrinal).

Insider trading can be interpreted as a trading of securities carried out by "insiders" of a company (in a broader sense), based on or motivated by the existence of "inside information" (insider information). Important information that is not disclosed in insider trading constitutes a transaction. Expecting to obtain personal economic benefits, namely short term benefits, directly or indirectly (Fuadi, 1996). Insider trading is a form of corporate insiders or the practice of corporate insiders who carry out securities transaction activities by utilizing exclusive information obtained or known as inside information. Juridically, the practice of insider trading can be categorized as a white collar crime (Pramono, 2013).

The implementation of the capital market is made with the main objective of all activities in the capital market can run in a fair, orderly and orderly manner. According to one Michael J. Watson Q. C that one of the principles that must be considered when making rules in the capital article is the principle of justice (fairness in the market) which has the effect of creating fair, informative rules, guaranteeing opportunities and risks are the same for every investor. Based on this in law the capital market must provide a guarantee in the form of transparency and information disclosure (disclosure principle) because in the capital market information is a vital thing because information can influence decisions investment and also affects the flow of securities prices (Guzman, 1998).

Capital market law must also be able to be designed so that it is able to determine competency standards and behavior of related parties in the capital market so that investors get input regarding investment and field services in the capital market from competent parties. In addition, the purpose of capital market law should be can provide a confidence for investors regarding the integrity of the market capital itself which is supported by rules regarding capital provisions, guarantees transaction settlement, insurance, dispute resolution in the event of violations and crimes in the capital market. Capital market law must also designed so that securities trading occurs

fairly and honestly so that it can prevent a crime and violation in the capital market such as fraud, market manipulation or insider trading crimes.

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One of the capital market violations regulated in the Capital Market Law is insider trading or commonly known as Insider Trading. Insider trading activity can be described as insider trading of securities, usually certain securities related to a company are bought or sold at the same time by people associated with the company. These securities are not widely known, but if issued, they can have a significant impact on the market price of the securities (Brazier, 2016).

Capital Market Law No. 8 of 1995 does not provide a clear definition of insider trading, but regulates prohibited trading. Acquisition of publicly traded or affected companies. It can be concluded that securities trading classified as Insider trading must meet at least the following three factors:

1. There is an insider,
2. Important information that has not been published (published),
3. Make transactions based on important information

Insider public information is all kinds of information that can directly affect the price of a security and the information has not announced to the public and also indicates that the price the security is determined based on available information (Untung, 2011). Insider trading as a practice that violates the code of ethics because the information will be used by the first party to withdraw profits by buying shares the company first (Arifin, 2011). The prohibition of insider trading practices is basically so that all information that comes out of the company can reach evenly, so that no party benefits unilaterally by considering all information on the stock exchange as an important commodity that influences the decision to make or not invest (Haidar, 2015).

As for the elements of Insider trading according to the Capital Market Law, there are two sides to the capital market. First, it has a positive side which means that, instead of increasing public funding, it allows issuers to later divert them to productive

business activities, thus releasing much larger business development. Second, also includes the negative side, the possibility of direct or indirect criminal opportunities aimed at making profits in the capital market by illegal means increases. This illegal channel is sometimes referred to as "insider trading" or more commonly "insider trading". Insider trading can be defined as a stock exchange (buying and selling) based on information or material facts that were known by a person or group of people before the information was released by the market (Riyanto, 2016).

The first characteristic of insider trading is that insiders commit fraud, because capital market fraud is a false statement of important facts or the omission of important facts, information provided about situations where it occurs is beneficial or avoids harm to oneself or others, or can mislead parties. others for the purpose of influencing the buying and selling of securities. This prohibition applies to all parties involved in securities trading and fraud (Nasarudin & Surya, 2014).

Law Number 8 of 1995 concerning the Capital Market does not provide an explicit definition of insider trading, but in this regulation it only provides limitations regarding what transactions are prohibited. The prohibition on insider trading began to be regulated with the presence of the Decree of the Minister of Finance Number 1548/KMK/013/1990 concerning the Capital Market as amended in the Decree of the Minister of Finance Number 284/KMK.010/1995, which was later strengthened by the enactment of the Capital Market Law.17 In the explanation of Article 95, 96, 97 UUPM which includes prohibited trading are:

1. Insiders who make purchases or sales of:
 - a) The securities of the company from which the information originates; and
 - b) Securities of other companies that make transactions with the transaction companies.
2. Insiders who influence other parties to make purchases or sale of these securities.
3. Insiders who provide inside information to any other party who can reasonably be expected to use the information to make a purchase or sale of securities.

4. Others who unlawfully obtain inside information from the insider is then used in such ways in items 1, 2 and 3.
5. Others who seek to obtain inside information indirectly against the law, but the provision of such information with restrictions (for example with the obligation to keep confidential), Then use the information in the ways as referred to in points 1,2 and 3 above.
6. Securities companies that have inside information of a company open transaction which is referred to in points 1,2 and 3 unless the following two conditions are met:
 - a. Transactions are carried out not at your own expense, but at the customer's orders
 - b. The securities company does not provide recommendations to its customers regarding the securities in question.

Fraud is an act that is prohibited in capital market activities. The concept of applying the theory of abuse by United States control in the Newman case (Nasution, 2005). In this case, Newman has no fiduciary duty to the company and uses non-public or inside information (Hall, 1996). The court found Newman guilty of the theory of serious abuse of inside information (Nasution, 2005). Insider trading is classified as fraud, to avoid potentially harmful consequences and protect investors from insider trading practices (Hall, 1996). Bismar Nasution in his book also says that insider trading can be categorized as fraud in the capital market (Nasution, 1996).

To make it easier to prove, Bapepam must consistently properly record transactions and transaction actors by securities companies so that it will greatly facilitate the process of assisting the disclosure of perpetrators of crimes in capital market activities. By using existing records, investigators can trace where the transaction came from, who the perpetrator is, what relationship exists between the transaction actor and the securities being transacted and what motives are behind the transaction. However, insider trading can be detected by detecting several facts that existed when the practice occurred, including the presence or absence of insiders who transacted on the securities of the company in which the person concerned was an insider. In addition, it can also be detected from an increase in the price and trading

volume of securities before the announcement of material information to the public and an increase or decrease in the price and volume of trading that is not fair (Juliana, 2022).

In addition to proving the existence of insider trading, legal protection for investors is very much needed in the event of insider trading. This legal protection can be done in 2 ways, namely by providing legal certainty through legislation and legal certainty through law enforcement. The existence of legal certainty through laws and regulations will provide protection for investors to obtain complete, accurate and correct information so that investors can make the right decisions because they are supported by strong information. In addition, the existence of legal certainty through law enforcement carried out by Bapepam by taking preventive actions, namely in the form of rules, guidelines, guidance, and direction and repressive actions, namely in the form of examinations, investigations, and the application of sanctions will be able to build trust from the stakeholders. investors to the capital market itself (Khairrand, 2004).

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Article 90 of Law Number 8 of 1995 concerning the Capital Market regulates fraud. Relying solely on articles such as article 90 on fraud is not enough to discover the characteristics of insider trading (Gysmar, 2001). If a person who does not have confidence in the company commits a fraud, then the fraud is not classified as insider trading. However, to prove that insider trading can be fraudulent, it must be based on a theory of abuse, as in the Newman case above.

The main characteristic of Insider trading is that when trading insider information directly or indirectly, within the meaning of Article 90 of the Capital Market Law, false statements regarding material facts or omission of material facts are characteristics of fraud. If the fraud does not cause misunderstanding or harm to others, then it is not included in the category of fraud. The Capital Market Law prohibits fraud, but this regulation does not apply to the loss of Article 90 of the Capital Market Law. That is, the profits obtained from fraud are not included in the category of fraud, even though it turns out to be a loss.

The second characteristic is insider operation (fraud). Market manipulation is the biggest offense in the Capital Markets, including insider trading. The nature of market manipulation may or may not influence insiders. In particular, insiders are at least aware of the plans of the listed issuer, so insider engagement is more efficient when using important factual information about the company that is published.

Manipulation is the direct or indirect action of a party for the purpose of giving a false or misleading view of a transaction, market conditions, or the price of securities on the exchange. This false image encourages others to buy and sell securities at the price level desired by the manipulator. This is because the price of securities in the market is very sensitive to events and information that is directly or indirectly related to the

securities, and if there is a fluctuation then the party who spreads the rumor will benefit (Nasarudin, Surya, 2004).

Insider trading can involve a group of people who deliberately take advantage of insider information in order to get the maximum profit from stock trading on the exchange. With that, there are three main things to complete the insider trading process, namely the presence of insiders, information from the company which is still very confidential and material in nature and the existence of stock trading from insiders. According to Article 95 of the Modla Market Law No. 8 of 1995, what is meant by insider information is material information from insiders whose information is not yet publicly available. These insiders are quite sophisticated in running their business in a very professional way that is very difficult to identify or trace (Imam, 2011).

Information or commonly called material facts is information or facts that are quite important and very relevant regarding events, events, or facts that can affect the price of securities from the stock exchange or the decisions of investors, prospective investors, or other interested parties from the information or data. For example information or material data as follows (Yulfasni, 2005):

1. Merger, acquisition, business consolidation or formation of a business.
2. Share split or distribution of stock dividends.
3. Tremendous earnings and dividends.
4. Gaining or losing a contract is important.
5. Product or new discovery that is very meaningful.
6. Changes from the company's financial year.
7. Changes in control or significant changes in management.

Insider trading usually occurs in stock trading instruments, where in the mechanism of offering shares on the Stock Exchange there are two forms, namely offerings through the primary market and secondary market offerings. The price of the shares to be offered will be higher in the secondary market than in the primary market. So that stock trading in the secondary market is very involved from the insider element. From this statement, it is in accordance with the opinion of Nasrum Harun, namely, stock trading in the secondary market is strongly influenced by insider intervention in

the offering of shares on the Stock Exchange. This of course causes very unhealthy competition among investors. It can be said that transactions involving insider trading or transactions with insider information are subject to terms or conditions for insider trading, the conditions for insider trading are as follows

1. Parties That Include Insiders. UUPM with the interpretation of providing the meaning of Insiders are parties that are included in or can be classified as follows:
 - a. Commissioners, Management and/or Corporate Employees
 - b. Major shareholder of the Issuer or Public Company
 - c. Individuals who have a relationship with the issuer
 - d. Parties as former insiders (insiders).

There are exceptions for these parties, namely the Examiner, the Board of Directors, the Issuer's Officer or the Issuer's Major Shareholder, who are no longer internal in the sense of letters a, b, c above, but for a maximum of 6 (six) months. This means that if a director or trustee of an issuer or public company resigns or resigns, for example on January 1, 2000 together with June 30, 2000, then that person is still considered an insider and after July 1, 2000 no longer an insider (UU, 2005).

2. Inside Information

Insider Information is material information, including material facts held by insiders that have not been published, while important information or facts are material and relevant information or facts relating to events, facts or events that can affect the market price of securities and/or decisions. investors/ potential investors or other parties with an interest in such information or important facts.

Another definition is anything that happens in the company (social issues) that has not been made public where the leaders of the companies involved already know the information, for example if the company is about to acquire, or report earnings that the latest information differs significantly from previously disclosed information. The information is not corrected to be the basis for consideration in terms of making trades (Friedman, 1987).

Types of important information or facts that must be announced immediately before the end of the second working day to the public and submitted to Bapepam. X.K.I. regarding Disclosure of Information that Must Be Announced to the Public

Immediately, mentioning events, information, or material facts that are expected to influence the price of securities or investment decisions, including:

- a) Merger of companies, purchase of shares, merger of companies or establishment of joint ventures;
- b) Stock split or distribution of stock dividends;
- c) Income from special dividends;
- d) Win or lose important contracts;
- e) Significant new products or inventions;
- f) Changes in control or significant changes in management;
- g) Notification of Settlement or Payment of Debt;
- h) Sell additional titles to the public or in limited physical quantities;
- i) Buy or lose on liquidation of material assets
- j) Social conflict is relatively high;
- k) Further proceedings against the company and or its directors and guardians;
- l) Submit an offer to buy securities from other companies;
- m) Replacing the accountant who audits the company;
- n) Change the trustee;
- o) Changes in company operations.

The types of information above are some information as examples, besides that there are many other types of documentary information such as fires, explosions, lost card games or the like and the like, all in the form of material. information or facts must be immediately disclosed to the public so that there is no injustice to capital market participants, because information is a commodity.

3. Trading (Transaction View)

Another condition after the presence of an insider (insider), having inside information (important information that has not been announced to the public), then the third condition is a transaction event (transaction). Transactions are purchases and sales made by insiders or parties who receive information from insiders about securities from the Issuer concerned. If the transaction did not occur or is in progress, then the requirements have not been met to qualify as insider trading.

The Capital Market Law, in Article 95 of the Capital Market Law, Article 96 and Article 97, which regulates capital market crimes (but in this case Bapepam can make an exception, see Article 99) clearly stipulates that outside transactions are prohibited. In terms of insider trading, it can only be said to be perfect if there are parties who are classified as insiders whose key information is still kept secret, insiders are trading these securities, it can only be considered that insider trading has occurred so that on the basis of these circumstances they can carry out investigations related to criminal acts. specified in Article 95 of the Capital Market Law. The indicators for the occurrence of insider trading (Nefi, 2005).

1. *Return or Negative Return*

The goal of insider trading is to get a high profit (extraordinary profit) more than usual. The unusual performance strongly suggests it was caused by insider trading. In order to investigate higher returns, performance can be used as an insider trading indicator.

2. *Volatilitas Return*

As previously mentioned, in trading activity, the occurrence of insider trading is characterized by volatility, namely the tendency of prices to change unexpectedly. There are two types of volatility, namely fundamental volatility and transient volatility. Fundamental volatility is caused by unexpected changes in the value of an instrument, and transient volatility caused by trading activity. Caused by an unknown merchant.

3. Transaction Value

The value of stock transactions will be very different, if insider trading is suspected, there will be a very large transaction value or a very strong decline in a certain period of time because hardware information that is not disclosed is open to the public, but is used by insiders. Therefore, the transaction value is important to be used as an indicator of suspicious insider trading.

4. Exchange Member Domination

The dominance of exchange members can be used as an indication of the emergence of insider trading, because it will see the patterns or habits of exchange members in transacting. While insiders have the ability to record or distribute their

trading messages to multiple exchange members, this is evident in the behavior of translation exchange members, who trade in normal transactions.

RESEARCH METHODOLOGY

This research uses normative juridical law research methods by reviewing, testing and reviewing the discussion of related traditional knowledge. To obtain the data in this study, the author uses several types of approaches, such as the Statute approach, Islamic law and the comparative approach. This study uses library research by obtaining secondary data in the form of literature books, journals, research results, articles and laws and regulations related to the object of research (Marzuki, 2005).

DISCUSSION

Insider trading Islamic Law Perspective

The main source of law in the civil law system is statutory regulations, but there are other sources of law such as customs, jurisprudence, and doctrine. In contrast to the common law system, where legal issues are resolved on a case by case basis, the results are reflected in the judge's judgment (jurisprudence), and the main source of law is jurisprudence (jurisprudence). The civil law system is more interpretive because lawyers in continental European countries are accustomed to referring to statutory provisions that still require interpretation, such as grammatical, historical, original interpretation, and judicial construction (Anwar, 2001).

Starting with the differences between the two legal systems of common law and continental law, we will consider adapting the two systems from a legal perspective and creating a format for solving the crime of insider trading. Due to the legal theory surrounding insider trading, the legal aspects of the capital market are often the center of attention and are often the subject of interesting debate. The legal theory related to the practice of insider trading is the legal theory that forms the basis for regulating aspects related to insider trading (Anwar, 2001).

Insider trading is known to be prosecuted as a criminal charge, as regulated in the Capital Market Law No. 8 of 1995, in addition to civil claims related to dignity or rationality. However, in many countries, completion of this process tends to lead to

institutional compensation or fines. It is recognized that such actions, the result of insider trading, will have a tremendous impact on both investors and the development of the capital market as a whole, but only when necessary. Compensation alone is not enough. The deterrent effect on perpetrators of criminal acts creates criminal sanctions as mentioned above, for example in Law Number 8 of 1995 concerning the Capital Market and Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Trading Transactions.

Civil or criminal sanctions in legal investigations of the crime of insider trading are needed to cover and hinder the punishment received. Capital Market Supervision System Case studies of violations of capital market laws, particularly insider trading, reveal the extent and complexity of capital market violations. This needs to be considered in developing Indonesian law. In the context of criminal prosecution and the concept of the formation of national law, the law does not seem to be interpreted in a limited way, but as if it is only fixed on written law. In addition, the Indonesian capital market has been hijacked, according to the Anglo-Saxon legal system, the power of Indonesia. This has been debated for a long time (Anwar, 2001).

Insider trading certainly threatens the life of the Islamic capital market, and allowing insider trading without restrictions is tantamount to suicide in the capital market. But what is the basis for thinking that Insider trading is prohibited, which can even be a criminal act. There are many reasons for that, as follows (Fuady, 1996):

1. Insider trading is harmful to fair and efficient market mechanisms. If insider trading wasn't prohibited, running the market was like driving a car without payment
2. Insider trading also has a negative impact on issuers, Insider trading eliminates investor confidence in the issuer itself, and once investor reputation declines, investors build or grow capital. It will be difficult. Insider trading can even do something to the detriment of the issuer to make prices fluctuate and make it available to issuers.
3. Significant loss to investors: Investors suffer direct losses in the event of an action that is classified as insider trading. Maybe he bought securities at too

low a price. Even investors are said to have been scammed or cheated by insider traders.

There are several securities transactions that are not included in the category of insider trading, based on Vapepam regulation number XI.C.1 for securities transactions that are not prohibited by insiders, namely:

1. Transactions are carried out between persons within the same issuer operating the same information outside the exchange.
2. Transactions are carried out between insiders who have inside information and other parties outside the stock exchange. However, there are the following conditions:
 - a. This insider has made all inside information available to other parties.
 - b. Related parties do not use inside information provided for transactions other than insiders.
 - c. Accompanied by a written statement that the other party will maintain the confidentiality of inside information and will not conduct transactions other than transactions with insiders.
 - d. Other parties will not trade securities from issuers/public companies/issuers or other companies related to listed companies within a period of time after receiving the information. One of the conditions that must be met for Insider trading to take place is the existence of a transaction (transaction). Therefore, if a person has inside information that has not been traded, it is not considered insider trading, but may be considered a breach of disclosure obligation (Fuady, 1996).

Law enforcement is an effort to realize the idea of legal certainty, welfare, and justice (Heriyanto, et al, 2003). Insider trading is a dangerous and detrimental practice for the capital market, Insider trading itself can also be understood as a “conspiracy” that needs to be stopped because it is very dangerous, detrimental and unfair to capital market participants (Fuady, 1996). Law enforcement Insider trading requires a clear legal basis to make it easier for law enforcement agencies to apply the law. To be precise, Articles 95 to 99 of the Capital Market Law contain provisions for

Insider trading. For certain capital market criminal acts, it means that the act can be subject to administrative or criminal sanctions.

The rules for sanctions, including criminal sanctions, are expressly regulated in Article 104 of the Capital Market Law which reads: “Any party who violates the rules as described in Article 90, Article 91, Article 92, Article 93, Article 95, Article 96, Article 97 paragraph (1), and Article 98 is subject to a maximum imprisonment of 10 years and a maximum fine of Rp. 15,000,000,000.00 (fifteen billion rupiah). Eradication of crime in criminal law is part of criminal policy, which is considered the most rational legal remedy (Dewi, et al, 20014). While the background of the prohibition is that such actions can harm (Fuady, 1996).

1. Fair and efficient market mechanism
2. Negative impact on issuers
3. Material loss for investors
4. company security.

In Islam Insider trading is interpreted as *bai'ul al-hadlir li badin*, is a transaction carried out by people from the city when they are about to make transactions with people in the hamlet by visiting them directly, in which there is an element of fraud, by therefore the producers (hamlet people) do not know about this with certainty about the actual price of the commodity.

Things like this, the practice of insider trading is strictly prohibited in Islamic law because it causes a lot of losses, especially from small investors who have very low and weak information coverage. Therefore, this is very dangerous for the viability of the capital market in Indonesia because it can damage the functioning of the market for example; the formation of very unfair market prices and unfair treatment among market participants. So that the practice of insider trading needs to be prohibited and prevented from happening to the detriment of many people. As the National Sharia Council Fatwa No. 40/DSN-MUI/X/2003 concerning “Capital Markets and General Guidelines for the Implementation of Sharia Principles in the Capital Market Sector”. The National Sharia Council stipulates (DSN, 2003):

- a. Transactions must be carried out in accordance with the precautionary principle and there is no speculation or manipulation involving elements of dharar, gharar, usury, maisir, risywah, immorality, and tyranny.
- b. Transactions involving dharar, gharar, usury, maisir, risywah, immoral, and tyrannical money include:
 - 1) Najsy, is an activity that makes false offers;
 - 2) Bai' al-ma'dum, namely sales (short-term sales) of goods that are not owned (short selling);
 - 3) Insider trading, which is using inside information to profit from illicit transactions;
 - 4) Generate misleading information;
 - 5) Margin trading services, namely trading Sharia Securities using interest-based loan facilities to settle the obligation to purchase Sharia Securities; and
 - 6) Ihtikar, consisting of buying or taking Sharia Securities to change the price of Sharia Securities with the aim of influencing other parties.

So that Islamic law equates this insider trading attitude with a bai'u al-hadlir li badin contract, namely transactions carried out by city people when making transactions with village people by visiting them, in which there is an element of fraud, because the producers (village people) do not know for sure the actual price of the commodity (Huda et al, 2010).

The danger of insider trading practices in the capital market in Indonesia, which causes a lot of harm to investors, especially small investors whose reach of capital market information is weak, therefore Islam needs to protect investors in the Indonesian capital market. Regarding the protection of investors in the Capital Market in Indonesia, Islam gives great appreciation and attention, this can be seen by the existence of a Sharia Capital Market which was formed to ensure that the trading activities of the Capital Market are in accordance with Islamic principles. Followed by fatwas issued by the Indonesian Ulema Council (MUI) on trading activities in the capital market to provide legal certainty to investors as well as provisions regarding the existence of a Sharia Supervisory Board (DPS) in the capital market industry.

The existence of the Sharia Supervisory Board (DPS) formed by the DSN-MUI is very important which in principle is to ensure compliance with Sharia principles in activities in the Sharia Capital Market (Manan, 2009). In addition, to further ensure the security and protection of investors who want to invest in the Sharia Capital Market, the DSN-MUI has set criteria that issuers and public companies must meet to become Sharia issuers, including:

1. Type of Business, which does not conflict with Sharia principles, both in the production and distribution of the company.
2. Types of transactions based on prudential principles that do not contain speculative content such as dharar, gharar, maysir, and zhulm.

With these criteria, it may be difficult to commit a crime for Sharia issuers. Where in the event of a violation, such as Insider trading, the product or securities issued by itself are no longer Sharia products or securities. Because in muamalah activities there are three factors that need to be considered starting from the input, process, and utilization of the results which are all halal (Soemitro, 2014). Of the several crimes committed on the exchange, insider trading is the most notorious. This may be because insiders who know the information are considered “geniuses” when trading (because every transaction they make brings huge profits). Viewed from the perspective of Islamic law Insider trading is haram, because it contains falsehood, as in the word of Allah SWT QS. An Nisa: 29

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالِكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ

مِنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

“O you who believe! do not eat each other's property with vanity (not right), except in trade which is carried out on the basis of consensual between you. And don't kill yourself. Indeed, Allah is Most Merciful to you. (Surah An-Nisa 29)

The reasons for the prohibition of insider trading are clear. because it does more harm than good, except for the perpetrator himself. Insider trading should be prohibited and the perpetrators should be subject to criminal penalties for harming many parties. In addition to the law in the Act, there is also Islamic law regarding the criminal act of

Insider trading which is described in the Qur'an and Al-Hadith. QS. Al-Baqarah verse 275

الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ ذَلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَانْتَهَى فَلَهُ مَا سَلَفَ وَأَمْرُهُ إِلَى اللَّهِ وَمَنْ عَادَ فَأُولَئِكَ أَصْحَابُ النَّارِ هُمْ فِيهَا خَالِدُونَ

Those who eat usury cannot stand up except as one who has been possessed by Satan because he is mad. That is because they say that buying and selling is the same as usury. In fact, Allah has permitted buying and selling and forbids usury. Whoever gets a warning from his Lord, then he stops, then what has been obtained before belongs to him and his affairs (up to) to Allah. Whoever repeats it, then they are the inhabitants of Hell, they will abide in it forever (QS. Al-Baqarah 275)

In addition to the Qur'an, the hadith of the Prophet Muhammad SAW has explained the prohibition of the existence of elements of fraud that occur in insider trading

حَدَّثَنَا أَسْوَدُ حَدَّثَنَا أَيُّوبُ بْنُ عُثْبَةَ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ عَطَاءٍ عَنِ ابْنِ عَبَّاسٍ قَالَ نَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ الْغَرَرِ قَالَ أَيُّوبُ وَفَسَّرَ يَحْيَى بَيْعَ الْغَرَرِ قَالَ إِنَّ مِنَ الْغَرَرِ ضَرْبَةَ الْعَائِصِ وَبَيْعِ الْغَرَرِ الْعَبْدُ الْأَبْقُ وَبَيْعِ الْبَعِيرِ الشَّارِدِ وَبَيْعِ الْغَرَرِ مَا فِي بُطُونِ الْأَنْعَامِ وَبَيْعِ الْغَرَرِ تَرَابُ الْمَعَادِنِ وَبَيْعِ الْغَرَرِ مَا فِي ضُرُوعِ الْأَنْعَامِ إِلَّا بِكَيْلٍ

“Has told us Aswad, told us Ayyub bin 'Utbah from Yahya bin Abu Kathir from 'Atho' from Ibn Abbas, he said, 'The Messenger of Allah -peace and prayer of Allah be upon him- forbade the buying and selling of gharar.' Ayyub said, that Yahya interprets selling. buying gharar, he said, 'Among the forms (selling and buying) of gharar is (selling something) which is permissible by diving first, selling runaway slaves, selling stray camels, (selling and buying) gharar is a fetus that is still in the stomach of an animal, (buying and selling) gharar is buying and selling of mining products that are still buried, (selling and buying) gharar is milk that is still in the udder of an animal, except by measuring. (HR. Ahmad Number 2616)

The prohibition on insider trading, as stated above, is basically so that information coming out of the company can reach everyone (investors) evenly first so

that no one party benefits, keeping in mind that information on the stock exchange is an important commodity that make people decide whether or not to invest. Thus, no one will benefit, especially if the person concerned has access to company management (Balfas, 1998).

Guidance and supervision by OJK on insider trading practices in the capital market in Indonesia is very much needed considering that investment is one of the most important factors in building a country's economy. For that we need an institution that oversees and advances the activities of the Indonesian capital market. The Financial Services Authority as an independent body established by the Government to regulate, monitor, promote and protect the entire financial services sector, both traditional and sharia. Therefore, to ensure that the capital market is included in the supervision and support of OJK, OJK always conducts supervision in the form of financial reporting, changes in shareholders and reports from investors who experience losses in the capital market. As a guide, OJK always conducts training and outreach to issuers and investors to prevent crime in the Indonesian capital market, including insider trading.

In addition, in the Sharia Capital Market, monitoring and guidance is also carried out by the OJK, but the OJK has collaborated with the DSNMUI to ensure that the Sharia Capital Market applies Sharia principles. Supervision in the form of application of fatwas and issuance of sharia compliance decisions in the sharia financial services sector. In promoting OJK and DSN-MUI, we also provide education to investors, socialization, business production and distribution, and transaction protection based on the precautionary principle to ensure that everything is halal (Darmawan, 2018).

Insider trading is a crime in the capital market in Indonesia as described in UUPM no. 08 of 1995. The prohibition on insider trading in the Capital Market Law is due to the fact that it benefits certain investors and causes a lot of harm to other investors by providing information by insiders or, more specifically, leaking material information about a public company to one or only certain investors. In addition, the greater consequence of insider trading crime in the capital market is that it will create an unfair market, the emergence of illicit profits, and an untrustable market that is detrimental to the Indonesian capital market. In line with that, Islam also prohibits the

practice of insider trading. This is because insider trading violates Sharia principles, namely the principles of al-is (fairness) and ash-shiddiq (honesty) and contains speculative, manipulative and tyrannical elements in it (Aziz, 2010).

CONCLUSION

The development of the capital market can not be separated from the accompaniment of parties who have wanted greater profits so as to encourage the parties concerned to commit violations and crimes in the capital market. In Indonesia, violations and crimes in the capital market have been regulated and explained in detail in Law Number 08 of 1995 concerning the Capital Market. In the Indonesian capital market, insider trading practices are often found, both suspected and proven to have been carried out by insider trading, and often occurs in capital market instruments in the form of shares. Stocks are one of the investment instruments that often convert between the returns promised to investors in the form of dividends and capital gains.

In addition to the law in the Act, there is also Islamic law regarding the crime of insider trading, which is explained in the Qur'an and Al-Hadith. In the Qur'an it is found in Al-Baqarah verse 275 and Surah An-Nisa' verse 29, while in Al-Hadith it is in HR. Ahmad Number 2616 with the book From the Musnad of Bani Hasyim found in the Chapter "Beginning of Musnad Abdullah bin Abbas". Apart from the Qur'an and Al-Hadith, there is also the Fatwa of the National Sharia Council Number 40/DSN-MUI/X/2003 concerning "Capital Markets and General Guidelines for the Implementation of Sharia Principles in the Capital Market Sector".

The rules for sanctions, including criminal sanctions, are expressly regulated in Article 104 of the Capital Market Law which reads: "Any party who violates the rules as described in Article 90, Article 91, Article 92, Article 93, Article 95, Article 96, Article 97 paragraph (1), and Article 98 is subject to a maximum imprisonment of 10 years and a maximum fine of Rp. 15,000,000,000.00 (fifteen billion rupiah). Eradication of crime in criminal law is part of criminal policy, which is considered the most rational legal remedy

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