



LEGAL ASPECTS MISUSE OF ISSUER MATERIAL INFORMATION BY NOTARIES FOR PERSONAL INTEREST

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ABSTRACT

Notaries are one of the professions that are very close to crime in the capital market, because notaries have an important role for issuers so that notaries have inside information. Notaries are very vulnerable to inside trading crimes. This research uses normative legal research methods and empirical legal research. Therefore, the data used include primary data and secondary data. Data were collected using library research and field research using interview methods. Furthermore, the data were analyzed using qualitative data analysis methods. Notaries can be held accountable if the notary is proven to have misused material information, where the examination is carried out by the OJK as the party that oversees the capital market. Responsibilities that can be requested by a notary include criminal liability, namely a 10-year prison sentence and a fine of 15 billion rupiah and civil which can be prosecuted under Article 1365 of unlawful acts, besides that there are also administrative responsibilities and code of ethics responsibilities.

Keywords: *Notary, Abuse, Material Information*

1. INTRODUCTION

One of the most harmful crimes is insider trading. Insider trading is where company insiders conduct securities transactions using important information that affects the price of these securities and the information has not been announced to the public or investors.¹The practice of insider trading is a practice that violates the principle of openness in the capital market. In addition, this practice is also an unfair stock trading practice because the inside trader's position is better in ownership of informal advantages compared to other investors.

Insiders include Corporate Insiders. Technically, Corporate Insiders can be divided into two types, namely: first, traditional insiders: those who are in a fiduciary position (a party who is obliged to carry out fiduciary obligations within the company) within the issuer or public company. Included in traditional insiders are commissioners, directors, employees, major shareholders of issuers or public companies. Second, Temporary Insiders or quasi insiders are parties outside the company who have a relationship of trust and confidence with the company or have a short-term relationship that results in their fiduciary duty to the company. Therefore, this relationship allows outsiders to obtain inside information. Included in temporary insiders are legal consultants, notaries.² The role of a notary in the capital market sector is needed especially in relation to the preparation of the Articles of Association or Bylaws (AD/ART) of parties or capital market players such as issuers, public companies, securities companies as well as important contracts such as Collective Investment Contracts (KIK), contracts underwriting or important deeds such as the Deed of Dissolution and Liquidation of Mutual Funds.³

¹Unial Laily Mutiari, Muhammad Syahri Ramadhan, Irsan, "Insider Trading in the Perspective of Capital Market Law in Indonesia", Juridical Journal Vol. 5 No. 2, December 2018, p. 3

²DR. Bismar Nasution, "Insider Trading", <https://bismarnasution.com/insider-trading/>, accessed on October 1, 2021

³Tan Thong Kie, All Things Notary Practice, Book I Cet. 2, (Jakarta: PT. Ichtar Baru, Jakarta, 2001), p. 30

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The relationship between the notary and the issuer is that the notary has responsibility for all agreements made by the issuer with all parties related to going public. Thus, issuers are also very dependent on the presence of this notary when they are going to issue⁴

Notary is one of the professions that is very close to crime in the capital market, that's because Notaries have an important role for issuers engaged in the capital market so that Notaries have Inside Information. So that notaries are very vulnerable to inside trading crimes. This makes the Notary must uphold the Notary code of ethics as intended in the Notary Position Act⁵. This limits the Notary not to misuse the information he has obtained, such as selling and buying information or threatening to leak the information to the public which is done solely to fulfill personal interests.

The main issues that will be discussed in this paper include the following:

1. What is the role of a Notary in activities in the capital market?
2. What are the duties and obligations of a Notary in relation to material information from issuers that is known or owned by a Notary?
3. What is the responsibility of a Notary who misuses material information from issuers?

In accordance with the formulation of the problem above, the objectives of this study are:

1. To describe and analyze the role of a Notary in capital market activities
2. To describe and analyze the duties and obligations of the Notary to the Issuer Material Information that has been known by the Notary
3. to describe and analyze the responsibilities of notaries who have misused material information

2. RESEARCH METHODS

This study uses a normative juridical approach or doctrinal legal research to obtain answers to the legal problems under study, namely the Legal Aspects of Misuse of Issuer Material Information by Notaries for Personal Interest. law related to the emergence of problems that will occur if a notary commits a violation in carrying out his profession, especially in the Capital Market, for example misusing an issuer's material information only for personal interests

- a. Primary law is a legal material that is authoritative, meaning it has authority. Primary legal materials consist of legislation, official records or minutes in the making of legislation and judges' decisions.⁶
- b. Secondary legal materials, namely legal materials that are not classified as primary legal materials⁷Secondary legal materials are closely related and provide explanations of existing primary legal materials and can assist in the analysis process such as books written by legal experts, legal journals, scientific papers, magazine and newspaper articles, articles, internet sources, and other sources relevant to the problem
- c. Tertiary legal materials, materials that provide instructions or explanations for primary and secondary materials, namely dictionaries, encyclopedias, indexes of legal magazines, and others.

The technique of collecting legal materials in this study uses documentation studies by carrying out library research, by collecting and conducting studies and analysis of legal materials relevant to the research discussion.

The data analysis stage is the final stage of all research activities, in this stage all data will be analyzed carefully by making interpretations that are guided by concepts, principles, legal rules

⁴Ibid, p. 72

⁵Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary

⁶Peter Mahmud Marzuki, Legal Research, Revised Edition, (Jakarta: Prenadamedia Group, 2005), Pg. 180

⁷I Made Pasek Diantha, Legal Research Methodology in Legal Theory Justification, (Jakarta: Prenadamedia, 2018), Pg. 145



that are relevant to the purpose of this research.

3. Research Results and Discussion

3.1. Role of the Capital Market Notary

One of the capital market supporting professions is a notary. The function of a notary in the capital market is related to the documents required by issuers, either in the context of an IPO or GMS, when a company is registered in the capital market. Most of the required documents such as agreements at the time of the IPO or the Minutes of the General Meeting of Shareholders at the time of the GMS are all made in the form of a notarial deed. Before making a deed, the notary must collect data and information. A new deed can be made by a notary if the required data and information are complete.⁸

In carrying out its functions, a notary must be able to act as a neutral party or an intermediary. The notary must be able to provide an explanation of the actions (in this case the actions in the capital market) carried out by the issuer based on the data and information obtained.⁹

The authority of a Notary as a Capital Market Supporting Profession in a Public Offering is related to the UUJN, namely making authentic deeds of agreements required in connection with the Public Offering such as securities underwriting agreements, amendments to securities underwriting agreements, printed procurement agreements, share administration agreements, trusteeship agreement, preliminary agreement. Notaries act as minutes in the meeting preparatory to the Public Offering. Notary makes a deed of the General Meeting of Shareholders which approves the wish to conduct a Public Offering. Notaries also make a deed of amendments to the Articles of Association.

3.2. Duties and Obligations of a Notary to Material Information

Material information itself is confidential, because material information is an object that is highly respected in the capital market. Material information can affect the ups and downs of a stock so that the capital market supporting professions must comply with the code of ethics that has been set in their profession. The main obligation of every capital market supporting profession, including a notary, is to keep all material information confidential. This relates to the provisions of Article 4 and Article 16 paragraph (1) letter f of the Law on Notary Positions¹⁰, requires the notary to maintain the confidentiality of everything regarding the deed he made and all information obtained for making the deed in accordance with the oath of office unless the law provides otherwise.

In addition, the notary also participates in examining the files of issuers who will do the listing. And also. The notary is also authorized to examine the issuer's deed of establishment and ratification of the issuer's deed of establishment at the Ministry of Law and Human Rights and the notary also examines the capital and shares owned by the issuer, then the notary also checks the approval in the GMS to conduct an initial public offering.¹¹, all of which can be categorized as material information. So that the notary is required to conduct a thorough examination and provide suggestions for companies dealing with the initial offering.

3.3. Liability of a Notary who misuses Material Information

If in the investigation conducted by the OJK, a notary is proven to have committed or helped certain parties to commit insider trading crimes. So, for every Notary who is proven to have committed or been involved in the practice of insider trading, the Notary has violated the Capital Market Law, UUJN, and the Notary Code of Ethics at once. Therefore, the Notary must be

⁸Nindya Nursanto, Roles and Responsibilities of Notaries as Capital Market Supporting Professionals for Companies Conducting Initial Public Offering (IPO) Shares, (Depok, Notary Masters Program, Faculty of Law, University of Indonesia, 2005), p. 52.

⁹Ibid p. 54

¹⁰Indonesian Law, Number 2 of 2014, concerning the Position of Notary, Article 4, and Article 16

¹¹Yahya Harahap, Limited Liability Company Law, Cet 3 (Jakarta: Sinar Graphic, 2011), page 67

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responsible for his actions to the OJK as the capital market supervisory agency, the supervisory board and the notary honorary board as the notary supervisory agency.¹²

The threat of the most severe sanctions that can be received by a Notary if proven to have committed an insider trading act is a criminal sanction in the form of a maximum imprisonment of 10 (ten) years and a maximum fine of Rp. 15,000,000,000 (fifteen billion rupiah), in accordance with Article 104 of the Capital Market Law.¹³ And also, dismissal with respect or disrespect by the Minister of Law and Human Rights of the Republic of Indonesia in accordance with Article 12 of Law No. 2 of 2014 concerning the Position of a Notary¹⁴,

However, in practice, notaries who carry out insider trading will only be subject to fines, the fines as stipulated in the Capital Market Law, which can reach 15 billion rupiah. However, the fine can be higher if the party who feels that the notary has been harmed makes a PMH lawsuit, namely Article 1365 BW. Because in the capital market itself, the prison sentence as regulated in the Capital Market Law does not really have a deterrent effect on the notary.

4. CONCLUSIONS AND RECOMMENDATIONS

4.1. Conclusion

1. Capital market notaries play a role in preparing the Articles of Association of capital market players, such as issuers, public companies, securities companies, and mutual funds, as well as making important contracts such as mutual fund contracts, underwriting and trusteeship contracts. After the company is listed on the capital market
2. The task of the notary with the known material information is to put all the information in the form of a deed such as a deed of consolidation of shares, business combinations, etc. S
3. A Notary Notary can be held accountable if the Notary is proven to have misused material information, where the examination is carried out by OJK as the party that oversees the capital market. Accountability that can be requested by a notary includes criminal and civil liability, besides that there are also administrative responsibilities and code of ethics responsibilities. Criminal liability is given and determined by the Capital Market Law because the notary is proven to have committed a capital market crime

4.2. Suggestion

1. It is suggested to the government to be able to formulate and issue more detailed regulations regarding the role of a notary in the capital market. In addition, it is suggested to the OJK as a capital market supervisory agency to pay more attention to every part of the capital market, especially notaries.
2. It is recommended that in the future the notary, if the notary, in every activity in the capital market to continue to uphold the code of ethics of the notary and really keep the secret, especially material information. In order for the notary to avoid actions that are prohibited by law, especially insider trading.
3. It is recommended that in the future law enforcers put more emphasis on sanctions, and firmness and supervision are needed on the sanctions imposed, so that they are truly binding and obeyed by notaries who violate, there is also a need for a procedural law against violations of the Notary Code of Ethics that can provide protection and certainty of the public interest

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¹²Tavinayati and Yulia Qamariyanti. Op. Cit., page 78

¹³Indonesian Law, No. 8 of 1995, Concerning the Capital Market, Article 104

¹⁴Indonesian Law, No. 2 of 2014, Regarding the Position of a Notary, Article 12



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