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Criminal sanctions for insider trading: Comparison with Singapore

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Abstract

Insider trading is one of the crimes in the capital market that causes a lot of material loss to the victim. Such a large loss has caused fears of investors to trade on the capital market in Indonesia. For this reason, the government is trying to prevent insider trading, the government has made a Capital Market Law, but this is not enough. For this reason, policies need to be made relating to criminal sanctions for perpetrators insider trading in the future. The research method used is the normative legal research method. With a conceptual approach, comparison and Law. The legal issues that will be examined are the legal and philosophical foundations of criminal sanctions for perpetrators insider trading and criminal law policies relating to criminal sanctions for perpetrators insider trading in the future? The result is a legal basis for criminal sanctions for perpetrators insider trading is to provide a deterrent effect to the perpetrators so that it does not happen again and protect the public from insider trading. Policies relating to criminal sanctions for perpetrators insider trading are the use of schikking in resolving insider trading and by using non-litigation methods.

Keywords: criminal sanctions; insider trading; comparison.

Abstrak

Insider trading adalah salah satu kejahatan dibidang pasar Modal yang menimbulkan banyak kerugian materiil korban. Kerugian yang demikian besar menyebabkan adanya ketakutan dari investor untuk bertransaksi di pasar modal di Indonesia. Untuk itu pemerintah berupaya mencegah insider trading tersebut pemerintah membuat Undang Undang Pasar Modal, akan tetapi hal tersebut belum cukup. Untuk itu perlu dibuat kebijakan berkaitan dengan sanksi pidana bagi pelaku insider trading di masa yang akan datang. Metode penelitian yang digunakan adalah metode penelitian hukum yuridis normatif. Dengan pendekatan konsep, perbandingan dan Undang Undang. Adapun isu hukum yang diakan dikaji adalah landasan yuridis dan filosofis sanksi pidana bagi pelaku insider trading dan kebijakan hukum pidana yang berkaitan dengan sanksi pidana bagi pelaku insider trading di masa yang akan datang? Hasilnya landasan yuridis sanksi pidana bagi pelaku insider trading adalah untuk memberikan efek jera kepada pelaku agar tidak terjadi lagi dan melindungi masyarakat dari insider trading. Kebijakan berkaitan dengan sanksi pidana bagi pelaku insider trading adalah adanya penggunaan schikking dalam menyelesaikan insider trading maupun dengan menggunakan metode non litigasi.

Kata Kunci: sanksi pidana; insider trading; perbandingan.

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Introduction

The development of the capital market in Indonesia has a fairly large trading value, reaching 1,124.12 trillion until August 25, 2017. The volume of share transactions in 2016 was 1,925.42 billion shares and until August 25, 2017, the transaction amounted to 1,889.63 billion shares. JCI in 2016 amounted to 1,846,228 Trillion and until August 25, 2017 amounted to 1,126,352 Trillion. Such a large trading volume has a positive impact (Henry, 200,301) and negative (Gottchalk, 2010, 7). The positive impact is the velocity of money

(Mc.Gee, 2008: 206) which is so large it will produce huge profits for capital market players. The existence of foreign investment and domestic investment has an influence on regional economic growth. This is why this causes investment, especially from foreign investors (Sodik & Nuryani, 2005: 168). If investors invest capital through investments through the capital market, there will be confidence in the authority of the capital market in Indonesia by the international world, thereby driving development in all fields.

The negative impact is the existence of new crime practices in the capital market, including insider trading, fraud, manipulation of the market in various forms, the existence of fraud, falsification of documents or asymmetrical information (Ataullah, Davidson, Le, Wood, 2014: 232). Case insider trading large stocks, traders also have a strategy in trading shares. (Meulbroek and Hart, 1997).

Gil Bazier (1996: 81) gives opinion about insider trading, In context of Insider Dealing, what an 'insider' will try to do is to buy or sell (or suggest that others buy or sell) securities when he is in possession of information which may alter their price, but will do so before such information has been made public and has therefore had a change to have any such effect. Such information will usually relate in particular to the company in question. Insider trading indicators according to Indra Safitri (1998: 229) usually known when the perpetrator has sold the shares he bought, using inside information. He further explained that a significant number of shares was the trigger for investigators in the alleged violation. Insider trading generally occurs in the sale of very large shares in a certain period and the price will increase very rapidly, this allows capital market players to get an unfair advantage.

This unreasonable profit value can be influenced by the information obtained from insiders, so investors buy or sell shares. If it is associated with insider trading elements consisting of securities trading, it is carried out by insiders, the inside information is inside, and the inside information has not been opened by the public. Stock trading is motivated by inside information, the purpose of which is to get an unfair advantage, so it is clear that insider information that has not been published can be the object of investor transactions. Whereas what becomes the object of capital market transactions is actually securities or shares, but then inside information can support the accuracy in making decisions of a company in conducting transactions on the stock market.

The insider trading crime committed by the perpetrators is a negative impact of a large amount of funds that revolve in the capital market, so that arises the desire of the perpetrators to take profits as big as possible in a way that is not good from the capital market activities. One way to look for profits is to provide important information from companies that have not been published later will affect the trading of shares in the company through insiders Information that comes from these people for investors is always sought in order to increase company profits (Fishman and Hargetty, 1992; Mane, 2005; Seyhun, 1986). This kind of information needs to be prevented so that no greater loss occurs. This is considering that insider trading is an unethical act, insider trading perpetrators will receive legal or social sanctions (Kaplan, Smuels, and Thorne B, 2009:

384-400) and cause large losses (Mc.Gee, 2010: 65) including in Singapore and in Indonesia. For this reason, efforts are needed to prevent insider trading crime in Indonesia. Efforts to prevent losses due to insider trading made Law No. 8 of 1995 concerning the Capital Market. Based on the Capital Market Law which regulates prohibited acts along with criminal threats for those insider trading offenders in the form of imprisonment and fines. However, the threat of fines and imprisonment is not enough to overcome insider trading on the capital market. For this reason, it is necessary to establish a criminal law policy that regulates criminal sanctions for insider trading.

Research Problems

Based on the description above, the problem to be discussed is how the legal, historical and philosophical basis of criminal sanctions for *insider trading*. The *second* problem, how is the criminal comparison against *insider trading* perpetrators in Indonesia and Singapore as well as the upcoming criminal law policy related to criminal sanctions of *insider trading* perpetrators.

Research Methods

Legal research in English is called legal research or normative juridical research. Legal research is conducted to find solutions to legal issues that arise, namely to provide a prescription of what should be the proposed legal issues. The approach in this study uses the statute approach and the comparative approach and conceptual approach.

Discussion

Juridical foundation of criminal sanctions for *insider trading*

Criminal arrangements in general in the Criminal Code consisting of basic crimes regulated under Article 10 to 1 which reads: basic crimes consist of capital punishment, imprisonment, fines, and imprisonment. Based on the principle of *lex specialis derogat legi generalis* (special provisions that rule out more general provisions), specifically the criminal will be regulated based on the respective laws. Likewise, criminal arrangements for insider trading in the Capital Market Law.

The regulation of insider trading in Law Number 8 of 1995 concerning Capital Markets in Article 95, Article 96, Article 97. In Article 95 states that: Insiders from issuers or public companies that have inside information are prohibited from buying or selling securities:

- a. Issuer or Public company; or
- b. Other companies conducting transactions with the issuers or public companies concerned.

Article 95 of the Capital Market Law contains the scope of insider trading, namely issuers, public companies, major shareholders, management or employees, public accountants, legal consultants, and parties who have work relations. Article 96 states that the insider referred to in Article 95 banned:

- a. Influence other parties to buy or sell the said Securities; or
- b. Give insider information to any Person who deserves to be able to use the information to make a purchase of securities

Article 96 contains a prohibition against insiders to influence or provide inside information to other parties where it is reasonably suspected that information can be used to purchase securities. According to Indra, this prohibition is aimed at the possibilities that occur, wherein information and perpetrators of insider trading are carried out by others, usually are the closest people, both work relations and family relationships (Indra, 234).

Article 97 states that:

- (1) Any person who tries to obtain insider and insider information illegally and then obtains it is subject to the same prohibition as the prohibition that applies to insiders as in Article 95 and Article 96.
- (2) Any party who seeks to obtain inside information and then obtains it without violating the law is not due to a prohibition that applies to insiders as referred to in Article 95 and Article 96, as long as such information is provided by the issuer or public company without restrictions.

The substance of Article 97 of the Capital Market Law poses a threat to people who obtain information by violating the law. Whereas what is meant by breaking the law is that the information can be obtained by stealing because the information is read and taken without the knowledge or permission of the owner of the information. This information is excluded people who get information to the public, for example, if a stock analyst who conducts research on the issuer's shares is allowed. However, Juha shows that people in the company show that they have insider trading motivation (Kalluiki, Nilson, Hell, 2009: 37-53). Therefore, another article is then regulated which relates to the inside information contained in Article 98. Article 98 contains:

- a. Securities companies that have inside information about an issuer or public company are prohibited from conducting securities transactions of the issuer or public company, except if:
- b. The transaction is carried out not at his own expense, but at the behest of the customer;
- c. The securities company does not provide recommendations to its customers regarding the relevant securities.

Regulations on insider trading in Law Number 8 of 1995 concerning Capital Markets in Article 95, Article 96, Article 97, Article 98. Arrangements relating to the criminal prosecution of insider trading actors are regulated in Article 104 of the Capital Market Law. Based on Article 104, it states that: every party that violates the provisions as referred to in Article 90, Article 91, Article 92, Article 93, Article 94, Article 95, Article 96, Article 97 paragraph (1) and Article 98 is threatened with a maximum sentence of 10 years. (ten) and a maximum fine of Rp. 15,000,000,000 (fifteen billion rupiah). The regulation of criminal

sanctions for insider trading is formulated cumulatively between imprisonment sanctions and fines. Penalty sanctions in the form of a maximum of 10 years.

Other regulations relating to the capital market include:

1. Government Regulation Number 45 of 1995 concerning Capital Market Activities
2. Government Regulation Number 46 of 1995 concerning Capital Market Examination and Investigation
3. Rule XI.C.1, Bapepam Chairman's Decree number 58/PM/1998 concerning Insider Prohibited Securities Transactions
4. Regulation X.K1. Bapepam Decree Number 86/PM/1996 concerning Information Openness which must be announced to the public immediately
5. OJK Regulation Number 22/POJK.01/2015 concerning Procedures for Criminal Investigations in the Service Sector.

From the description of the case above, insider trading arrangements in Indonesia since the enactment of Law Number 8 of 1995 concerning the Capital Market. Based on the rules of the Capital Market Law, there is a new term of crime, namely insider trading which had never existed in other laws.

Then the question arises what about shareholders, can they be insider trading? Shareholders including major shareholders based on Law Number 40 of 2007 concerning Limited Liability Companies Article 3 paragraph (1) states that the company's shareholders are not personally responsible for the agreements made on behalf of the Company and are not responsible for the company's losses exceeding the shares owned. This shows that shareholders are only responsible for the number of shares held. Shareholders are not responsible for the company's name. However, shareholders are aware of important events and information whether they have been published or not yet published. So that shareholders can be the perpetrators of the dissemination of important information to certain parties. This information can be used in stock trading.

Likewise with people who because of their position, profession or because of their business relationship with the company, it is possible to obtain inside information. People who because of their profession are associated with companies include: public accountants, notaries, legal consultants, appraisers. Public accountants, notaries, legal consultants and assessors know important information in companies that have not been published or that have been published. This important information can be used in stock trading. Important information if you are in the wrong person, especially in professions such as public accountants, notaries, legal consultants and appraisers, insider trading can occur.

The parties as mentioned above include point: a) (including commissioners, directors, company employees); b) (major publicly traded shareholders); and c) (public accountants, notaries, legal consultants, appraisers) who are no longer parties before passing 6 months. This means that the parties remain parties before 6 months. And the parties must maintain important information whether it has been published or not yet

published to others. However, after the 6th month these parties are no longer parties. So the information they have is no longer important information.

According to Asril Sitompul (2007: 16), based on the culprit insider trading is divided into four namely,

- a. Primary insider, consisting of; Directors, commissioners, senior officials who have access to information that has not been published.
- b. Secondary insider, consisting of consultants who are actively involved in company activities, representatives, advocates and other "outsiders" who have access to inside information.
- c. Tipper, included in this group are "insiders" who have information and then give it to outsiders to trade securities of the company.
- d. Tippee, who belongs to this group, is an outsider who gets information from the company's "insiders" and uses it to trade company shares.

The cornerstone of the philosophy of criminal sanctions for insider trading

Criminal sanctions are actually reactive to an act. So the focus of criminal sanctions is directed at one's wrongdoing through the imposition of suffering (so that the person concerned becomes a deterrent), then the focus of action is directed at giving relief so that he changes (Ahmad, 2013: 90-91). When examining criminal sanctions from a philosophical perspective, there are three things that need to be outlined, namely: ontological, epistemological and axiological.

Rizal Mustansyir (2008: 20) said that, in legal science ontology, it means that the presence of legal science in the scientific area. It means that what becomes legal reality, so that its presence is really something substantial. It is further related to the epistemological aspects which are ways, systems, methods or theories related to legal science, so that the truth can be justified scientifically. Whereas axiological means the benefits and uses contained in the law.

Basically, all philosophies of regulations in Indonesia must be in accordance with the philosophy of the Indonesian state, Pancasila, which strongly demands a balance between the harmony between individuals, society and the state. Likewise with the regulation of criminal sanctions related to insider trading in Indonesia which must be based on the perspective of Pancasila. Ruben Ahmad (2013, 98-99) said that criminal sanctions (based on criminal sanctions) based on the principles of Pancasila included:

“First, based on the supreme precepts of the Almighty, in which punishment must function in mentally cultivating the person being convicted and transforming the person into a religious person. Second, the recognition of the dignity of human dignity and dignity as God's creation. Criminalization must not violate its most basic human rights and must not demean its dignity for any reason. The implication is that even if the convict is in prison, the elements and nature of his humanitarianism should not be ruled out in order to free the person concerned from his evil thoughts, traits, habits, and behavior. Third, foster national solidarity with others as citizens of the nation. Perpetrators must be directed at efforts to increase tolerance with others, foster sensitivity

to the interests of the nation, and direct not to repeat the crime. In other words, that criminal punishment needs to be directed to instill a sense of love for the Fourth nation, foster maturity as a citizen who is dedicated, able to control, and respect and obey the law as an expression of people's decisions. Fifth, raise awareness of the obligations of each individual as a social creature that upholds justice together with others as fellow citizens. In this connection, it is also important to remember that the government and the people must share in the responsibility of freeing the convicted from self entanglement, discipline, and social cruelty that surrounds them as criminals convicted as a social creature that still has rights and obligations. The aspect of liability is that the convicted person must undergo a period of misery that does not diminish and demean his human dignity.”

Criminal sanctions for insider trading perpetrators must also be based on the principles of Pancasila as the philosophy of the Indonesian people. Thus, in essence (ontological aspects) of criminal sanctions for perpetrators of crime is the deterrence of the perpetrators so that it does not happen again. Criminal sanctions emphasize the element of retaliation (raiding) and is suffering that is deliberately inflicted on an offender. (Ahmad, 2013: 90) Criminal sanctions based on criminal law are not only providing retaliation to perpetrators of crime, but criminal sanctions against these perpetrators also aim at other communities not following the behavior of committing the crime.

The epistemological aspects of criminal sanctions can be broken down based on the theory of criminal goal theory which is divided into 3 namely retaliation theory, goal theory, and combined/mixed theories. In the theory of retaliation based on the opinion of Vos argues that the theory of retaliation consists of objective retaliation and subjective retaliation (Hamzah, 2005: 31). Subjective retaliation is retaliation against the wrongdoer. Objective retaliation is retaliation for what has been created by actors in the outside world. Hegel argues that crime is a balance between objective retribution and subjective retaliation in a crime.

According to J. Adenaes, the main purpose of crime according to absolute theory is to satisfy the demands of justice (to satisfy claims of justice) (Marlina, 2011: 45-46). In this regard, Immanuel Kant's thought in the "philosophy of law" which states that the criminal never carried out solely to promote other goals/good for the perpetrators themselves or society, but in all cases must be charged only because the person concerned has committed a crime (Muladi, 1998: 11). While Immanuel Kant said that the crime in the theory of retaliation is a demand for decency in society. Therefore the theory of retaliation states that crime does not aim for the practical, such as correcting criminals according to Andi Hamzah. In this retaliation theory in imposing a criminal act, it is no longer necessary to discuss the benefits to be obtained by the perpetrators after being convicted of a crime. A criminal offender who commits a crime results in a criminal sentence. Muladi said that, in the theory of absolute punishment or retaliation, it was stated that the crime was imposed solely because people committed a crime or a crime (*quia peccatum est*).

The theory of retaliation or absolute generally outlines that the crime was imposed to avenge the perpetrators of crimes who have denied public order, violated decency, or

avoided vigilantism so that perpetrators need to be sanctioned. Van Bamelem states that this retaliatory theory legitimizes punishment as a means of retaliation for a crime committed by someone (Bemelem, 1997: 25). So that the nature of punishment according to absolute theory or retaliation is criminal is retaliation for the perpetrators of crime.

The second theory is the theory of relative or objective theory wherein, this criminal law seeks the basis of criminal law in carrying out public order and its consequences, namely for the prevention of crime. Some experts who included contributing to the theory of relative or objective theory include, among others, van Hamel, Nigel Walker, von Feurbach, Muller. Muller in his theory states that the consequences of criminal prevention do not lie in criminal execution or in criminal threats, but in determining the criminal by judges in a concrete manner.

According to van Hamel the purpose of a special intervention is to prevent the bad intentions of the perpetrators (dader) aimed at preventing the offender from repeating his actions or preventing the offender from carrying out the planned evil deeds. Von Hamel points out that the specific prevention of a crime is:

1. The criminal must contain a frightening element in order to prevent criminals who have the opportunity to not carry out their bad intentions
2. The criminal must have an element of correcting the convicted person
3. Criminals have the element of destroying criminals that cannot be fixed (Hamzah, 2004: 36)

Nigel Walker said that the basis for justifying this theory of purpose was to reduce the frequency of crime. The flow adopted by Nigel Walker is called the reductive theory and its adherents are called reducers. The concept of utilitarian theory relating to punishment can be described as follows, namely that crime is not merely to retaliate or reward people committing a crime, but it has certain useful objectives. The criminal purpose in utilitarian theory is prevention. This means that criminalization for criminals is an attempt by people not to commit a crime or people not to repeat a crime so that the number of crimes in the community is reduced. Thus the security and welfare of the community can be achieved.

The third theory is a mixed theory or *verenigings theorieen* which in its development is divided into 3 (three) theories, namely: a theory that tends to retaliation, a theory that focuses on community defense and a theory that tends to the theory of purpose. The experts discussing the combined theory include Pellgrino Rossi, Pompe, Grotius, Thomas Aquino, Vos.

The first combined theory which emphasizes retaliation includes *vereginings theorien* or a joint theory stating that retaliation as the principle of criminal and the severity of the criminal must not go beyond a just retaliation, but it is stated that the criminal has various influences including repairing something that is damaged in society and prevention general. Basically the combined theory of Rossi is a combination of the theory of retaliation and goal theory. This combined theory has two objectives, namely giving a criminal response to the perpetrator with a measure that is in accordance with his

mistake in order to have the effect of improving behavior for the offender. Thus this combined theory takes the positives from both theories, namely the theory of retaliation and the theory of purpose. This theory not only wants retaliation but seeks to improve the behavior of the perpetrators of crime by improving behavior. Rossi's opinion as stated by van Bemmelen which states that the criminal aims to avenge mistakes and secure the community (Hamzah, 2004: 36). Whereas in the second combined theory which focuses on the defense of public order, Thomas Aquino is one of them. Whereas the third combined theory states that looking at the same is retaliation and defense against public order. Based on the theory of criminal purpose theory described above, it can be concluded epistemologically that the existence of criminal sanctions for insider trading perpetrators aims to provide deterrence to the perpetrators. So that insider trading perpetrators who commit crimes will rethink remembering the witnesses who were given sanctions to be deterrent.

The axiological aspect is a branch of philosophy that studies the benefits or uses of a science. The most well-known theory of utility is the utilitarian theory of Jeremy Bentham. The theory of utilitarianism was born as a reaction to the metaphysical and abstract features of legal and political philosophy in the 18th century. This flow is a flow that puts it as a legal goal. Benefit here is defined as happiness. So whether it's good or bad, whether or not a law depends on whether the law gives happiness to humans or not.

The principle put forward by Bentham is "The Greatest Happiness for the Greatest Number" which states that happiness is enjoyed by as many individuals as possible. Furthermore, Teriputra (2011: 61) is mentioned as a legal objective that is merely to provide happiness or happiness to as many citizens as possible.

The benefit or use of criminal sanctions for insider trading is to provide protection for victims and the public. This means that the existence of criminal sanctions for insider trading perpetrators will directly protect the victim from the perpetrators' actions and also protect the public from the existence of crime that creates insecurity in it. Therefore, the prevention of crimes committed by the state in the form of criminal sanctions in the Act aims to protect the public and provide a sense of security. Thus if security is achieved in the community, prosperity in the community will also be achieved.

Criminal sanctions against Singapore *insider trading* perpetrators

Insider trading in Singapore is regulated in the 2001 Securities Future Bill (SFB) amended by the Securities Futures Act 2017. Based on the Securities Future Act (SFA) regarding the actions of insider trading using the term inside information, regulated in Article 218 and Article 219 of the Securities Futures Bill in 2001. Article 218 regulators about acts that are prohibited by people who have a relationship that has information from people in connection with the company or company material facts. Article 218 included in this article is a person connected to the company having information about the company that is not publicly available but has a material effect on the price or value of the company's securities. People who are in contact may not sell and buy shares, people who are in contact

may not directly or indirectly communicate information to others, if violating paragraphs 2 and 3 connected people can be prosecuted: anyone including the person connected. Pursuant to Article 218 paragraph (6) which is a connected party or an affiliated party is:

- a. Directors, secretaries and employees
- b. Recipients, company managers
- c. Law consultant
- d. Company liquidator
- e. Trustee

Article 219 regulates acts that are prohibited by others who have inside information. The substance of this article is the same as Article 218, only the difference is that Article 218 is connected or parties that are affiliated and have important and not yet announced information about the company while in Article 219 it contains about other people or not affiliated people and has important and not announced information about the company.

The categorization of these two articles that distinguishes is people who have important information about the company while the same object is important information about the company while the same object is important information and has not been announced. So that the rules relating to criminal sanctions against offenders who violate Article 218 and Article 219 Security Futures Bill are the same.

Criminal insider trading sanctions in Singapore are regulated in Article 221 Securities Futures Bill 2001 which states:

- (1) A person who contravenes section 218 or 219, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 7 years or to both.
- (2) No proceedings shall be instituted against a person for an offence in respect of a contravention of section 218 or 219 after : (a) a court has made an order against him for the payment of a civil penalty under section 232; or (b) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 232(5).

Article 221 of the SFB states that the criminal threat for insider trading perpetrators under articles 218 and 219 is a fine of not more than 250,000 Singapore dollars and a prison sentence of not more than 7 years, or both of them in paragraph (1). Paragraph (2) states that there is no process for persons or perpetrators of violations of Article 218 and Article 219 of the SFA after the court makes an order against the perpetrators who pay civil penalties based on Article 232 of the SFA or the person has been bound in an agreement with the authorities to pay civil penalties without acknowledgment of responsibility.

Cases that occur in Singapore, where insider trading cases are based on applicable laws the Securities and Future Act (SFA) specifically regulates insider trading which states that, if people doing insider trading are subject to fines of not more than 250,000 Singapore dollars and imprisonment no more than 7 years (Article 221 (1)). Based on paragraph (2) the article states that if the perpetrator faces a court and pleads guilty he will be subject to a civil penalty or civil penalty in accordance with Article 232. The case of Vincent Rajiv

Louis who carried out insider trading on PT Danamon's shares. Rajiv had previously learned of information about the acquisition of PT Danamon and DBS Bank Limited (DBS), so Rajiv bought a large amount of Danamon shares which would later be resold after Danamon was acquired by DBS. Rajiv made a profit of 173,965 Singapore dollars and his insider trading. This violates Article 282 (2) Vincent Rajiv must pay a fine of 434,912 Singapore dollars.

Payment of civil fines in Singapore as a consequence of the application of the concept of "jail or bill" that was coined by Packer. Packer said the concept of jail or bill was stated if the perpetrator admitted his actions, then the perpetrators were subjected to large fines without imprisonment and vice versa if the perpetrators did not acknowledge his actions then the perpetrators would be threatened with fines and imprisonment. Actors who do not acknowledge the bandage must be proven in court, thus the perpetrator must convince the judge that he did not commit the act. The advantage for the perpetrators who choose this process is the possibility of being free from prosecutors' demands.

The civil penalty or civil penalty in Singapore is seen as more effective and efficient, especially in resolving economic crime cases, one of which is fraud in the capital market. This is because it is in accordance with the characteristics of economic crime that must be resolved quickly so that no greater loss occurs. The large losses will later have an impact on state losses that can be suppressed by the settlement of civil penalties imposed by Singapore.

Criminal comparison of insider trading perpetrators in Indonesia and Singapore.

Capital Market Law which regulates the actions of insider trading, especially in Article 95, Article 96 and Article 97. Penalty for insider trading criminal sanctions regulated in Article 104 are criminal penajra and criminal fines. Emphasizing the existence of imprisonment sanctions for perpetrators as an effort to deter perpetrators. Hegel stated that crime was a logical necessity and a consequence of crime. Included in insider trading, imprisonment and fines are deterrents so as not to repeat in the future.

However, imprisonment does not always correspond to economic crimes including insider trading. Prison sentences for perpetrators of economic crimes including insider trading are not appropriate because of the characteristics of economic crimes that are always a great loss for the victims. Besides that, imprisonment sanctions for perpetrators of crimes (including insider trading) which are part of economic crimes are considered to have weaknesses for a variety of reasons, the first being imprisonment sanctions for insider trading principals, in particular, will not be deterred (Arief, 2010: 111-112) Second, it requires a long process in court so that it is feared to affect capital market activities in general. Third, sanctions imprisonment require quite expensive fees. Furthermore, according to Endah (2008: 98), it states that, in economic terms, there is no denying that the implementation of imprisonment if calculated from the costs that must be incurred (social cost) is so large, with imprisonment an actor (convicted) must finance and must be

provided with building facility facilities that place they are in the institution. And often cause state financial problems.

While criminal fines are the principal crimes that have developed lately. Criminal fines are seen as more economical when compared with corporal imprisonment. Criminal fines will be very appropriate to apply criminal acts in the economic field including in insider trading. Named insider trading actors include companies or corporations and people (individuals).

When compared with the rules relating to insider trading in Singapore it is very different. If the criminal act related to insider trading is generally the same, where there is an element of inside information in the insider trading. In the SFA (Securities Future Act) Article 221 which regulates the threat of insider trading in Singapore in the form of a prison sentence of no more than 7 years and a fine of no more than 250,000 Singapore dollars. Criminal sanctions for the above actors if the perpetrators do not recognize the violations committed and are considered against the state. If an insider trading offender admits to having committed an insider trading offense, based on the provisions of Article 221 paragraph 2 it is stated that the court made an order against the perpetrator who paid a civil penalty under Article 232 SFA (5) or the person has been bound in an agreement with the authority to pay a civil fine without recognition liability.

There are criminal differences in the rules of insider trading in Indonesia and in Singapore due to a different legal system. The legal system adopted by Indonesia is civil law and the legal system adopted by Singapore is common law. The civil law system has the characteristics of: how to achieve the ideals of national law in mainland Europe through the formation of legal codification, whereas in the United Kingdom (Common law System) the goal of achieving national law is through the formation of customs. Romli explained that in Britain legal unification was carried out and resolved by Bench and Bar in court, whereas in European Continental countries, the court was unable to create or form legal unification (Atmasasmita, 2000: 26-28). A further characteristic is the grouping of public and private law. Whereas in common law it is not the case

The civil law system according to Romli, the law is considered as an engine of law reformer, not merely a re-record (Atmasasmita, 2000: 28). Therefore in civil law systems such as in Indonesia, every rule is written in the law. As in insider trading, the criminal threat consists of imprisonment and fines using a mechanism through litigation or court (based on the Capital Market Law). It is different from the criminal threat from insider trading in Singapore who applies a court order to determine fines for perpetrators who admit to having committed violations. This will not happen in Indonesia, because the mechanism only exists in the common law system. In civil law as practiced by Indonesia such a thing is not regulated.

In criminal convictions or convictions in cases of insider trading that occur in Indonesia, the application is different in cases that occur in Singapore. The case of insider trading happening in Indonesia is the State Gas Company (PGN) year. The chronology of the PGN case is as follows: in an internal meeting PGN was informed that the pipeline

installation project on the islands of Java and Sumatra would be completed. If the project is completed, PGN will generate multiple benefits. Therefore, some PGN shareholders who happen to be PGN employees find out about this information and then sell their PGN shares on the stock exchange. The activity of selling PGN shares was very fast so that the stock price rose rapidly. Investors see that there is such activity causing all investors to buy PGN shares. However, the pipe installation project was not completed on time due to many obstacles, so PGN failed to get multiple benefits. This caused PGN's share price on the Jakarta Stock Exchange to drop significantly by 23.36% from Rp. 9650, - per January 11, 2006 to Rp. 7400, - January 12, 2007. The decline was very closely related to the release of PGN's management the day before which stated that there was a decrease in the volume of gas to be distributed, from 150 mmscd to 50 mmscd. There are two material facts in this case, namely: first the delay of this gas project (in the context of commercialization) which was originally to be carried out at the end of 2006 was postponed until March 2007. The second material fact is that information has actually been known by management since September 12, 2006 (declining info gas volume) and December 18, 2006 concerning gas delays.

All information suffered a very large loss due to *insider trading* events that occurred at the PGN. The perpetrators totaling 9 people were finally sent a return of profits from the sale of PGN shares. From this incident, 9 perpetrators were subjected to administrative sanctions in the form of return of profits with a total of Rp. 3,178,000. The details are as follows:

1. Former director of PGN, WMP Simanjuntak was fined Rp. 2,330,000,000 (Rp. 2.33 billion rupiah)
2. Former company secretary, Widyatmo Bapang was fined Rp 25,000,000 (Rp 25 million)
3. Adil Abbas was fined IDR 30,000,000 (IDR 30 million)
4. Nur Subagyo Prijono was fined Rp. 53,000,000 (Rp.53 million)
5. Iwan Heriawan was fined Rp. 76,000,000 (Rp.76 million)
6. Djoko Saputro was fined Rp. 154,000,000 - (Rp. 154 million)
7. Hari Pratoyo was fined Rp. 9,000,000 (9 million IDR)
8. Rosichin was fined Rp. 184,000,000 - (Rp. 184 million)
9. Thohir Nur Ilham was fined Rp. 317,000,000 (Rp. 317 million).

The settlement in this case uses non-litigation method, whereas in the capital market law it is stated that the criminal threat for insider trading perpetrators is a prison sentence of Rp. 15. Billion rupiah at most and a maximum of 10 years imprisonment.

Insider trading perpetrators are not processed using litigation or through courts as stated in the Capital Market Law. Perpetrators in the PGN case were settled by a non-litigation mechanism. Criminal or criminal sentences in this case are fined sanctions by paying fines to all insider trading actors. The amount of the penalty for each actor is determined by the amount of profit obtained from insider trading. Thus insider trading perpetrators in the PGN case no longer need to be subjected to other crimes. The use of

non-litigation mechanism is not regulated in the Capital Market Law, but is a government win win solution solution to resolve the PGN case.

In the case of insider trading that occurred in Singapore is the case of Vincent Rajiv Louis who carried out insider trading on PT Danamon shares. Rajiv had previously learned of information about the acquisition of Bank Danamon and DBS Bank Limited (DBS), so Rajiv bought a large amount of Danamon shares which would be resold after Danamon was acquired by DBS. Rajiv made a profit of \$ 173,965 in his insider trading. This violates article 218, 219 relating to insider trading in the SFA. And was convicted under Article 232 (2) Vincent Rajiv had to pay a fine of \$ 434,912. (mas.gov.sg) Vincent Rajiv conducts insider trading in Indonesia against a company in Singapore, Bank Danamon, so that under Article 213 SFA Rajiv is subject to violations of Article 218 and Article 219, namely trading with inside information. Rajiv then came to the Court and admitted that he had violated insider trading, therefore according to article 221 clause 2 it was stated that the Court could make an order against the perpetrators, namely Rajiv paid a civil penalty. The court determines civil penalties that must be paid by the perpetrators (Rajiv) based on Article 232 (2) which states the amount of the fine with the provisions that:

- a. if not exceeding 3 times the profits or losses suffered
- b. a fine of 50,000 Singapore dollars if the perpetrators are individuals and 100,000 Singapore dollars if the perpetrators are corporations.

In this Rajiv case, the fine was determined based on Article 232 paragraph (2) which did not exceed 3 times the profit. While the profit generated from insider trading was \$ 173,965, and the penalty to be paid by the perpetrator was \$ 434,912. From the case of insider trading in Singapore represented by Rajiv this shows that the rules relating to insider trading are very effective by imposing civil penalties in the form of compensation to the victim in accordance with applicable regulations, so if carefully examined the rules relating to insider trading in Singapore in criminal imprisonment or criminalization prioritizing fines rather than imprisonment, imprisonment will be imposed on insider trading perpetrators if the perpetrators do not recognize the violations of insider trading that have been committed, whereas for insider trading offenders who have admitted to committing insider trading offenses in the form of civil penalty or civil penalties in the form of compensation under Article 221 paragraph 2 SFA.

Criminals in insider trading in Indonesia still use fines and imprisonment in accordance with Law No. 8 of 1995 concerning the Capital Market. In practice, criminal penalties for insider trading using prisons and fines such as Article 104 of the Capital Market Law have not been meted out as such. In general, the case of insider trading in Indonesia, the settlement of insider trading is more prone to a win-win solution so that the penalties imposed are generally in the form of fines or return of profits generated in insider trading by the offender. The use of a win win solution mechanism in the case of insider trading in Indonesia is in the form of an arbitration or mediation mechanism.

Such is the case that distinguishes between crimes against insider trading perpetrators in Singapore and Indonesia. If in Singapore still uses fines and determined by

the court (litigation mechanism) if the perpetrator states a violation, whereas in Indonesia more often uses a non-litigation mechanism.

Table 1. Comparison of rules relating to *insider trading* between Indonesia and Singapore

The substance of the rules	In Indonesia	In Singapore
<i>insider trading</i>	The term used for insider trading is regulated in Article 95, Article 96, Article 97 of Law Number 8 of 1995 concerning the Capital Market	The terms used in <i>insider trading</i> , and inside information are regulated in Articles 218 and 219 of the Securities Future Act of 2006
Forms of criminal sanctions for <i>insider trading</i>	Criminal sanctions in insider trading in the form of principal crimes in the form of imprisonment and fines in accordance with article 104. Article 104 of the Capital Market Law that reads the threat of criminal fines is a maximum fine of Rp. 15 Billion Rupiah and Criminal Prison for a maximum of 10 years Additional crimes in the form of criminal damages provided for in article 111 listed in other provisions.	Criminal sanctions in the form of imprisonment and fines. Article 221 (1) of the Securities Future Act states that violating articles 218 and 219 guilty of committing a crime, then the fine is not more than 250 thousand Singapore dollars or imprisonment of no more than 7 years. (2) There is no process against someone who violates articles 218 and 219 if the perpetrator goes to court and pleads guilty to having committed a violation and the court makes a compensation payment order based on article 232 Securities Futures Bill in 2001. A civil penalty in the form of compensation is determined: a. if it does not exceed 3 times the profits or losses suffered b. a fine of 50,000 Singapore dollars if the culprit is per-person and 100,000 Singapore dollars if the corporate culprit.
Criminal sanctions system	The Capital Market Law does not regulate a system of imposing criminal sanctions. Based on the <i>Asex lex specialis derogat legi generali</i> , the criminal prosecution system is based on KU-HAP Article 101	Criminal imprisonment with the concept of jail or bill.

The criminal law policy deals with criminal sanctions against insider trading perpetrators in the future

Systematic policies made by the government are various kinds of social policies. Social policy is part of legal policy, political policy, economic policy and others that aim to achieve the welfare of the community. Criminal law policy or criminal law policy is an integral part of efforts to protect society (social welfare) in criminal law policy consisting of a penal policy and non-penal policy (Arief, 1996: 2). Criminal law policy or penal policy is divided into three namely criminal law regulations (formulation), criminal law procedures (application), and criminal implementation mechanism (execution) (Arief, 1996: 29).

The policy formulation of sanctions for insider trading actors is required specifically or specifically. The formulation is in the form of new breakthroughs related to the existence of alternative sanctions for insider trading. Perpetrators are not only given prison sanctions, or fines as in the Capital Market Law. But it can be sanctioned in the form of disciplinary action in terms of the Economic Criminal Act. The term in its development was called an additional crime. There are many types of additional sanctions based on the law. As in the Corruption Law there are additional sanctions in the form of payment of replacement money, in the Consumer Protection Act it states that sanctions for payment of compensation. Likewise with the PPATK Law, additional sanctions in the form of seizure are also mentioned in the Economic Criminal Act.

Sanctions Alternative sanctions are placed in this additional criminal act which can then be made in preventing the spread of insider trading crimes, bearing in mind that these crimes are crimes caused by human greed so as to cheat in commerce. When compared with criminal sanctions in Singapore there are options in resolving insider trading crimes. First, if an insider trading offender in Singapore does not recognize or suspect an insider trading offense, then the offender is threatened with a heavier criminal namely a jail sentence and a fine of approximately 250,000 Singapore dollars.

Sanctions such as civil penalties or civil penalties may be adopted in Indonesia as a breakthrough for alternative sanctions for insider trading. This civil fine can be done through a litigation mechanism through the court. Payment of large fines for insider trading players with this system can adopt the system that has been implemented in Singapore. Bearing in mind that the characteristics of insider trading or economic crime generally result in large losses, if threatened with the threat of imprisonment and fines with the existing system as it is now, where the process of examination before the court requires a long time. Therefore it is necessary to implement a system where the perpetrators are given detention in the form of large fines with a faster process. With a note that the insider trading perpetrator admitted that he had committed the crime which caused a great loss. The next process, the perpetrators are not subject to a proof process because the person concerned has admitted to committing a crime. Sanctions given to perpetrators are large penalties in accordance with applicable regulations. The application of this civil fine according to Singapore law can be implemented if there is an order from the court based on the Singapore Capital Market Law, namely Securities and Futures Bill, especially Article 232.

This article also explains the amount of civil fines to be paid by insider trading players based on Article 232 paragraph (2), which is no more than 3 times the profits obtained from inside trading or no more than 3 times the losses he avoids. The application of civil or civil penalties carried out in Singapore is in accordance with the characteristics of economic crimes, especially insider trading. Aside from the process, the criminal fines were carried out quickly, the criminal fines were also carried out by litigation. this has never existed in Indonesia, settlement of cases that caused large losses in a fast way. In Indonesia, the settlement is done quickly if the terms of the criminal sanctions are fast and

the penalties are also light. A fast process of economic crime can be carried out by *schikking*.

Schikking in the Economic Criminal Act is known and can be interpreted in terms of a peaceful fine. *Schikking* is carried out with the permission of the Attorney General to provide criminal relief to the perpetrators in economic crimes by replacing the payment of a sum of money in accordance with what the Attorney General has ordered. The reason for *schikking* is the existence of the principle of opportunity that the attorney general has decided to settle the case with other mechanisms outside the court. The intended public interest is the interest of the state not personal interests or the interests of the community.

Another thing that can be adopted from criminal sanctions against insider trading perpetrators in Singapore is the choice of using the litigation process in a fast way without any evidence after confession. The perpetrators of direct insider trading who admit their actions and mistakes then use will be threatened with sanctions in accordance with Article 232 of the SFA in the form of huge fines without the threat of imprisonment. Cases that have occurred are cases of capital market fraud with Rajiv perpetrators. If the perpetrator chooses not to acknowledge the act, it must be proven in court with a long process and sanctions imprisonment and fines. But if the perpetrators choose this process there is a possibility of being free from all charges if the evidence is proven not to have committed the crime.

In Indonesia such a trial system is similar to a brief examination according to Article 203 of the Criminal Procedure Code. However, this short event has a mild case requirement and mild criminal threat. In this short examination program the maximum fine is Rp. 7500, - and a maximum imprisonment of 3 months. Actually this brief examination can be applied to the settlement of economic crimes because it is in accordance with the character of the economic criminal law which must be resolved quickly in order to reduce the amount of loss. However, in this economic criminal case the losses incurred are very large in number and the threat of speech is also heavy. This has become an obstacle to the rapid resolution of economic crimes.

Therefore economic criminal acts, especially in insider trading, are sometimes settled using non-litigation methods. The non-litigation method intended is to resolve by arbitration or mediation between the two parties, both investors as victims and insider trading actors, as in the PGN case described above. Even though BAPMI or the Indonesian Capital Market Arbitration Board explained that criminal cases occurring on the capital market in Indonesia could not be resolved through arbitration or mediation mechanisms. However, what is happening is not the case, settlement of arbitration and mediation for capital market cases as a form of win win solution or the best solution for both parties.

Conclusion

Based on the description above, it can be concluded that, first, Insider trading has been regulated as a type of criminal offense since the enactment of the Capital Market Law in Indonesia. Based on philosophical foundation, criminal sanctions for insider trading

are. *Second*, Differences in criminal threats for insider trading actors between Singapore and Indonesia, in which Singapore there is a civil penalty mechanism for insider trading perpetrators who admit to committing violations and the court imposes orders for payment of civil penalties based on applicable regulations (Article 232 (2) SFA). In Indonesia there is no known civil penalty mechanism. *Third*, Future criminal law policy relating to insider trading is the need for new breakthroughs in the provision of criminal sanctions in accordance with the characteristics of economic criminal law, especially insider trading.

Suggestion

Suggestions that can be raised from the results of the discussion in this paper is, should the threat of imprisonment for insider trading perpetrators in Indonesia be inappropriate, given the imprisonment of perpetrators of economic crimes especially insider trading is not in accordance with the character of economic crimes. By paying attention to comparisons with applicable laws in Singapore which put forward criminal fines rather than imprisonment against perpetrators of economic crimes especially insider trading more effectively and efficiently.

References

- Blair, Peter H. (2000). Do Stock Market Liberalizations Cause Investment Booms. *Journal of Financial Economics*, 58(1), 301-334.
- Gottchalk, P. (2010). Financial Theory of Crime. *Journal Financial of the Crime*, 17(2), 210-222.
- McGee, Robert W. (2008). Applying Ethics to Insider trading. *Journal of Business Ethics*, 77(2), 205-217. DOI 10.1007/s10551-006-9344-6.
- Sodik, J. & Nuryadin, Didi. (2005). Investasi dan Pertumbuhan Ekonomi Regional (Studi Kasus pada 26 Propinsi di Indonesia, PRA dan Pasca Otonomi. *Economic Journal of Emerging Markets*, 10(2), 157-170.
- Ataullah, A., Davidson, Ian., Le, Hang., and Wood, Geoffrey. (2014). Corporate Diservication, Information Asymetry and Insider trading. *British Journal of Management*. 25(2), 228-251. DOI: 10.1111/j.1467-8551.2012.008846.x.
- Meulbroek, LK. & Hart. (1997). The effect of illegal insider trading on takeover premia. *Review of Finance*, 1(1), 51-80. DOI.10.1023/A:10009755324212.
- Brazier, G. (1996). *Insider Dealing: Law and Regulation*. London: Cavendish Publishing Limited.
- Safitri, I. (1998). *Transparansi Independent Pengawasan Kejahatan Pasar Modal*. Jakarta: Global Book.
- Fishman, M. & Hargetty, K. (1992). Insider trading and The Efficiency of Stock Price. *RAND Journal of Economic*, 23(1), 106-122.;
- Mane, H.G. (2005). Insider trading: Hayek, Virtual Market, and The Dog That Not Bark. *Legal Series, Paper*. 1-26.;

- Seyhun, H.N. (1986). Directors, Costs of Trading and Marketing Efficiency. *Journal of Finance Economic*, 16(2), 189-212.
- Kaplan, Steven., Smuels, Janet A., and Thorne B, Linda. (2009). Ethical Norms of CFO Insider trading. *Journal of Account Public Policy*, 28(5), 384-400.
- Mc.Gee, Robert W. (2010). Analyzing Insider trading from the Perspectives of Utilitarian Ethics and Right Theory. *Journal of Business ethics*, 91(1), 65-82.
- Mustasyir, Rizal. (2008). Landasan Filosofis Mazhab Hukum Progresif Tinjauan Filsafat Ilmu. *Jurnal Filsafat*. 18(1), 15-24.
- Hamzah, Andi. (2004). *Asas Asas Hukum Pidana*. Jakarta: Rineka Cipta.
- Kalluki, Juha Pekka., Nilson, Hnedrik., Hell, B. Jorgen. (2009). "Why do Insider Trade?" Evidence Based on Unieque Data on Swedish Insider. *Journal of Accounting and Economic*, 48(1), 37-53.
- Sitompul, Asril. (2007). *Insider trading, Kejahatan di Pasar Modal*. Jakarta: Books Terrace & Library.
- Ahmad, Ruben. Hakekat Keberadaan Sanksi Pidana dan Pemidanaan dalam Hukum Pidana. *Legalitas*, 5(2), 79-104.
- Marlina. (2011). *Hukum Penintensier*. Bandung: Refika Aditama.
- Muladi & Barda Nawawi Arief. (1998). *Teori Teori dan Kebijakan Pidana*. Bandung: Alumni.
- Bammelem, Van. (1997). *Hukum Pidana I*. Bandung: Bina Cipta.
- Hamzah, Andi. (2004). *Asas Asas Hukum Pidana*. Jakarta: Rineka Cipta.
- Teriputra, Yuli Asmara. (2011). Krisis Terhadap Teori Ulititas. *Majalah Disiplin*, 15(3), 36-42.
- Arief, Barda Nawawi. (2010). *Kebijakan Legislatif dan Penanggulangan Kejahatan dengan Pidana Penjara*. Yogyakarta: Genta Publishing.
- Atmasasmita, Romli. (2000). *Perbandingan Hukum*. Bandung: Mandar Maju.
- Nurhayati, Dwi Endah. (2008). Sistem Pidana Denda Dalam Kebijakan Legislatif di Indonesia. *Tesis*. Semarang: Universitas Diponegoro.
- Arief, Barda Nawawi. (1996). *Bunga Rampai Kebijakan Hukum Pidana*. Bandung: Citra Aditya Bakti.