



Implementation Of The Principle Of Disclosure In Share Trading In Primary Market And Secondary Market

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ABSTRACT

The capital market has an important role in a country. The principle of openness is a core issue in the capital market and is at the same time the soul of the capital market itself. The problems that will be discussed in writing this thesis are about what are the benefits and objectives of implementing the principle of openness in the primary and secondary markets, then discussed about how the regulation of stock trading is carried out in the primary market and secondary market, and finally discussed how the regulation of the principle of openness to share trading carried out in the primary and secondary markets. The research that will be conducted is normative legal research. Normative research based on primary and secondary legal materials, namely the intarization of regulations relating to the writing of the author's thesis. The data collection technique was carried out by means of library research (library research). From the data that has been collected, both primary data and secondary data, then processed and analyzed using qualitative descriptive analysis techniques. The principle of openness plays an important role in the trading process in the primary and secondary markets. Disclosure about material facts is the soul of the capital market based on the existence of the principle of openness that allows for the availability of consideration for investors, so that they can rationally make decisions to buy or sell shares. The legal basis governing this stock trading can be seen in Article 7 paragraph (1), Article 9 paragraph (1) and Article 95 of Law Number 8 of 1995 concerning the Capital Market. These articles regulate the provisions that must be implemented and must not be violated by capital market players in order to create orderly, fair and efficient securities trading. The regulation regarding the principle of openness in trade is regulated in Chapter X (Article 85-89) of Law Number 8 of 1995 concerning the Capital Market. The implementation of the principle of openness in stock trading in the primary market is centered in the delivery of information on share offerings through prospectuses. Meanwhile, openness in the secondary market is very dominant and crucial in determining stock prices.

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1. Introduction

Increased economic growth in a country reflects the development in that country. One of the elements that influence economic growth is seen from how big the development of the business world is in the country. Therefore, it is necessary to have a strategy and effort to intensify management in the business sector. One of the effective means that can influence the development of a country in the business sector is the effectiveness of capital market activities in that country. This is because the capital market provides long-term debt and equity funds. In

a business activity, it must require long-term funds for the continuity of the business. In an effort to increase the capital of a company by withdrawing funds from outside the company, it will pay attention to how much funds are obtained and how long it takes to obtain these funds. In addition, the type of funds withdrawn is no less important to consider. Are the funds withdrawn in the form of loans or own capital. This will be considered by looking at the financial position of a company. If the financial position of a company is in a state where it is impossible to run the company again, then the company will ask for credit from the bank to provide a loan. However, banks will also not be able to always provide credit for such company conditions. So that, the best solution for the company is to increase the amount of its own capital. In these conditions, the role of the capital market is needed to be able to meet the funding needs of a company.

The capital market is a field of business for trading securities such as shares, stock certificates and bonds. In the classical sense, as can be seen in the practice in capitalist countries, securities trading is actually an activity of private companies. The main motive lies in the problem of capital requirements for companies that want to further advance their business by selling their shares to money owners or investors, both groups and business institutions.

The capital market is essentially a network of arrangements that allow long-term claims management, the addition of financial assets (debt funds) at the same time, allowing investors to change and complete investment portfolios (through the secondary market). The ongoing function of the capital market is to efficiently increase and link the flow of long-term funds with "market criteria" which will support real economic growth as a whole.

The capital market has an important role in a country, which basically has the same role between a country and another country. Almost all countries in the world have capital markets that aim to create facilities for industrial needs and all entities in meeting the demand and supply of capital, except in countries with closed economic systems. Therefore, the capital market is not a necessity in a country.

The capital market always requires that there is always full disclosure and the audit results of the accountant's opinion must be of an unqualified opinion, which is unconditional. The underwriter in the process of determining the price and initial offering of the capital market instrument may also have an interest in the opinion of the public accountant. Here it appears that the role of public accountants is always needed starting from the emission plan, the emission process and then the buying and selling process in the secondary market.

The principle of openness is a core issue in the capital market and is at the same time the soul of the capital market itself. Disclosure about material facts is the soul of the capital market based on the existence of the principle of openness that allows for the availability of consideration for investors, so that they can rationally make decisions to buy or sell shares.

2. Method

This research is normative legal research²⁰. Normative legal research is mainly carried out for research on legal norms in the sense of legal science as the science of rules or if law is seen as a rule whose formulation is autonomous without being associated with society.

The writing of this thesis uses qualitative descriptive analysis techniques. The purpose of descriptive analysis technique is to describe information related to the writing of this thesis in a systematic, actual and accurate manner. And the qualitative analysis technique means collecting, sorting, classifying, and making an overview of all the elements in the writing of this thesis, such as the principles of openness, stock trading, primary market and secondary market

which are compiled and described in a systematic and comprehensive manner so that can add insight for writers and readers.

3. Analysis And Results

3.1 Implementation Of The Principle Of Openness In Share Trading In The Primary Market And The Secondary Market

a. Implementation of the Principle of Transparency in Stock Trading in the Primary Market

Problems that arise in the implementation of the principle of openness in stock trading in the primary market are centered in the delivery of information on share offerings through the prospectus, and furthermore is concerned with the legal arrangements regarding the prospectus. Prospectuses are prohibited from containing false information about material facts.

The provisions regarding the prospectus in the UUPM are as follows:

- 1) It is forbidden to include the following: untrue information about material facts, and do not contain true information about material facts.
- 2) Contains all details about material facts that can influence investors' decisions.
- 3) The most important facts and considerations are placed first.
- 4) Be extra careful in using photos, diagrams or tables because they have the potential to be misleading.
- 5) Expressed in clear and communicative language.
- 6) Disclosure of material facts must be emphasized according to the line of business or industrial sector.
- 7) There must be a statement that all capital market supporting institutions and professions mentioned in the prospectus are fully responsible for the data presented in accordance with their functions in accordance with the regulations in force in the territory of the Republic of Indonesia and their respective codes of ethics and standards.
- 8) Each affiliated party is prohibited from providing information or statements regarding data that are not disclosed in the prospectus without written approval from the issuer and the underwriter.

Prospectuses that describe true material facts are very important for investors. According to Edward G. Eisert, that the prospectus aims to provide important information about the company doing the registration. The provision of such information helps investors in making decisions to buy the shares offered.

Legally responsible parties if there are parties who suffer losses as a result of the existence of a misleading prospectus is regulated in Article 81 paragraph (1) of Law Number 8 of 1995 concerning the Capital Market, namely the party who "offers" or "sells" consisting of :

- 1) issuer,
- 2) underwriters,
- 3) Brokers, and
- 4) Investors who want to resell the securities they have bought.

Furthermore, the party responsible for the incorrect registration statement (in which there is also a prospectus), then Article 80 UUPM determine that they should be held accountable either individually or together is :

- 1) Each party who signs the registration statement,
- 2) Directors and commissioners of the issuer at the time the registration statement becomes effective,
- 3) Underwriter of securities, and
- 4) Capital market supporting professions or other parties who provide opinions or

information and with their approval are included in the registration statement.

William H. Beaver said, if the company provides only a small amount of data for investors, it can increase uncertainty in making assessments and also increase the risk to the company's estimated earnings and dividends. In the end the bias lowers stock prices and increases the cost of capital. Beaver added that companies can get incentives if they provide or seek information about the company to potential investors. For example, by going through an audit by a public accountant to convince investors about the standard of information provided by the company. The prospectus fungus is very vital for every investor because the prospectus provides sufficient knowledge and can be used as consideration in making a decision to buy a stock. or the content and timing of the submission of the prospectus to potential investors requires adequate arrangements so that it can be useful as a way to protect investors from fraudulent sales.

Another problem that is also worrying is related to information about issuers' projections. The projection information described by issuers in the prospectus is mostly historical in nature, namely information that tends to contain more data and information about the company's past than revealing the company's projections in the future.

Submission of company projection information cannot be separated from the provisions for submitting projection information that must be included in the prospectus. Decision of the Chairman of Bapepam or Guiding Regulations regarding the Form and Content of Registration Statements for Public Offering⁷⁸ and the Decree of the Chairman of Bapepam and the Guiding Regulations regarding the Form and Content of the Abridged Prospectus in the Context of a Public Offering, which must be submitted in the submission of company projection information in the Registration Statement or prospectus in the public offering process. Even the provisions for submitting projection information do not explicitly stipulate that issuers must submit company projection information.

b. Implementation of the Principle of Transparency in Stock Trading in the secondary market

By paying attention to the phenomenon in the primary market, it can be seen that an efficient market actually exists in the secondary market. Therefore, openness to the secondary market is very dominant and crucial in determining stock prices.

Mandatory disclosure continues as long as the company goes public. The principle of openness is implemented through:

1) Periodic financial reports

Issuers whose registration statements have become effective have the obligation to periodically submit financial reports to Bapepam and announce them to investors.⁸²This financial report consists of an annual report (which means that the issuer will be responsible for the finances of a company within one year to Bapepam and investors) and a semi-annual report (which means that the issuer will be responsible for the finances of a company within six months to Bapepam and investors). With this periodic financial report, Bapepam performs a supervisory function by continuously monitoring the financial health of issuers.

Financial statements must contain predictable accurate information so as to ensure the money moves to those who can use it more effectively. The delay in submitting the report is a violation of the principle of transparency. Such violations are threatened with administrative sanctions in the form of fines based on the provisions of article 63 point e concerning the Implementation of Activities in the Capital Market.

The delay in the completion of the presentation of the financial statements is the dependent variable. In this settlement, the delay in the completion of the presentation of the financial statements is measured by using the time span or the delay in the completion of the presentation of the financial statements. What is meant by delay in the completion of the presentation of financial statements is the interval of the number of days between the date of the financial statement period (in this study using December 31) to the date the audited financial statements are signed by the auditor or the date of issuance of the audit report (date of opinion). In this case, the maximum time according to the regulations in force in 2003 is SK No.Kep 36/PM/2003 with a deadline of 90 days after the balance sheet date. The unit used to measure this variable is in days.

2) Disclosure regarding the existence of new material facts

What is meant by material information or facts is important and relevant information or facts regarding events, occurrences, or facts that may affect the price of Securities on the Stock Exchange and or the decisions of investors, prospective investors, or other parties with an interest in such information or facts. Information that must be submitted to the public is accurate and complete information in accordance with the company's circumstances.

Mergers and acquisitions must be informed to investors because these actions include material facts. The problem that arises here is when a merger or consolidation and acquisition becomes a matter that contains material facts. This needs to be a concern because the capital market regulations in force in Indonesia only state that information on mergers and acquisitions as material facts must be submitted without specifying the right time to convey the information. For example, whether the discussion here regarding the merger is material and at that time it must be conveyed to investors or stock traders.

3) Prohibition of insider trading

Insider trading contrary to the principle of transparency because the person concerned buys or sells shares based on information from "insiders" who are not public in nature. This action is detrimental to the other party who does not receive the same information at the same time, so that he cannot make a decision to buy or sell the shares he holds. In line with the emergence of the capital market, especially the stock market, the term Insider Trading emerged. Insider trading is usually associated with illegal activities in the financial market environment to seek profit which is usually done by utilizing internal information, for example plans or unpublished company decisions. But actually the term Insider Trading is a term for the trading of shares or securities (eg bonds) of a company by people within the company. In some jurisdictions, insider trading is legal and legal.

However, sometimes it is difficult to distinguish whether an insider trading is legal or illegal. Most countries in the world that have capital markets have legal rules regarding insider trading which are categorized as illegal. The United States, United Kingdom and Canada are countries that are known to have very strict laws on insider trading. In Indonesia, there is already Law Number 8 of 1995 concerning the Capital Market which also regulates the sanctions applied to illegal Insider Trading. However, this law is considered by some observers to be unable to accommodate the recent developments in business practices and capital markets.

4) Prohibition of market manipulation

The practice of market manipulation is aimed at distorting the free power of supply and demand in general. Any manipulation uses artificial restrictions on the floating supply stock followed by several factors to stimulate public and stock demand in an artificial form or create a forced appearance of actual trading activity. The first plan of the manipulation practice is to impose an artificial restriction on the stock inventory by acquiring substantial shares in the controlled account. The activity of stimulating the demand for shares is intentional by

controlling the preparation of the shares purchased in line with the stock price that has soared (price manipulation).

c. Misleading statements in primary and secondary markets

In general, many violations of the transparency principle also include misleading statements due to misrepresentation or statements by making omissions of material facts, both in documents and public offering documents as well as in stock trading.

Such statements can create a wrong picture of the issuer's quality, management and economic potential of the issuer. Therefore, the regulations implementing the principle of openness prohibit misrepresentation and omission.

Misrepresentation is a statement that is not true (false statement of fact) about a fact or situation that affects a person to be want to hold agreement. In the process of closing the insurance, the prospective insured must be honest (in the best of intentions) in conveying all information facts regarding the object of insurance which influence height risk. If there is a lie, then the policy will be canceled automatically. The conditions are fulfilled Misrepresentation is statement must be about a fact, made by one party, must be material to the fact, affect the occurrence of the contract, cause loss / loss to the party in the contract.

In the objective offense element, omission is an inactive act or a negative act. In other words, silence or let. Errors can take many mathematical forms. Critical, or in the application of accounting principles. There is a position error or error due to omission / omission, or an error in the interpretation of facts. "Commission" is an error of principle, such as the treatment of income expenditure as a capital expenditure. While "Omission" means that an item is not entered, causing the information to be incorrect.

In Indonesia, the implementation of the principle of transparency in the form of misleading statements can be seen from the indications of double bookkeeping belonging to a subsidiary of PT. Sumarecin Agung conducted by two public accountants. Bapepam sanctioned these public accountants by standardizing their licenses as capital market supporting professions.

Regulations implementing the principle of openness in the Indonesian capital market have contained provisions regarding the prohibition of misleading conduct in the prospectus and in announcements in the mass media related to a public offering. In addition, the provisions prohibiting misleading acts have stipulated sanctions in the form of a maximum imprisonment of ten years and a maximum fine of fifteen billion rupiahs against the organizers for these acts.

However, the regulations for implementing the principle of openness which contain provisions for the prohibition of misleading acts are simple and inadequate. For example, article 78 of the Capital Market Law stipulates that it is not permissible to make statements of material facts that are wrong or do not contain true material facts.

Another prohibition can also be seen in article 93 of the Capital Market Law, which prohibits a person from making a statement or providing materially untrue or misleading information that can be affected by the stock price on the stock exchange, namely if at the time the statement is made a statement is given; first, the party concerned knows or should know that the statement or information is materially incorrect or misleading. Second, the party concerned is not careful enough in determining the material truth of the statement or statement.

The principle of absolute transparency is implemented in the capital market. This is in line with the objective of the principle of openness to maintain investor confidence, to create an efficient market and protect investors. The objective of the principle of openness is hampered, because

the regulations implementing the principle of openness in the Indonesian capital market do not adequately regulate the size of determining material facts. Basically, it is still necessary to develop the concept of material facts in order to clearly provide what is the measure of material facts. Due to the factual limitations of the material used so far, it is not able to provide a significant measure.

The implementation of the transparency principle is also related to the need for detailed regulations regarding misleading acts, especially regarding the elements of misleading statements.

4. Conclusion

The principle of openness plays an important role in the trading process in the primary and secondary markets. The principle of transparency is an obligation for every company that wants to sell its shares. The principle of transparency aims to maintain investor confidence, create an efficient market, prevent irregularities and become a means of protection for investors.

The legal basis governing this stock trading can be seen in Article 7 paragraph (1), Article 9 paragraph (1) and Article 95 of Law Number 8 of 1995 concerning the Capital Market. These articles regulate the provisions that must be implemented and must not be violated by capital market players in order to create orderly, fair and efficient securities trading. The process of selling shares or bonds for the first time in the primary market is referred to as an Initial Public Offering (IPO). An IPO is an activity carried out by a company to obtain funds from the investor community by selling shares or bonds. And then forwarded to the secondary market which is a place where investors can buy and sell shares after the shares are listed on the Exchange.

The principle of transparency in stock trading is an obligation and an important matter in the world of capital markets which is regulated in Chapter X (Article 85-89) of Law Number 8 of 1995 concerning Capital Markets. The implementation of the principle of openness in stock trading in the primary market is centered in the delivery of information on share offerings through prospectuses. By paying attention to the phenomenon in the primary market, it can be seen that an efficient market actually exists in the secondary market. In the disclosure of information on periodic reports, it is obligatory for Issuers or public companies that have received an effective statement from Bapepam to submit periodic reports for the general public to know. This report is useful to see the development of the issuer's financial growth which will directly affect the movement of stock prices in the secondary market. Therefore, openness to the secondary market is very dominant and crucial in determining stock prices. It is hoped that the law will develop the Indonesian capital market in a conducive climate.

References

- Alexander Lay et al, Summary of Capital Market Regulations, [Jakarta: The Indonesia Netherlands National Legal Reform Program (NLRP)], 2010.
- Nasution, Transparency in the Capital Market, Jakarta: Law & Finance Institutional Partnership, 2001.
- Bismar Nasution, Openness in the Capital Market, University of Indonesia, Faculty of Law, Graduate Program, 2001.
- Darmadji and Fakhruddin, Capital Markets in Indonesia, Bandung: Salemba Empat, 2011.
- Edy Ikhsan and Mahmud Siregar, Research Methods and Legal Writing as Teaching Materials, Medan Faculty of Law, University of North Sumatra, 2009.

- Iswi Hariyani, *Smart Book on Capital Market Business Law*, Jakarta: Visimedia, 2010.
- M. Irsan Nasarudin and Indra Surya, *Legal Aspects of the Indonesian Capital Market*, Jakarta: Kencana, 2004.
- Pandji Anoraga, Piji Pakarti, *Introduction to Capital Markets*, Jakarta : PT. Rineka Cipta, 2001.
- PT. Mutual Funds (Persero), *Capital Market Information and Data*, Jakarta : PT. Mutual Funds, 1987.
- Victor Purba, *Capital Market General Dictionary*, Jakarta : UIP, 2000. Yulfasni, *Capital Market Law*, Jakarta : Iblam Publishing Agency, 2005.
- Law Number 8 of 1995 concerning the Capital Market.
- Decree of the Chairman of Bapepam Number Kep-49/PM/1996 concerning Guidelines on the Form and Content of a Public Company Registration Statement.
- Rule Number IX.B. 1 Guidelines regarding the Form and Content of a Public Company Registration Statement.
- Decision of the Chairman of Bapepam Number Kep-51/PM/1996 concerning Guidelines on the Form and Content of Prospectus and Concise Prospectus for Public Offering.
- Rule Number IX.C.3 Guidelines regarding the Form and Content of Abridged Prospectus for Public Offering.
- I Putu Gede Ary Suta, "Information in Public Offerings", paper submitted on "Education and Training for Capital Market Supporting Professionals for Legal Consultants Batch IV", Jakarta 10 July - 22 July 1995, p. 8-9.
- AnneAhira, "Fundamental Analysis", quoted from <http://www.anneahira.com/analysis-fundamental.htm>. Last accessed on 6 May 2013.
- Anti Fraud Banking quoted from <http://coolaleur.wordpress.com/2012/04/05/a-fraud-bandage/>. Last accessed on 6 May 2013.
- Fraud Audit* quoted from <http://bud1ww.blogspot.com/2011/05/audit-cheating.html> last accessed on 23 April 2013.
- Learn to Invest* quoted from <http://www.learninginvestasi.net/saham/cara-doing-business-selling-buying-stocks-in-stock-exchange>. Last accessed on 6 May 2013.
- Bisdan Sigalingging, "Principles of Capital Market Openness", accessed [via www.bisdan-sigalingging.blogspot.com](http://www.bisdan-sigalingging.blogspot.com). Last accessed March 19, 2013.
- Fernando Kasenda, "Primary Market and Secondary Market", quoted from www.fernandokasenda.blogspot.htm. Last accessed on March 19, 2013.
- Law & Insurance* quoted from <http://http://aamai.or.id> last accessed on 23 April 2013.
- Zlrzu, *Principles of Capital Market Activities*, quoted from http://id.shwoong.com/social-sciences/economic/2242523-principles-activities-capital-market/#ixzz2L_vzJGqcx. Last accessed on 23 February 2013.
- Trading Mechanism* quoted from <https://lots.co.id/education/basic/43/TRADING-MECHANISM> which was last accessed on 23 April 2013.
- "Stock Trading Mechanism", quoted from <http://friends.forummotion.com>, last accessed on April 04, 2013.
- "Understanding the Capital Market". Quoted from <http://www.ecommunity.com>. Retrieved 08 March 2012.
-

"Knowing the Types of Stocks and Trading Stocks", quoted from <http://5persen.com/tipe-perdagangan-saham> which was last accessed on April 4, 2013.

Oxlay. "Primary Market and Secondary Market in Trading in the Capital Market". Quoted from [http://id.shvoong.com/social-sciences/economics/2195383-primary-and-secondary market/#ixzz2Mw41NKJZ](http://id.shvoong.com/social-sciences/economics/2195383-primary-and-secondary-market/#ixzz2Mw41NKJZ). Retrieved 08 March 2013.

"The Application of the Principle of Transparency in Go Public Companies" quoted from <http://bagosseto.wordpress.com> on February 22, 2013.

"Understanding Capital Markets" in IMF Papers quoted *from* <http://www.openstorage.gunadarma.ac.id> Last accessed on 08 March 2012.

"Understanding Shares and Types", quoted from <http://yanhasiholan.wordpress.com> which was last accessed on April 4, 2013.

"Role and Function of Capital Market". Quoted from <http://www.magazineeducation.com> Last accessed on February 22, 2013. 2013 on March 8

Renny Widiastuti, "Legal Aspects of Investor Protection in Bank Mandiri Stock Trading Ahead of the Primary Market", quoted from www.5530.htm . Last accessed March 1, 2013.