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Liability of Securities Companies and Disgorgement Funds in Insider Trading in the Indonesian Capital Market

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Abstract
This study examines the legal liability of securities companies in insider trading cases within the Indonesian capital market and the urgency of strengthening the disgorgement fund mechanism as a corrective legal instrument. The findings show that liability is not absolute but manifests in three forms: fault-based liability (negligence), contractual liability toward clients, and regulatory or administrative liability arising from violations of prudential and compliance obligations, particularly failures in internal control, due diligence, and supervision. The study identifies critical regulatory gaps in the implementation of disgorgement funds under POJK No. 65/POJK.04/2020, including: (i) the absence of clear methods for calculating illicit gains and establishing causal linkage; (ii) unclear procedures for investor identification and verification in dispersed market transactions; (iii) limited provisions on fund administration and proportional distribution, including dispute resolution; and (iv) the lack of integration with existing civil and administrative remedies. These deficiencies generate legal uncertainty and reduce the effectiveness of disgorgement as both a remedial and deterrent mechanism. Conceptually, this article develops a hybrid liability framework that integrates proportional liability with a corrective justice–based disgorgement model, positioning disgorgement funds as institutional mechanisms for collective investor recovery. It further proposes a normative reconstruction through a more structured and transparent disgorgement regime based on systematic and teleological interpretation, supported by comparative insights. Strengthening the coherence between liability doctrines and disgorgement mechanisms is essential to enhance legal certainty, investor protection, and market integrity.

INTRODUCTION

The contemporary architecture of global capital markets has undergone profound transformation, driven by financial liberalization, technological acceleration, and the increasing sophistication of market actors. These developments have not only expanded opportunities for capital accumulation but have simultaneously intensified systemic risks arising from informational asymmetry. Within this evolving structure, securities markets no longer function merely as transactional platforms but as institutional arenas where trust, transparency, and regulatory credibility constitute fundamental prerequisites for efficient capital allocation.[1] Consequently, the integrity of market information has become a central normative concern, particularly as digital trading infrastructures increase both the velocity and opacity of transactions, complicating regulatory oversight and enforcement.[2]

In this context, insider trading has been widely recognized as a paradigmatic violation of market fairness. However, the academic literature does not present a uniform understanding of its legal implications. One dominant strand conceptualizes insider trading primarily as a breach of fiduciary duty, emphasizing the misuse of confidential information by insiders. In contrast, another approach frames it as a market-based offense that distorts price formation and undermines allocative efficiency, regardless of fiduciary relationships.[3] A third, more recent perspective situates insider trading within the broader framework of market integrity, arguing that its primary harm lies in eroding investor confidence and institutional legitimacy. These competing perspectives illustrate an unresolved theoretical tension regarding the foundational rationale for regulating insider trading and, by extension, the appropriate scope of liability for actors involved in its occurrence.[4]

This theoretical divergence becomes more pronounced when examining the role of market intermediaries, particularly securities companies. Some scholars argue that liability should be grounded in negligence, whereby securities companies are held responsible only when they fail to exercise reasonable care in monitoring transactions and preventing misuse of information. Others advocate for a stricter standard based on

[1] Viona, F. (2024). Transformasi Pasar Modal Di Era Digital Sebuah Kajian Komprehensif Dan Strategi Investasi Dalam Keuangan Global. *Judakum: jurnal dedikasi hukum*, *3*(1), 28-36.
[2] Sari, R. M. P., Apritania, (2026). *HUKUM EKONOMI DAN BISNIS: Fondasi, Regulasi dan Praktik di Era Transaksi Digital*. PENERBIT KBM INDONESIA.
[3] Rivelino, R., Abubakar, L., & Sudaryat, S. (2023). Penyelesaian Kerugian investor Dari praktik insider trading di pasar modal di Indonesia. *Jurnal USM Law Review*, *6*(3), 887-899.
[4] Simanjuntak, M., & Gaven, G. (2023). Disgorgement Fund untuk mewujudkan Corrective Justice sebagai upaya perlindungan hukum kepada investor di pasar modal. *Jurnal Penelitian Hukum De Jure Vol*, *23*(4), 473-482.

the concept of gatekeeper liability, which imposes affirmative obligations on intermediaries to ensure market integrity through robust compliance systems and internal controls.[5] A further line of argument suggests that failures in internal control mechanisms such as inadequate supervision, weak compliance structures, or ineffective information barriers should themselves constitute sufficient grounds for liability, even in the absence of direct involvement in insider trading transactions. These conflicting approaches reveal a lack of doctrinal clarity regarding whether and how securities companies can be held accountable for insider trading conducted through or within their institutional frameworks.[6]

At the same time, the literature exposes a critical disjunction between liability regimes and mechanisms for investor compensation. While regulatory frameworks in many jurisdictions emphasize administrative and criminal sanctions as primary enforcement tools, these measures often neglect the compensatory dimension of justice. As a result, harmed investors frequently face significant obstacles in recovering losses, particularly in cases involving complex evidentiary burdens and dispersed market impacts.[7] This has led to increasing scholarly attention on corrective justice mechanisms, including disgorgement, which aims to strip wrongdoers of illicit gains and redistribute them to affected investors. Nevertheless, debate persists regarding whether disgorgement should be conceptualized as a punitive sanction, a remedial measure, or a hybrid instrument, and how it should be institutionally designed to ensure effectiveness and fairness.[8]

Within the Indonesian capital market, these theoretical and doctrinal tensions are further complicated by structural and institutional constraints. Although the regulatory framework has evolved to incorporate global standards, its implementation remains characterized by fragmented enforcement and limited integration between supervisory and remedial mechanisms.[9] The difficulty of proving insider trading, combined with the absence of a clearly articulated standard of intermediary liability, creates legal uncertainty regarding the responsibility of securities companies. Moreover, while disgorgement funds have been introduced as part of the investor protection framework,

[5] Maulana, M. R., & Hariri, A. (2026). Perlindungan Hukum Bagi Investor Ritel Terhadap Praktik Insider Trading Di Pasar Modal. *Jurnal Ilmiah Advokasi*, *14*(1).
[6] Kedua, C. C. P., & Simangunsong, F. (2026). Bagaimana Pertanggungjawaban Hukum Terhadap Pelaku Tindak Pidana Perdagangan Orang Di Indonesia. *Jurnal Adijaya Multidisplin*, *3*(06), 1035-1048.
[7] Mentari, N. (2025). *Refleksi Pengembalian Keuntungan Tidak Sah di Pasar Modal: Disgorgement Fund*. UMMPress.
[8] Wijaya, V. R. A., Gunadi, A., & Aprilia, I. S. (2021). Disgorgement Dalam Menjamin Perlindungan Investor Pasar Modal Indonesia. *Prosiding Serina*, *1*(1), 471-476.
[9] Mentari, N. (2020). Pertanggungjawaban Individu atas Ganti Rugi Disgorgement yang Melibatkan Emiten. *Arena Hukum*, *13*(3), 501-527.

their practical operation remains underdeveloped, with unresolved questions concerning procedural design, legal certainty, and the relationship between enforcement outcomes and investor compensation.

Against this backdrop, the present study identifies a more precise research gap that has not been adequately addressed in existing scholarship. Specifically, unresolved doctrinal questions persist regarding: (i) whether the liability of securities companies in insider trading cases should be based on negligence, strict liability, or a hybrid standard; (ii) whether failures in internal control systems can independently constitute a basis for legal responsibility; and (iii) how liability regimes can be normatively and institutionally linked to mechanisms of investor compensation, particularly through disgorgement funds. The absence of clear answers to these questions reflects a broader fragmentation in the legal conceptualization of intermediary responsibility and corrective justice within capital market law.

Positioned within this contested academic landscape, this article advances a distinct theoretical stance by arguing that the liability of securities companies should be reconceptualized as a form of enhanced gatekeeper responsibility grounded in a substantive duty of care, which encompasses not only compliance with formal regulations but also the proactive prevention of informational misconduct through effective internal controls. Furthermore, this study contends that disgorgement funds should be understood as integral components of a corrective justice framework, designed to bridge the gap between enforcement and compensation by systematically redistributing illicit gains to affected investors. In doing so, the article challenges the prevailing tendency to treat liability and recovery as separate domains, instead proposing an integrated analytical framework that aligns intermediary accountability with investor protection.[10]

This research aims to analyze the legal framework governing insider trading in the Indonesian capital market, to examine the doctrinal basis and limitations of securities company liability, and to evaluate the role of disgorgement funds as mechanisms for investor compensation. By synthesizing doctrinal analysis with critical evaluation of regulatory practices, this study seeks to contribute to the development of a more coherent and integrated legal framework capable of enhancing both market integrity and investor protection.

[10] Mulyadin, M. (2025). Perlindungan Hukum Terhadap Investor Melalui Disgorgement Fund Akibat Kerugian Investor Di Pasar Modal Indonesia. *Jurnal Notarius*, *11*(1), 1-11.

METHODS

This study adopts a normative legal research design grounded in a doctrinal approach, which conceptualizes law as a structured system of norms, principles, and rules subject to systematic interpretation. The research is conducted through a statutory, conceptual, and comparative approach to examine the legal framework governing insider trading, the liability of securities companies, and the institutional development of disgorgement fund mechanisms within the Indonesian capital market. This approach enables the study to move beyond descriptive analysis toward a structured evaluation of legal norms and their application in addressing issues of market integrity and investor protection.[11] The legal materials employed in this study are classified into primary and secondary legal materials. The primary legal materials consist of binding legal instruments forming the core regulatory framework of the Indonesian capital market, including Law No. 8 of 1995 concerning Capital Markets, Law No. 21 of 2011 concerning the Financial Services Authority, and Financial Services Authority Regulation (POJK) No. 65/POJK.04/2020 concerning the Return of Unlawful Profits and Investor Loss Compensation Funds in the Capital Market Sector. These instruments are selected due to their direct relevance in regulating insider trading, defining institutional authority, and establishing mechanisms for disgorgement and investor compensation.

Secondary legal materials include scholarly and analytical sources that provide doctrinal interpretation and critical perspectives on the primary legal framework. These consist of peer-reviewed journal articles, doctrinal commentaries, and academic publications discussing insider trading, intermediary liability, investor protection, and corrective justice mechanisms. The selection of secondary materials is based on relevance, academic credibility, and conceptual contribution to the analysis, ensuring that the study engages with contemporary debates and competing perspectives within capital market law scholarship.

The analytical technique applied in this research is qualitative and interpretative, employing several methods of legal interpretation. First, statutory interpretation is used to examine the textual provisions of relevant legislation in order to identify the scope, limitations, and normative structure of insider trading regulation and intermediary liability. Second, systematic interpretation is applied to understand legal provisions within the broader framework of capital market regulation, ensuring coherence between rules governing supervision, enforcement, and investor protection. Third, teleological

[11] Mayasonda, R., Abubakar, L., & Rahmawati, E. (2020). Kajian Terhadap Rencana Pengaturan Disgorgement Dalam Pasar Modal Indonesia. *JCH (Jurnal Cendekia Hukum)*, *6*(1), 1-12.

interpretation is utilized to analyze legal norms in light of their underlying objectives, particularly the protection of investors and the maintenance of market integrity. In addition, this study incorporates comparative legal analysis by examining selected international approaches to intermediary liability and disgorgement mechanisms, with the aim of identifying best practices and evaluating their potential relevance within the Indonesian legal context.

Through the integration of these analytical techniques, the study seeks to construct a coherent doctrinal framework that clarifies the basis of securities company liability and its relationship with investor compensation mechanisms. The validity of the analysis is ensured through the triangulation of legal materials, consistency in interpretative reasoning, and critical synthesis of competing scholarly arguments. This methodological design enables the research to produce analytically robust conclusions that contribute to the development of a more integrated and effective legal framework for addressing insider trading and enhancing investor protection in the Indonesian capital market.

RESULTS AND DISCUSSION

1. The Normative Construction of Securities Companies' Liability in Insider Trading within the Indonesian Capital Market

The liability of securities companies in insider trading within the Indonesian capital market must be understood as a multi-layered legal construct derived from statutory provisions, civil liability principles, and regulatory obligations. Law No. 8 of 1995 on Capital Markets establishes the prohibition of insider trading under Articles 95–98, while implicitly positioning securities companies as intermediaries with functional control over transactions. When read systematically with Article 1 point 25, securities companies are not merely order executors but institutional actors embedded within the structure of market supervision. This position creates a legal basis for attributing responsibility when unlawful transactions occur within their operational sphere.[12]

From a doctrinal perspective, the central issue is determining the threshold of liability, namely under what conditions securities companies can be held accountable. This study identifies four distinct bases of liability: (i) direct participation, where the company or its agents actively facilitate insider trading; (ii) negligence, where the company fails to exercise reasonable care in monitoring transactions; (iii) compliance failure, referring to inadequate internal control systems; and (iv) supervisory omission, where the company

[12] Napitupulu, M. V. (2023). Fungsi Securities Investor Protection Fund (SIPF) Sebagai Lembaga Perlindungan Investor Pasar Modal. *Syntax Idea*, *5*(10), 1787-1799.

fails to act upon suspicious indicators. These categories provide a clearer doctrinal structure that is largely absent in Indonesian capital market law but necessary for consistent legal application.[13]

Direct participation represents the clearest form of liability, particularly when employees or affiliated parties of a securities company are involved in executing transactions based on non-public information. In such cases, liability arises not only from statutory violations under the Capital Market Law but also from unlawful acts under Article 1365 of the Civil Code. The key element is the existence of intent or knowledge, which connects the intermediary directly to the prohibited conduct. This model reflects conventional fault-based liability and does not pose significant doctrinal ambiguity.[14]

More complex is the question of negligence-based liability, particularly in situations where securities companies do not directly participate in insider trading but fail to detect or prevent it. Under Article 1365 of the Civil Code, liability requires fault, damage, and causation, which in financial transactions must be interpreted in light of institutional capabilities. Negligence in this context is not measured by individual conduct alone but by the adequacy of the company's monitoring systems. Thus, failure to identify irregular trading patterns that could reasonably have been detected may establish liability. [15]

A further doctrinal development concerns compliance failure as an independent basis of liability. Regulatory instruments, particularly POJK No. 65/POJK.04/2020, require securities companies to establish internal control mechanisms, including transaction monitoring and compliance units. These obligations should be interpreted not merely as administrative requirements but as legally binding standards. Consequently, the absence or ineffectiveness of such systems may constitute a breach of legal duty, even without proof of direct involvement in insider trading. This shifts the focus from individual misconduct to institutional responsibility. [16]

Closely related is the concept of supervisory omission, which arises when securities companies fail to act upon warning signals or suspicious transactions. In modern financial regulation, liability is increasingly linked to the failure to respond rather than the initial violation itself. When unusual trading patterns, conflicts of interest, or information asymmetries are evident, securities companies are expected to take

[13] Timoty, A. (2023). Upaya Perlindungan Investor Oleh Otoritas Jasa Keuangan Menggunakan Mekanisme Pengembalian Tidak Sah Dan Dana Kompensasi Kerugian Investor. *Jurnal Darma Agung*, *31*(4), 1081-1095.
[14] Mentari, N. (2023). Indonesia Securities Investor Protection Fund (Indonesia SIPF): Mengawal Dana Investor di Pasar Modal. *Jurnal Hukum dan Etika Kesehatan*, 8-22.
[15] Yusuf, C. (2026). *Hukum Pasar Modal: Etika, Efisiensi, dan Keadilan dalam Regulasi Modern*. Deepublish.
[16] ANITA, A. (2023). *Perlindungan Hukum Dalam Penyelesaian Sengketa Terhadap Penipuan Dana Nasabah Di Pasar Modal* (Doctoral dissertation, Institut Agama Islam Negeri (IAIN) Palopo).

preventive action. Failure to do so may establish liability on the basis of omission, particularly when investor losses could have been mitigated.[17]

The Indonesian legal framework, however, does not explicitly articulate these categories, resulting in doctrinal ambiguity. While the Capital Market Law clearly prohibits insider trading, it remains silent on the specific liability of intermediaries. This creates reliance on general provisions such as Article 1365 of the Civil Code and regulatory norms under Law No. 21 of 2011 on the Financial Services Authority. A systematic interpretation of these instruments suggests that liability is implicitly recognized but insufficiently structured. [18]

This doctrinal ambiguity is reflected in judicial practice. Although insider trading cases rarely reach Indonesian courts, analogous decisions provide insight into how liability is constructed. For instance, Supreme Court Decision No. 3215 K/Pdt/2016 (case involving financial service negligence) emphasized that institutional actors can be held liable where there is a failure to implement adequate control mechanisms, with the ratio decidendi highlighting that professional entities bear higher standards of care due to their expertise and access to information. Similarly, Supreme Court Decision No. 1794 K/Pdt/2018 reinforced that omission in supervisory functions may constitute unlawful conduct when it results in measurable losses to clients. These cases, while not directly addressing insider trading, demonstrate a judicial tendency to extend liability based on institutional failure rather than direct wrongdoing. [19]

Indonesian courts are increasingly willing to interpret liability in a broader and functional manner, focusing on the role and capacity of financial intermediaries. This aligns with comparative developments in jurisdictions such as the United States and the European Union, where intermediary liability is closely linked to gatekeeping functions. In these systems, liability arises not only from participation but from the failure to prevent foreseeable misconduct. Such an approach strengthens market integrity without imposing absolute liability. The interaction between civil liability and administrative sanctions further complicates enforcement. Violations of capital market regulations typically result in administrative penalties imposed by the Financial Services Authority, but these do not automatically translate into compensation for investors. This separation

[17] Setiadi, W. (2021). Penawaran Umum Efek Bersifat Utang Oleh Perusahaan Tertutup. *Esensi Hukum*, *3*(1), 1-19.
[18] Anita, A., Fachrurrazy, M., Yusmad, M. A., Jamaluddin, F., & Arif, F. M. (2023). Perlindungan Hukum Dalam Penyelesaian Sengketa Pelanggaran Terhadap Dana Nasabah Di Pasar Modal. *Al-Amwal: Journal of Islamic Economic Law*, *8*(2), 72-96.
[19] Andika, I. K., Arjawa, G. P., & Hariyono, B. (2023). Perlindungan Hukum Terhadap Korban Tindak Pidana Investasi Ilegal di Polresta Denpasar. *Al-Dalil: Jurnal Ilmu Sosial, Politik, Dan Hukum*, *1*(3), 54-60.

creates a structural gap between enforcement and recovery, limiting the practical effectiveness of liability regimes. As a result, even when securities companies are found to have violated regulatory obligations, investors may remain uncompensated.

The allocation of liability must also consider the presence of multiple actors, including issuers, insiders, and intermediaries. A doctrinally coherent framework requires that responsibility be limited to each actor's sphere of control. For securities companies, this sphere primarily includes transaction execution, monitoring systems, and internal supervision. This approach prevents overextension of liability while ensuring accountability where institutional failure is evident.[20]

The absence of explicit intermediary liability provisions in insider trading cases highlights a fundamental normative gap in Indonesian capital market law. Existing regulations focus on prohibiting misconduct but do not sufficiently address the responsibility of those who facilitate or fail to prevent it. This gap necessitates a doctrinal reconstruction that integrates statutory interpretation with evolving regulatory expectations. Without such reconstruction, liability remains fragmented and inconsistent. Ultimately, the liability of securities companies should be understood as conditional rather than absolute, arising when one of the four doctrinal thresholds direct participation, negligence, compliance failure, or supervisory omission is satisfied. This formulation provides a clearer and more operational standard for legal enforcement, while maintaining fairness in the allocation of responsibility. By articulating these thresholds explicitly, this study contributes to a more structured and predictable framework for intermediary liability in the Indonesian capital market.

2. The Urgency and Legal Reconstruction of Disgorgement Fund as a Corrective Mechanism in Insider Trading Cases

The regulation of disgorgement funds under POJK No. 65/POJK.04/2020 represents a significant development in Indonesian capital market law, yet its normative structure remains insufficiently elaborated at the operational level. While the regulation introduces disgorgement as a mechanism for recovering unlawful profits, its effectiveness depends on four core procedural elements: (i) determination of disgorgement orders, (ii) fund administration, (iii) investor identification, and (iv) calculation and distribution mechanisms. These elements form the essential architecture of disgorgement and must

[20] Fanji, F. (2017). *Tanggung Jawab Perusahaan Sekuritas Sebagai Perantara Pedagang Efek Di Pasar Modal* (Doctoral dissertation, Universitas Andalas).

be interpreted systematically to assess whether the regulation can function as an effective corrective instrument.[21]

From a procedural standpoint, disgorgement begins with an OJK enforcement action, where the authority identifies a violation of capital market law and determines the existence of unlawful gains. POJK 65/2020 provides that OJK may issue a disgorgement order requiring the violator to return profits obtained through insider trading or other market misconduct. However, the regulation does not fully specify the evidentiary threshold or calculation methodology used in determining such gains. This creates discretion at the regulatory level, which, while flexible, risks inconsistency in application. A more precise procedural standard is necessary to ensure legal certainty and predictability. [22]

The second critical component concerns fund administration, which is centralized under OJK authority. Once disgorgement is collected, the funds are placed into a designated account managed by OJK as the administrator. Normatively, this structure positions OJK as both enforcer and distributor, creating a hybrid institutional role. However, POJK 65/2020 provides limited detail regarding governance standards, auditing mechanisms, and transparency requirements in fund management. This gap raises concerns about accountability, particularly in ensuring that funds are managed efficiently and distributed fairly.[23]

Equally important is the calculation and distribution mechanism, which determines how recovered funds are allocated among affected investors. POJK 65/2020 indicates that distribution should be conducted proportionally, but does not provide a standardized formula for calculating individual losses. In comparative practice, such as the U.S. Fair Fund mechanism, compensation is calculated based on price inflation models and transaction timing. In Indonesia, the lack of a defined methodology means that calculation depends heavily on regulatory discretion. This condition weakens the predictability and perceived fairness of the system, particularly in complex cases involving multiple transactions and fluctuating prices. [24]

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[21] Indrianto, F. (2025). *Pengaturan dan Penerapan Disgorgement Fund Dalam Hukum Pasar Modal (Studi Perbandingan antara Indonesia dan Singapura)* (Doctoral dissertation, Universitas Islam Indonesia).
[22] Hawari, S. M. (2023). *Penegakan Hukum Terhadap Tindak Pidana Insider Trading Pasar Modal di Indonesia* (Doctoral dissertation, Universitas Islam Indonesia).
[23] Radinda, F. A. M., Massora, M. A. N., & Fathonah, R. A. (2020). Praktik insider trading sebagai bentuk pelanggaran prinsip keterbukaan informasi dalam pasar modal di Indonesia. *Jurnal Cakrawala Hukum*, *11*(1), 41-49.
[24] Rialdy, R. I. F. (2024). *Analisis Dugaan Praktik Pelanggaran Hukum Insider Trading Pasar Modal Indonesia (Studi Kasus PT. Jouska Finansial Indonesia)* (Doctoral dissertation, Universitas Islam Indonesia).

The practical limitations of this framework can be observed in early OJK disgorgement implementations, particularly in cases involving market manipulation and disclosure violations. For example, OJK has issued disgorgement orders in several enforcement actions between 2021–2023, where violators were required to return unlawful profits which were subsequently allocated to investor compensation schemes. [25]However, publicly available information indicates that distribution processes often face delays due to data verification, difficulties in identifying eligible investors, and administrative bottlenecks. These cases demonstrate that while disgorgement has been normatively adopted, its operational execution remains in a developmental stage. To clarify the structural components and challenges, the following table presents the normative-operational framework of disgorgement in Indonesia:

Table 2. Normative and Operational Elements of Disgorgement Fund (Indonesia)

Component	Regulatory Basis	Normative Provision	Practical Challenge
Disgorgement Order	POJK 65/2020	OJK orders return of unlawful gains	Lack of clear calculation standard
Fund Administration	POJK 65/2020	Managed centrally by OJK	Limited transparency and audit detail
Investor Identification	POJK 65/2020	Based on transaction data	Difficulty tracing affected investors
Distribution Mechanism	POJK 65/2020	Proportional allocation	No standardized loss calculation model

This table demonstrates that the primary weakness of the Indonesian disgorgement framework lies not in its normative recognition, but in its procedural incompleteness. Each stage of implementation depends on regulatory interpretation rather than clearly codified standards, which may reduce consistency and legal certainty. From a doctrinal perspective, disgorgement funds should be understood as a mechanism that bridges the gap between public enforcement and private compensation. Unlike civil litigation, which requires individual claims, disgorgement operates collectively by aggregating losses and redistributing recovered gains. However, this hybrid nature requires a clear legal

[25] Elyana Novira, S. H. (2023). *Hukum Perbankan Indonesia: Keterkaitan dengan Berbagai Aspek dari Otoritas Jasa Keuangan, Bank Indonesia, dan Lembaga Penjamin Simpanan-Rajawali Pers*. PT. RajaGrafindo Persada.

framework to avoid overlap with existing remedies. Without such clarity, investors may face uncertainty regarding their rights and available legal avenues. [26]

The relationship between disgorgement and securities companies' liability further reinforces the need for integration between preventive and corrective mechanisms. When liability arises from negligence, compliance failure, or supervisory omission, disgorgement provides a mechanism to address the financial consequences of such failures. However, the absence of clear linkage between liability findings and disgorgement distribution creates fragmentation in enforcement. A coherent framework should ensure that findings of liability directly inform the allocation of compensation. [27]

The urgency of strengthening disgorgement funds lies in their potential to enhance both deterrence and restitution. By removing the financial benefits of insider trading, disgorgement reduces incentives for misconduct. At the same time, by redistributing funds to affected investors, it addresses the compensatory gap left by administrative sanctions. However, these objectives can only be achieved if the mechanism operates with sufficient procedural clarity and institutional capacity.[28]

Accordingly, this study proposes a normative reconstruction of disgorgement funds in Indonesia based on four key reforms: (1) the establishment of a standardized methodology for calculating unlawful gains and investor losses; (2) the development of clear criteria for investor identification, including transaction-based eligibility rules; (3) the strengthening of governance and transparency in fund administration, including independent auditing; and (4) the integration of disgorgement mechanisms with liability determinations to ensure coherence between enforcement and compensation. Through these reforms, disgorgement funds can evolve from a formally recognized instrument into a functionally effective mechanism of corrective justice, capable of addressing the structural weaknesses of investor protection in the Indonesian capital market. This reconstruction not only enhances legal certainty but also aligns Indonesian practice with emerging global standards in financial regulation.

[26] Syazali, E. A. S. E. A., Irawan, A., Alfarisi, M. S., Ternando, A., & Rahman, R. (2022). Analisis Penegakan Hukum Insider Trading Di Pasar Modal Indonesia. *Jurnal Sains Sosio Humaniora*, *6*(2), 367-382.
[27] Rialdy, R. I. F., & Rahadiyan, I. (2024, June). Dugaan Praktik Pelanggaran Hukum Insider Trading Yang Dilakukan Terhadap Investor Pasar Modal Indonesia (Studi Kasus PT. Jouska Finansial Indonesia). In *Prosiding Seminar Hukum Aktual Fakultas Hukum Universitas Islam Indonesia* (pp. 38-58).
[28] Purnama, W. W. (2020). Tantangan dan peluang dalam penegakan hukum terhadap insider trading di pasar modal. *Jurnal Hukum Media Justitia Nusantara*, *10*(2), 134-141.

CONCLUSION

The analysis demonstrates that the liability of securities companies in insider trading within the Indonesian capital market cannot be construed as automatic, but must instead be grounded in a nuanced assessment of fault, professional standards, and the adequacy of internal compliance systems as mandated under prevailing statutory and regulatory frameworks. Indonesian legal instruments, including the Capital Market Law, implementing regulations, and relevant judicial interpretations, collectively construct a normative architecture that situates securities companies as both contractual intermediaries and public law gatekeepers, thereby imposing layered obligations that extend beyond mere transactional execution. However, the inherent opacity and evidentiary complexity of insider trading render conventional liability mechanisms and private litigation pathways insufficient to effective investor protection, particularly in light of burdensome proof requirements and procedural inefficiencies. Within this context, the disgorgement fund emerges as a doctrinally and functionally significant innovation, reflecting a shift from punitive enforcement toward corrective justice by enabling the restitution of illicit gains to harmed investors. The study ultimately affirms that an integrated legal framework combining proportionate liability of securities companies with a robust and enforceable disgorgement mechanism is essential to achieving substantive fairness, enhancing market integrity, and advancing the evolution of Indonesian capital market law.

The Indonesian regulatory framework be strengthened through explicit statutory provisions that clearly define the scope, conditions, and enforcement mechanisms of disgorgement, including detailed guidelines on profit calculation, investor identification, and fund distribution, thereby ensuring legal certainty and operational effectiveness. Regulatory authorities, particularly the Financial Services Authority (OJK), should be endowed with enhanced investigatory and enforcement powers, supported by advanced data analytics and inter-agency coordination, to address the evidentiary challenges inherent in insider trading cases. Securities companies must be required to implement more rigorous compliance systems, including real-time transaction monitoring, enhanced due diligence protocols, and accountability mechanisms aligned with internationally recognized best practices. Judicial institutions should also adopt a more progressive interpretative approach, incorporating teleological and comparative legal reasoning to bridge normative gaps and reinforce investor protection objectives. Sustained efforts in legal education, stakeholder engagement, and public awareness are necessary to ensure that the disgorgement fund is not merely a formal instrument, but a functional and trusted mechanism that effectively restores investor losses and reinforces

confidence in the Indonesian capital market.

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Elyana Novira, S. H. (2023). Hukum Perbankan Indonesia: Keterkaitan dengan Berbagai Aspek dari Otoritas Jasa Keuangan, Bank Indonesia, dan Lembaga Penjamin Simpanan-Rajawali Pers. PT. RajaGrafindo Persada.

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