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## **Insider Trading and Law Enforcement in the Capital Market**

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### **Keywords**

insider trading, sanctions, penalties

### **Abstract**

Illegal stock trading, or insider trading, has become a significant issue in the capital markets, both in Indonesia and the United States. This research aims to compare law enforcement related to insider trading between the two countries. This research uses a normative method with legislative and conceptual approaches. Data was collected through analysis of laws and regulations and case studies related to insider trading practices. The findings show that the regulations in the UUPM in Indonesia still use the fiduciary duty theory, which limits the scope of actions that can be sanctioned. In contrast, in the United States, the application of the fiduciary duty theory and misappropriation theory provides stronger legal protection and stricter sanctions against insider trading offenses. Although both countries have regulations prohibiting insider trading, the enforcement mechanism in the US is more comprehensive than in Indonesia. In the US, there are more legal precedents that clarify limits and sanctions, while in Indonesia, there is still a lack of implementation and understanding of insider trading. Enforcement of insider trading laws in the US is more effective than in Indonesia. The UUPM in Indonesia needs to be revised to integrate the misappropriation theory and strengthen sanctions against insider trading violations, in order to provide better protection to investors.

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## **INTRODUCTION**

Today the important role of the capital market on the economy in a country is as a means to fulfill the need for funds or capital for a company so that it can develop in its business. The capital market is like a market where sellers and buyers meet, but in it the object of buying and selling is funds or capital. The capital market also has the understanding that it is a market with various financial financial instruments with long-term time that can be traded, can be in the form of debt or capital. Financial instruments that can be traded are bonds, stocks, warrants, rights, and various derivative products such as opso (out and call) (Das et al., 2014). The important role and positive side of the capital market in the financial sector is because the capital market can be another new option in the business world for obtaining financing sources, besides that it is also a new breakthrough for the community, especially investors for investment implementation.

The legal basis of the capital market refers to Law No. 8 of 1995 concerning Capital Markets, which in Article 1 of the UUPM contains capital markets closely related to securities. The implementation of capital market activities the reference principle in its implementation is the principle of openness, which in securities transactions is all information related to its business which includes legal aspects, financial aspects, company assets, management aspects to the public (Barth et al., 2017). The principle of openness functions so that potential investors can understand related investment policies and

mandatory disclosure is carried out for companies that hold public offerings which are useful for delivering information to the public regarding their business, production management, finance, as well as other halls that are still closely related to the Company's business. The capital market is also regulated in Law No. 4 of 2023 concerning the development and strengthening of the financial sector.

One example of crime or abuse in the capital market is the crime of Insider Trading (Ahern, 2017). Insider Trading is a practical activity that takes steps related to securities transactions and the use of exclusive data and information that is owned by them (insiders) but is not yet available for investors and the general public. In Indonesia, insider trading that occurs due to the weakness of the law governing insider trading in UUPM article 95 does not classify explain in detail who are employees of public companies / issuers. If what is meant by employees of the issuer is permanent workers, then the law cannot reach non-permanent workers because at the time of the transaction the basic effect is a material fact that has not been disclosed to the public which is obtained by accident, which means it is not obtained directly through insiders.

Insider trading is a practice that has become a major concern around the world, especially in the capital markets (Kim et al., 2016). Insider trading refers to the act of buying or selling securities based on material unpublished information. A study by (Haidar, 2015) shows that in Indonesia, insider trading practices are often difficult to prove due to weak law enforcement and a lack of understanding among investors about their rights and obligations. Meanwhile, (Irawati, n.d.) reveals that existing regulations are often insufficient to protect investors from such fraudulent practices. On the other hand, (Masyitoh, 2021) notes that the legal approach in developed countries, such as the United States, is more stringent and structured, with a more comprehensive application of the fiduciary duty theory and misappropriation theory. This study aims to compare insider trading law enforcement between Indonesia and the United States, focusing on existing regulations and their effectiveness in protecting investors.

Insider Trading crimes do not only occur or exist in Indonesia but also in the United States (Ximeng & Zhiwen, 2023). The difference between Indonesia and the United States is that Indonesia adheres to the fiduciary theory and America adheres to the missappopriation theory so that anyone who conducts securities transactions based on non-public information is classified as a violation of Insider Trading law (James & Joseph, 2015). The laws and regulations that prohibit insider trading in the United States are "*the securities act 1933, the securities act 1934; SEC Rules: Rules like 10b5-1&5-2; The Insider Trading Sanctions Act of 1984; Insider Trading and Securities Fraud Enforcement Act of 1988*"

Prohibition of Insider Trading so that information from the Company (issuer) can reach the general public or the public together and equally (Agrawal & Cooper, 2015). The delivery of information that is evenly and simultaneously so that it is expected to provide anyone, either every / anyone, parties who need information and opportunities that are even and comparable for the use of information for their own interests. It is necessary to submit information owned by the issuer jointly and equally so that it can be ensured that there are no parties who are favored / benefited, related because the party concerned and also the Company or because the parties concerned get it by legal resistance.

In fact, various violations of the law in the capital market, namely Insider Trading in the course of its implementation are difficult to prove, because Insider Trading is in the middle of the need for legal doctrines or decisions of previous judges (jurisprudence) because until now there has been no availability of jurisprudence containing Insider Trading arrangements. From the above background, problems arise related to Insider Trading or

Insider Crimes and Law Enforcement in the Capital Market (Comparison Between Indonesia & the United States) so that researchers want to examine related legislation prohibiting insider trading between Indonesia and the United States and Law enforcement in handling insider trading between Indonesia and the United States.

This research is important because insider trading not only harms investors, but can also destabilize the capital market as a whole. With the increasing complexity of markets and transactions, an in-depth understanding of the regulation and enforcement of insider trading is crucial. This research offers a comparative approach between Indonesia and the United States, which has not been done in the context of insider trading (Fragkos et al., 2021). By comparing the two legal systems, this research is expected to provide new insights in understanding the effectiveness of law enforcement in each country.

The purpose of this study is to analyze the regulations and law enforcement related to insider trading in Indonesia and the United States, as well as to identify factors that affect the effectiveness of law enforcement in both countries. The results of this study are expected to provide recommendations for policy makers and regulators in Indonesia to improve the existing legal framework. In addition, this study can also contribute to the academic literature on insider trading and law enforcement in the capital market.

## **RESEARCH METHOD**

Researchers want to write using the normative juridical method by applying the statutory approach method (statue approach) as well as the conceptual approach. Peter Mahmud Marzuki said that researching with normative methods can use several approaches including (Popa et al., 2015):

1. Legislative Approach

In the statutory approach, namely examining laws with legal issues which occur in people's lives, not only analyzing norms but also looking at the philosophy of why the regulation was formed. And researchers are required to understand the hierarchy of legislation and the principles contained in the laws and regulations.

2. Conceptual approach

The use of this concept approach is when the research does not move away from the applicable legal rules/norms. This approach is implemented with reference to legal principles that exist in the opinions of scholars or legal doctrine.

3. Comparative approach

The approach used is a comparative study of laws, which is an activity to compare the laws of one country and other countries. The comparative approach must explain the points of similarity and difference. Similarities such as laws in the countries being compared may occur, given the similarity of the legal system regulated by the country both in terms of different political and economic developments. Differences in the background become the basis for the law to be not the same, but there are similarities in the doctrines used in each of these laws.

The research was conducted over a six-month period, from January to June 2024, to ensure comprehensive data collection and analysis. The type of data used consisted of primary and secondary data. Primary data was obtained through interviews with legal experts and practitioners in the capital market field, while secondary data was drawn from literature studies, including laws and regulations, scientific journals, and previous research reports relevant to insider trading. Data collection methods included desk studies to gather information from various written sources and interviews to gain a more in-depth perspective on the application of laws and enforcement related to insider trading (Feng et al., 2021). For

data analysis, this study uses qualitative analysis to interpret data from interviews and literature studies to identify patterns, themes, and gaps in insider trading regulation and enforcement. In addition, a comparative approach is used to compare the results of the analysis between regulation and enforcement practices in Indonesia and the United States, so as to draw conclusions about the effectiveness of each system.

## **RESULTS AND DISCUSSION**

### **Laws and regulations prohibiting insider trading between Indonesia & the US**

The meaning of insider trading according to blacks law dictionary is that it means Purchases made by directors, shareholders, or employees / employees who buy shares that are more than 10% (ten percent) of the Company's shares and have been registered on the national exchange. And therefore every transaction must be reported monthly to the SEC (securities exchange commission). The statutory arrangements relating to insider trading in the United States are in practice broader than those in Indonesia.

#### **1. Which laws and regulations prohibit insider trading in Indonesia**

Insider Trading regulation in Indonesia is in Law no 8 of 1995 concerning capital markets (UUPM). In UUPM article 95 Insider Trading is an insider of a public company or issuer which has limited internal information / information to carry out buying and selling securities of a public company or issuer; or other companies / issuers that have carried out a transaction with the public company / issuer concerned. The classification of insiders is commissioners, directors, employees of public companies, and major shareholders of public companies; companies that have a business correlation with public companies that make something happen that can get information. Or parties within the last 6 (six months) are no longer the parties referred to previously (Silva et al., 2018). Business relationship can be interpreted as a partnership or working relationship in business activities including suppliers, customers, creditors and contractors (Tseng, 2014).

Law No. 4 of 2023 provides a broad definition of securities limitations, the development of capital market instruments from time to time so as to provide coverage that cannot be limited. UUPM No. 8 of 1995 after being revised into Law 4/2023, from 1995 to 2023 there have been many illegal investment contracts that have emerged, due to the development and number of investment contracts so that there is no forum to accommodate the development of these investment contracts. So that it requires a lot of funds and makes losses to the public, because there are no rules governing the development of investment contracts in the capital market.

The weakness of Law No. 4 of 2023 is because the more widespread and the development of illegal investment contracts, it does not rule out the possibility of insider trading crimes also growing, but in Law No. 4 of 2023 there is no specific explanation regarding insider trading sanctions in the Law (Fam et al., 2018). so that insider trading actors do not get clear sanctions related to their crimes (Anand et al., 2019).

The Capital Market Law has laid the foundation for enforcing the law in an effort to shield and protect from any violations and abuses in the capital market. Coverage related to sanctions is only administrative in nature in accordance with UUPM article 102, UUPM articles 103-110 (criminal penalties / sanctions), UUPM article 111 (as well as civil penalties / sanctions related to claims).

But this law is still considered not to fully provide protection to investors because in UUPM no 8 of 1995 has not used / contained missappropriation theory (misappropriation theory) by him when the crime of insider trading (insider), UUPM is considered insufficiently efficient regarding the provision of punishment / sanctions on the perpetrators

of insider crimes who take part in insider trading because UUPM in Indonesia still adheres to the theory of trust relationships or known as fiduciary duty theory.

## **2. Laws and Regulations Prohibiting Insider Trading in the United States of America**

The regulation of insider trading in the United States according to the security exchange commission (hereinafter referred to as SEC) is the sale or purchase of securities that violate or violate fiduciary duty and / or other connections where the information / indices are nonpublic information relating to securities. Insider trading crimes are good for "tipping", "tipper" and others who commit fraud or misuse of this information. Enforcement of insider trading laws by the SEC, including:

1. Employees of issuers or public companies, both directors and other employees who sell shares of the Company after there is confidential information about the development of a Company.
2. Family members, business associates, colleagues, and "tippers" and others who sell securities after being informed.
3. Other parties who misuse and benefit from the confidential.

The legislation in the United States that contains the prohibition of insider trading is set out in:

1. The Securities Act of 1933: focused on the initial issuance of securities, it also laid the foundation for transparent information dissemination.
2. The Securities Exchange Act of 1934: the Act and its rules 10(b) & 10b-5, which are issued by the SEC, play an important role against insider trading, classifying it as a form of securities fraud.
3. SEC Rules: Rules like 10b5-1 and 10b5-2 further define the boundaries of insider trading, providing clarity on the nature of information and trust duties.
4. insider trading sanctions in 1984
5. relating to the law enforcement of insider crimes and fraud in 1988

The prohibition of insider trading in the United States is the "English and American common law prohibitions against fraud" issued in 1909, which is just before the legislation on securities exchanges was enacted. chapter 15 of the SEC 1993 contains the prohibition of fraud in the sale of securities and then strengthened by the SEC 1934, chapter 16 (b) there is a prohibition of profit in each sale-purchase and limited to a period of 6 months, as well as more than 10% of shares and produced by directors and / or shareholders. In section 10 (b) of the securities exchange act of 1934 SEC Rule 10b-5, there is a prohibition of fraud relating to the sale of securities. There are also other provisions regarding the enforcement of the insider crime and fraud act of 1988 and the insider trading act of 1984, in which anyone who conspires in the crime of insider trading is subject to a civil fine of up to three times the loss or gain that can be avoided from the criminal transaction which is in fact an unlawful act.

Insider trading in the United States has been adequately regulated due to jurisprudence and the development of both fiduciary theory and misappropriation theory. From the laws and regulations between Indonesia and the United States, it can be concluded that UUPM No. 8 of 1995 is less relevant along with the development of the capital market in Indonesia today, as well as the strong movement of insider crimes and all types of fraud in the capital market. The UUPM is also considered inadequate and has not been able to reach and ensnare market players in insider trading crimes, because there are limitations and shortcomings in the existing regulations in articles 95-98 of the UUPM and also article 102 of the UUPM regarding administrative sanctions. The prohibition of insider trading in the

UUPM is considered unable to provide full legal protection to investors. In contrast to the regulation related to insider trading in the United States, the regulation is complete and also contains limitations for insider trading and provides clarity on the nature of information and trustee duties.

Here are the differences in insider trading between Indonesia vs the United States:

### **1. Legal Basis of Insider Trading**

#### a Indonesia

- 1) "Law No. 8 Year 1995 on Capital Market"
- 2) "Law no 4 of 2023 on developing and strengthening the financial sector"

#### b United States of America

- 1) "The Securities Act of 1933"
- 2) "The Securities Exchange Act of 1934: Section 10(b)"
- 3) "SEC Rules: Rules like 10b5-1&5-2"
- 4) "The Insider Trading Sanctions Act of 1984"
- 5) "Insider Trading and Securities Fraud Enforcement Act of 1988"

### **2. Oversight Institution**

#### a Indonesia

Under the supervision of OJK (Financial Services Authority)

#### b United States of America

Under the supervision of the SEC (The Securities Exchange Commission)

### **3. Parties to Insider Trading**

#### a Indonesia

- 1) Public company insiders (commissioners, directors, company employees)
- 2) Individuals whose positions are related to public companies and allow them to obtain insider-related information
- 3) A party who was not a party in the previous 6 months.

#### b United States of America

- 1) The Company's employees, both directors and other employees who trade in the Company's shares after any indication of confidential information on the Company's development.
- 2) Business partners, themes, colleagues, family and "tippees" who trade securities after information is available.
- 3) Other parties who misappropriated and took advantage of the confidentiality.

### **4. Insider Trading Theory**

#### a Indonesia

UUPM in Indonesia uses fiduciary duty theory

#### b United States of America

United States Fiduciary duty theory and also misappropriation theory.

## **Law Enforcement in Handling Insider Trading Between Indonesia & the United States**

As the capital market develops, there are inevitably negative sides to its development, one of which is the emergence of insider trading crimes. Insider trading in Indonesia is equated with insider trading even though using the phrase is not entirely correct. The capital market does not only regulate insider information transactions that are not within the scope of the Company.

Insider trading in Indonesia is regulated in UUPM articles 95; 96; 97; and 98, which are the legal fences related to the regulation of insider trading. There are also regulations related to insider trading in the United States, one of which is The Securities Act of 1933.

In addition, the regulation in The Securities Act of 1933 is also regulated in article 10 (b) of The exchange Act which contains & mentions and has the conclusion of allowing unauthorized persons who directly and indirectly use the method of buying and selling between other countries / with letters and means of SEC infrastructure. (b) using the correlation with the sale of securities which have been registered on the national exchange which are not registered so as to use deceptive & manipulative efforts in violation of regulations as a guide to the public interest in order to protect investors.

There are several sanctions that the United States imposes on insider trading offenders:

1. The Insider Trading Sanctions Act of 1984, imposes penalties that combine three times the losses and profits earned.
2. Purchase or sell shares when they have material information which has not been published.
3. The SEC has the authority to impose civil sanctions (Article 21(d) of the 1934 Act) and administrative sanctions (Article 15(b)(4) of the 1934 Act) on securities dealers, such as limitations on business activities and revocation of registration.
4. Under section 32(a) of the 1934 act, violators of sections 10b-5 and 14e-3 are liable to a fine of one US dollar (or two and a half million dollars) and a maximum of 10 years' imprisonment (Kaveh & Dadras, 2017).

Our country, namely Indonesia, regarding the penalties/sanctions of Insider trading, the regulation is in UUPM 1995 / 1998. As well as related to the regulation of sanctions in Article 102 and Article 104 of the UUPM, with the following analysis, in Article 102 of the UUPM which contains administrative sanctions related to resistance to this law as well as arrangements for the implementation of parties and obtaining licenses, and approval from Bapepam. Administrative sanctions are written warnings, fines, business restrictions, business suspension, revocation of business licenses, and cancelation of approvals, and their further application is determined by government regulations; UUPM Article 103 capital market activities carried out by parties without approval as intended in this UUPM can get imprisonment of at least 5 (five) years and get a fine of 5 billion rupiah and parties who carry out activities in the absence of a license can get a threat of imprisonment of at least 1 (one) year and get a fine of 1 billion rupiah. And UUPM Article 104 the parties who violate the articles in the provisions of this article and get the threat of imprisonment of at least 10 (ten) years and get a maximum fine of 15 (fifteen) billion rupiah.

Based on the explanation of the two countries, it can be concluded that both Indonesia and the United States both countries impose sanctions on anyone who commits the crime of insider trading. However, there are some differences in law enforcement Where the United States the parties who obtain material information are strictly prohibited from insider trading. However, the regulation in Indonesia is only insiders, parties who have a relationship with public companies, and parties who obtain information / information by circumventing the law which is prohibited from conducting insider trading transactions (Habib et al., 2017).

There are examples of insider trading cases both in America and Indonesia;

#### **a Case in point in Indonesia**

In Indonesia itself related to insider trading, there is one example of a case, namely PT Bumi Resources, hereinafter referred to as PT BR. PT BR committed an insider crime which resulted in a temporary suspension related to the sale of PT BR Tbk shares due to a very significant surge in share prices. PT BR shares were then actively traded again and a sale and purchase agreement was made between PT BR and BP and Rio. The sale of PT BR

shares, which was previously unheard of, was suddenly busy being traded and became the target of investors. The original share price of Rp30 per share became Rp70 per share.

So that the stock exchange considers there are irregularities in the surge in share prices, and the stock exchange temporarily suspends PT BR with an indefinite time limit. The stock exchange assessed that the sale and purchase agreement was not carried out completely and systematically. PT BR also did not disclose the requirements and conditions that must be met by the parties. In connection with the incomplete information of PT BR, the suspension of the sale and purchase of shares is intended to prevent the leakage of misleading information between the sale and purchase of PT BR and the parties, this is intended so that there is no unnatural surge in the sale of shares, but the Management of PT BR reveals that the increase in share prices is considered reasonable.

The increase in PT BR's share price was due to higher demand which led to an increase in the market price. However, a number of analysts have concluded that an unreasonable increase in the share price of a public company is an indication of insider trading. Because before the agreement between PT BR and BP and Rio, the share price was originally Rp 35 per share with transactions of around 1,000,000 shares, which then experienced a surge of 400,000,000 shares.

This unnatural spike in the share price and trading volume of PT BR shares is based on the argument that the price increase occurred before the official report of PT BR was received by the stock exchange. However, indications of insider trading on the spike in share price and trading volume of PT BR shares did not receive further action by the authorities.

#### **b Case in point in the United States**

In this case occurred in the United States in 2001 involving a prominent business figure Martha Stewart in the year. She sold her shares in ImClone Systems which is a biotechnology company based on information from Sam Waksal who is a close friend of hers, where at that time Sam had the position of CEO of the biotechnology company. However, the information has not been published to the general public and there is also a problem related to the rejection of the US Food and Drug Administration (FDA) on ImClone's cancer drug. When the information was published, it turned out that ImClone's stock price had slumped or plummeted. And in the end Martha Stewart received a five-month prison sentence because she had committed the crime of insider trading.

#### **CONCLUSION**

Law enforcement of insider trading in the United States is arguably better than in Indonesia. UUPM is still considered insufficient in scope to provide legal protection to investors, because in UUPM No. 8 of 1995 it still uses the Fiduciary duty theory and has not used / included the misappropriation theory (misuse theory). And when the crime occurs, the UUPM is considered insufficiently efficient & effective regarding the punishment of insiders who take part in insider trading. Whereas in the United States using two theories, namely Fiduciary duty theory and misappropriation theory so that the regulation related to sanctions & punishments for these crimes is more sufficient & adequate, this is none other than because of the many theories that have developed especially in the United States along with the development of the capital market and also because of the many jurisprudences for dispute resolution.

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