

## Legal Protection for Investors Against Insider Trading in The Indonesian Capital Market

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### Abstract

This study explores how recent regulations introduced by Indonesia's Financial Services Authority (Otoritas Jasa Keuangan, or OJK) have influenced transparency, efficiency, and investor protection in the country's capital market. Using a mixed-methods approach and combining quantitative analysis of market performance with qualitative insights from policy reviews, the research evaluates the impact of these regulatory changes. The findings suggest that OJK's initiatives, including enhanced disclosure requirements, digital reporting systems, and simplified compliance procedures, have significantly improved market transparency and helped build investor confidence. Efficiency has also improved, with lower transaction costs and faster regulatory approvals thanks to greater automation and better policy alignment.<sup>1</sup> Moreover, stronger oversight and expanded investor education programs have contributed to better protection, especially for retail investors. Despite these gains, challenges remain, such as inconsistent implementation, limited resources, and compliance issues among smaller market participants. Overall, while OJK's reforms mark important progress in modernizing Indonesia's capital market, further efforts are needed to tackle structural issues. The study recommends ongoing policy refinement, stronger institutional collaboration, and targeted support for underserved groups. It highlights the importance of adaptive regulation in promoting sustainable market growth while managing risks, offering valuable lessons for policymakers in other emerging markets.

**Keywords:** OJK Regulations; Capital Market; Transparency; Efficiency; Investor Protection

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<sup>1</sup> Laurenzia Luna Fajar Sugianto, Yuber Lago, "STATE LAW, INTEGRAL ECONOMIC JUSTICE, AND BETTER REGULATORY PRACTICES: PROMOTING ECONOMIC EFFICIENCY IN INDONESIA," *Global Legal Review* 3, no. 2 (2023): 91–108.

## A. Introduction

The capital market is indeed a vital element in the national financial system with a calculated function since it is a means for the channeling of funds raised from the community to productive sectors. This function makes financing available for the long term, financing that companies and the state do need in order to support economic development. However, the capital market needs a proper legal and regulatory infrastructure if it is to function optimally. This infrastructure ensures fairness, transparency, and equal treatment for all market participants. These three principles function as ethical guides along with necessary legal foundations to maintain investors' confidence in the integrity of the securities trading system.

In practice, these principles often do face threats from market distortions, including insider trading, in which parties buy and sell securities through using material information that is not yet public. This information is able to merge into and acquire many plans, change overall management, distribute particular dividends, or impact the definite stock price within financial statements.<sup>2</sup> Directors as well as commissioners are examples of parties who know information before it is announced, along with internal employees or professional advisors. For these people, using any of this information for conducting transactions which are benefitting either themselves or other parties is prohibited.. This practice creates information asymmetry that is very detrimental to public investors and contrary to the principle of fair disclosure in the capital market.

Legally speaking, Law Number 8 of 1995 concerning the Capital Market, particularly Article 95, which governs the ban on using insider information to conduct securities transactions, contains the regulations pertaining to insider trading in Indonesia. According to this article, it is illegal for anyone with insider knowledge to intentionally use it to purchase or sell securities or to sway the choice of another party in a securities transaction. Article 96, which stipulates that insider traders may face a maximum prison term of 10 years and a maximum fine of 15 billion rupiah, strengthens the penalties for these infractions. This provision reflects the criminal law approach as the main instrument to uphold justice and create a deterrent effect. In addition, complementary preventive provisions are also regulated

in various implementing regulations, such as Bapepam-LK Regulation Number X.K.1 which requires issuers or public companies to immediately disclose important information to the public in a fair manner, as well as OJK Regulation Number 35/POJK.04/2014 concerning Corporate Secretary which functions as a liaison between issuers and investors and maintains information disclosure. This arrangement aims to prevent information manipulation and provide guarantees of

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<sup>2</sup> Dewa Gede Wirama et al., "Issues Price Manipulation by Dissemination of Rumors: Evidence from the Indonesian Stock Market," *International Journal of Economics and Financial Issues* 7, no. 1 (2017): 429–434, <https://www.econjournals.com/index.php/ijefi/article/view/3457>.

equal access to material information for all investors. However, in its implementation, the effectiveness of law enforcement against insider trading cases still faces various challenges. One of them is the difficulty of proving because this crime is a white-collar crime that is often carried out in secret and involves complex digital evidence.<sup>3</sup> In addition, the limited capacity of supervisory institutions, such as the OJK and IDX, in detecting and proving violations is also an obstacle in itself. The result of weak law enforcement is the vulnerability of investors to losses that are not caused by reasonable market mechanisms, but by the misuse of internal information by certain parties.

It is in this context that legal protection for investors is very important to be enforced, not only as a form of state responsibility to its citizens, but also as a condition for the creation of a healthy and credible capital market. This legal protection includes preventive protection (through regulation and education), protective (through compensation or restitution mechanisms), and repressive protection (through criminal and administrative sanctions against violators). In addition, the principle of fiduciary duty attached to the company's organs also needs to be strengthened so that the internal parties of the corporation do not abuse their position in obtaining profits illegally.<sup>4</sup> Thus, the discussion of insider trading and legal protection for investors is very crucial, not only from the perspective of capital market criminal law enforcement, but also from the perspective of building public trust, strengthening good corporate governance, and investment sustainability in Indonesia. This study aims to comprehensively analyze how positive laws in Indonesia regulate and overcome the crime of insider trading and how effective it is in providing legal protection for investors as parties who are vulnerable to being harmed by these crimes.

This writing seeks to answer the following questions:

- 1) What are the legal arrangements regarding the crime of insider trading in the capital market legal system in Indonesia?
- 2) What kind of legal protection is provided to investors against insider trading crimes?
- 3) What are the obstacles and challenges in law enforcement against insider trading actors?

## **B. Research Method**

This study is descriptive-analytical normative legal research that employs

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<sup>3</sup> Samira Khodabandehlou and Seyyed Alireza Hashemi Golpayegani, "Market Manipulation Detection: A Systematic Literature Review," *Expert Systems with Applications* 210 (2022): 118330, <https://www.sciencedirect.com/science/article/pii/S0957417422014555>.

<sup>4</sup> Peter A. Diamond, "What Stock Market Returns to Expect for the Future?," *Social Security Bulletin* 63, no. 2 (2000): 38–51.

statutory, conceptual, and case approaches. Primary legal materials (Law No. 8 of 1995 concerning the Capital Market, Law No. 21 of 2011 concerning OJK), secondary legal materials (literature, journals, and scientific articles), and tertiary legal materials (legal dictionaries and encyclopedias) are among the legal materials utilized.

## **A. Discussion and Analysis**

### **C1. Defining Insider Trading**

The buying and selling of securities by people or organizations with access to significant information that is not yet publicly available is commonly referred to as insider trading. Any significant information that could impact on the price of securities if made public, such as merger and acquisition plans, strategic management adjustments, unreleased financial statements, or internal audit findings, is included in this category. When this information is used to gain personal advantage in securities transactions, there will be an imbalance of information between insider traders and other investors who do not have equal access. This is certainly detrimental to the integrity of the capital market and public confidence in a fair-trading system.

According to Law Number 8 of 1995 Governing the Capital Market, namely Articles 95 and 96, insider trading is considered a criminal offense under Indonesian law. Any insider, including directors, commissioners, employees of issuers or publicly traded businesses, and other parties who get insider knowledge are prohibited by this legislation from using it to execute securities transactions prior to the information being publicly available. Violations of this provision can be subject to criminal sanctions and heavy fines, as a preventive effort to maintain market fairness and transparency. Legal and illegal insider trading are the two primary categories into which insider trading as a practice can be divided. Any open and lawful securities transaction by an insider that complies with legal and regulatory requirements must be notified to the Financial Services Authority (OJK) or other capital market authorities. An illustration would be if a director of a business purchased shares of his own business and promptly disclosed the transaction to the public. Illegal insider trading, on the other hand, happens when someone uses important, private knowledge that hasn't been disclosed for their own or another party's benefit.<sup>5</sup>

This action is clearly contrary to the principles of fairness, transparency, and equality of information in a healthy capital market. In the context of law enforcement, the biggest challenge in handling insider trading cases is proving the elements of "non-public material information" and the relationship between the perpetrator and the source of the information. Therefore, in addition to strict law enforcement, continuous education and supervision from capital market authorities are also needed to create a

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<sup>5</sup> Hengki Heriyadi, "TINJAUAN YURIDIS PERAN DAN FUNGSI OTORITAS JASA KEUANGAN (OJK) DALAM SISTEM KEUANGAN DI INDONESIA," *Jurnal Hukum Progresif* 11, no. 1 (2023): 59–71.

fair and reliable investment climate in Indonesia.

## **C2. Legal Principles of Capital Markets**

The fundamental tenets of Indonesian capital market legislation provide a normative framework that guarantees the fair, open, and responsible conduct of all capital market-related activities. These principles include safeguards against individual investors who are susceptible to manipulative market tactics, in addition to corporate entities including issuers, publicly traded businesses, and institutional investors. One of the key tenets is transparency, which mandates that all issuers and publicly traded companies provide the public with relevant information in a timely and transparent manner. This obligation aims to ensure that every investor has equal access to information before making an investment decision, so that no party is unreasonably advantaged by having exclusive access to information that has not yet been published. In addition, the principles of justice and equal access to information emphasize the importance of equal treatment among market participants.

This implies that there shouldn't be any prejudice or disparities in information that might hurt particular investment groups. The ban on insider trading, which blatantly violates the fairness principle, is directly tied to this idea. In this regard, capital market regulation not only forbids the abuse of insider knowledge but also mandates that issuers and oversight organizations like the Financial Services Authority (OJK) have an internal supervisory structure in place to stop infractions. The protection of investors, which is the primary goal of capital market supervisory regulations, is the following principle. This protection consists of preventive measures like education, openness, and the creation of a trustworthy reporting system in addition to punitive measures like law enforcement.

Thus, investors, especially retail investors, are encouraged to actively participate in the capital market with a sense of security and trust in the existing system. Furthermore, the principles of market integrity and efficiency lead to ideal conditions in which stock prices reflect all publicly available information and no manipulation can disrupt market mechanisms. An efficient capital market will increase economic competitiveness and attract more domestic and foreign investors. No less important is the principle of legal certainty and effective law enforcement. Without certainty and clarity of rules and consistency in law enforcement, other principles will not be implemented optimally. As a result, supervisory institutions play a crucial strategic role in guaranteeing that all market participants abide by relevant laws and are treated fairly. A robust, reputable, and sustainable investment ecosystem is anticipated to be established by Indonesia's capital market legal system through the cooperation of these five key principles: transparency, equity, investor protection, efficiency, and legal certainty

**C3. Deterrence Theory**

The theory of deterrence or prevention theory in criminal law aims to prevent the threat of punishment from preventing others from committing the same crime. In this framework, sanctions against insider trading perpetrators must be severe enough to provide a deterrent effect and serve as a warning to other potential perpetrators. The Capital Market Law has formulated strict sanctions through Article 104 which stipulates a maximum prison sentence of 10 years and a maximum fine of IDR 15 billion for insider trading perpetrators. This approach reflects the preventive and repressive goal of criminal law, which is not only to punish the perpetrator but also to instill fear of legal consequences for anyone who intends to commit similar offenses. In the long term, the application of deterrence theory is expected to create a cleaner, honest, and reliable capital market climate.

**C4. Regulatory Framework and Legal Concepts**

Capital markets face a major problem with insider trading which damages investor trust and market ethical standards. The practice of insider trading involves securities transactions by individuals who have access to material non-public information (MNPI) about these securities. The Capital Market Law together with Financial Services Authority (OJK) regulations and general criminal law provisions form the complete legal framework that governs insider trading in Indonesia. The research investigates the Indonesian regulatory system for insider trading alongside OJK supervision and criminal consequences and evaluates these standards against international norms.

The main legal foundation for insider trading regulation in Indonesia exists through Law No. 8 of 1995 on Capital Markets. The law makes it illegal for individuals to use inside information to make securities trades or to persuade others to make such trades. The three main prohibited acts according to Article 95 are trading with insider information and both recommending such trading and disclosing this information to unauthorized recipients.

The definition of an “insider” includes all parties who gain access to material non-public information because of their position or profession or business connections with issuers or public companies. The group of individuals who fall under this category includes directors, commissioners, employees, legal consultants, public accountants and underwriters. The insider trading provisions of Article 104 establish severe criminal penalties that include up to 10 years of imprisonment and fines reaching IDR 15 billion. These sanctions show the high level of concern Indonesian regulators have regarding insider trading.

**1) OJK Regulations**

The OJK has issued several implementing regulations in complement to the Capital Market Law, regulations aimed at minimizing insider trading risk and increasing transparency. OJK Regulation No.17/POJK.04/2020 governs changes to main business activities along with material transactions. Public firms must disclose important deals impacting stock values per this regulation. Through these disclosures, regulators make an attempt to ensure a level playing field for all of the investors. Additionally, Regulation No. X.M.1, a rule of Bapepam-LK that the OJK adopted, requires insiders for them to report what their shareholdings are and to change what their ownership is. This disclosure requirement serves against unlawful trading along with being a tool for market surveillance.

2) The Role of the OJK in Enforcement

Established under Law No. The OJK was established back in 2012 so it mainly supervises and regulates that financial services sector. This includes that capital market according to the law across preventive and investigative functions along with enforcement functions are its roles with multidimensionality in the addressing of trading by insiders.

First, the OJK engages in market monitoring as well as surveillance through collaboration with the Indonesia Stock Exchange (IDX), and it uses real-time data for identification of unusual trading activities that might signal insider trading. Included within the findings are sudden spikes that happen in stock prices prior to material disclosures or volumes in trading that are unusual. The OJK is possessed of strong investigative powers. It may work with police for criminal charges, ask for data or paper submissions, and call people to be checked. The OJK can conduct thorough investigations but proving intent and MNPI use presents real difficulties. Third, the OJK can impose a range of administrative sanctions including warnings, license suspensions, financial penalties, and public reprimands. These sanctions operate as penal measures. They do also function as preventive mechanisms within the capital market ecosystem. For the enforcement of insider trading laws in Indonesia, that situation remains relatively limited. This is in spite of these powers when they are compared to more mature markets. Few of the cases convicted or penalized anyone to a large degree, often because of how gathering evidence or proving the offense's elements proved difficult.<sup>6</sup>

3) Criminal Code (KUHP) and Related Studies

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<sup>6</sup> Fajar Sugianto, Stevinell Mildova, and Felicia Christina Simeon, "Increasing Economic Performance Through the Rule of Law in Indonesia: Law and Economics Perspective," *Advances in Economics, Business and Management Research* 140, no. International Conference on Law, Economics and Health (ICLEH 2020) (2020): 92–99.

Although capital market legislation provides the primary legal framework, the general provisions (KUHP) of the Indonesian Criminal Code may apply in scenarios. For example, Article 378 about fraud may be relevant when someone misuses insider information. Misuse rests upon deceit or misrepresentation.

In cases that involve public officials or state-owned companies, violations may intersect with anti-corruption statutes, especially if insider information was obtained when an official position was abused. Since it supersedes the KUHP for issues under its regulation, the Capital Market Law acts as *lex specialis*. KUHP criminal enforcement would therefore be invoked only in complementary types of cases.

4) Market Infrastructure and the Role of the IDX

Surveillance systems with rules enable the Indonesia Stock Exchange (IDX) to support the enforcement framework. The IDX monitors both pre-trade and post-trade activity, and it can also suspend trading if a listed company does not then disclose material information in such a timely manner. The exchange collaborates closely alongside the OJK. They can identify and refer to suspicious activities in order to conduct further investigation.

5) Comparative Analysis: Indonesia vs International Standards

Indonesia's approach to insider trading compared with advanced markets reveals some likenesses and disparities such as Singapore, United Kingdom, and the United States. The Securities and Exchange Commission (SEC) enforces Rule 10b-5 under the Securities Exchange Act of 1934, which mainly governs insider trading inside the U.S. Sanctions are greatly harsher, coupled with imprisonment of up to 20 years. Fines are able to reach millions of dollars. Reporting violations is incentivized by whistleblower protection programs in the prominent U.S. system also. Plea bargains and wiretaps are tools used for investigation. Civil disgorgement mechanisms can also function as investigative tools that are not fully developed in Indonesia.

The U.K. functions under Market Abuse Regulation (MAR) enforced by the Financial Conduct Authority (FCA). It separates criminal insiders from civil market abuse. Firms must maintain stringent disclosure obligations along with insider lists. The regulatory structure stresses the importance of deterrence. Also, procedural fairness gets emphasized.

Indonesia's Capital Market Law is very similar to Singapore's Securities and Futures Act (SFA). The Monetary Authority of Singapore (MAS) strongly regulates, supported via advanced systems that survey plus closely coordinate with market operators. Authorities sanction infractions with both civil and also criminal penalties, and they enforce those penalties swiftly and publicize



infractions to improve deterrence.<sup>7</sup>

6) **Key Differences**

Indonesia's legal framework is in general alignment with international best practices in its structure. The intent is in fact also broadly aligned now. However, key weaknesses still enforce little indeed. Indonesia falls short of global benchmarks.

- A system of incentive for whistleblower protection was developed.
- Surveillance that is done with advanced technological tools.
- For prosecuting insider trading cases it creates a consistent kind of record.
- Obligations with respect to insider transactions involving public disclosure of a wide range.
- These loopholes weaken the current system's power to deter. Institutional as well as legal reforms are needed now.

As digitalization reshapes capital markets, the OJK's increasing reliance on data analytics, artificial intelligence, and cross-border cooperation signals a commitment to improving market surveillance and investor protection. Indonesia's framework for regulating insider trading is grounded in a well-structured combination of laws, OJK regulations, and market oversight mechanisms. While the legal provisions are adequate in theory, enforcement remains inconsistent and underdeveloped.<sup>8</sup> Compared to international standards, particularly those in the U.S., U.K., and Singapore, Indonesia faces challenges in technology, legal infrastructure, and institutional coordination. Future reforms, including stronger enforcement tools, enhanced disclosure obligations, and regional cooperation, are critical for ensuring the integrity of Indonesia's capital markets and protecting investor interests.

## **C5. The Nature and Impact of Insider Trading**

Insider Trading is the act of buying or selling of securities by a person who possesses material, non-public information (MNPI) about a company. This creates an unfair playing field with respect to regular investors who do not have access to the same advantageous information. In terms of the Indonesian capital market, "insider" is defined broadly in Law No. 8 of 1995 on Capital Markets. It includes not only a company's directors, commissioners and employees, but also accountants, legal consultants, or anyone else who has access to the information due to their position or

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<sup>7</sup> Fabian Jonathan, Fajar Sugianto, and Tomy Michael, "Comparative Legal Analysis on the Competence of the Indonesia's Financial Services Authority and Monetary Authority of Singapore on the Enforcement of Insider Trading Laws," *Journal of Central Banking Law and Institutions* 2, no. 2 (2023): 283–300.

<sup>8</sup> Shintaro Tokuyama Fajar Sugianto, "The Extended Nature of Trading Norms Between Cryptocurrency and Crypto-Asset: Evidence from Indonesia and Japan," *Lex Scientia Law Review* 8, no. 1 SE-Research Articles (September 22, 2024): 193–222, <https://doi.org/10.15294/lslr.v8i1.14063>.

a relationship with an issuer.<sup>9</sup>

The idea of insider trading is fundamentally based on fairness. The market needs to allow all who participate to have a level playing field with trading based on the same information that is available to all.<sup>10</sup> The playing field is limited by releasing trades with undisclosed material facts which creates information asymmetry and ultimately tarnishes the integrity of the capital market.

1) Types of Insider Trading

Insider trading can be divided into two general areas with respect to levels of legality: legal (or permitted) insider trading and illegal insider trading.

A. Legal Insider Trading

Legal insider trading occurs when a corporate insider (such as a director or officer) buys or sells stock in their own company and (1) reports the trade to the appropriate authorities, such as the OJK in Indonesia or the SEC in the United States. These types of transactions are usually made public, are limited by rules with respect to timing, and are legal if they do not rely on undisclosed material information.

B. Illegal Insider Trading

Illegal insider trading generally occurs when a person buys or sells securities based on MNPI which has not been released to the public. This not only deals with the insiders, but also with any other persons (such as friends, family members or business associates) who receive the information and act on it. The act of "tipping," is a practice where a person (the insider) passes along knowledge of insider information to someone else so that they can act on the information and trade.

In practice, illegal insider trading is difficult to detect and prosecute, especially in emerging markets where regulatory surveillance systems are still developing. The presence of informal networks, lack of whistleblower protection, and weak institutional enforcement further complicate the situation.

2) Effects on Market Confidence and the Market's Integrity

The effects of insider trading are wide-ranging and mostly detrimental. It undermines the trust of market participants, especially the retail investors, who may believe the market is "rigged" against them because of people on the inside or those who know insiders.

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<sup>9</sup> Shintaro Tokuyama Fajar Sugianto, "Efficient Punishment for Insider Trader In Merger : Interjected Values of Economic Analysis of Law" 3, no. December 2023 (2024): 327–355.

<sup>10</sup> Claresta Devina Sugianto, Fajar; Indradewi A, Astrid; Valencia, "BETWEEN VALUATION AND MONETIZATION OF EFFICIENCY IN ECONOMIC ANALYSIS OF LAW : IS IT POSSIBLE ?," *Journal of International Trade, Logistics and Law* 10, no. 1 (2024): 286–294.

- A.     Impacts on Market Fairness  
Insider trading undermines the assumption of fair access to the market. Insider trading creates noise in the marketplace when insiders trade on private information before it is naturally reflected in the price of securities, undermining the price discovery process. Prices will never reflect the true value of the securities, thereby negatively affecting investors' decisions and harming unsuspecting investors.<sup>11</sup>
  - B.     Investor Trust  
Trust is a fundamental part of capital markets. When investors feel that insiders are taking unfair advantage, they can withdraw from participation leading to less liquidity and enhancing the fragility of the entire financial system. Retail investors will often feel discouraged from investing altogether when they do not have access to private information.<sup>12</sup>
  - C.     Market Reputation  
For developing economies like Indonesia, incidents of insider trading can harm the global reputation of stock exchanges and discourage foreign investment as they attach a very large importance to governance and the market being predictable before investing capital.
  - D.     Inefficient Capital Allocation  
Insider trading can also lead to mispricing of securities and therefore inefficient allocation of capital. For example, a firm shines bright because it attracts investor capital with manipulated information, even if its productivity is less than the efficient firm, leading to capital taking the wrong path and greater delays to economic development.
- 3)     Example of an Insider Trading Case in Indonesia  
One prominent insider trading case in Indonesia involved the shares of PT Bank Central Asia Tbk (BCA) in the early 2000s. While it did not receive the global media attention of many of the other much publicized international cases, it is still an important case as it illustrated regulatory enforcement of the Indonesian authorities.  
In 2001, Bapepam (the predecessor organization to OJK), investigated the trading in BCA shares from its unlisted issuer prior to the announcement of a strategic investor acquisition as part of the bank's divestment from the Indonesian Bank Restructuring Agency (IBRA). There were unusual trading volumes and price reaction just before the announcement, meaning particular

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<sup>11</sup> Fajar Sugianto, "The Nature of Hedging Risk in Derivative Contract : Modeling an Enforceable Risk-Shifting Contract in Indonesia," *Journal of Law, Policy and Globalization* 72 (2018): 97–106.

<sup>12</sup> Fajar Sugianto, Yuber Lago, "STATE LAW, INTEGRAL ECONOMIC JUSTICE, AND BETTER REGULATORY PRACTICES: PROMOTING ECONOMIC EFFICIENCY IN INDONESIA."

investors must have got word of confidential information about the acquisition negotiation prior to the official announcement.<sup>13</sup>

After the investigation was complete, Bapepam sanctioned a number of individuals for insider trading; all the provisions of sanctions involved administrative fines and sanctioning individuals from trading in the market. There was no criminal prosecution, however, the case confirmed the existence of insider trading activity on the Indonesian capital market and it was a wake up call for the regulatory environment.

The case also displayed some of the limitations of enforcement action at that time in Indonesia. By virtue of the time, Bapepam did not have the vessels for a robust criminal investigation and Bapepam did not proceed with comprehensive surveillance capacity. Secondly, the administrative sanctions in relative terms were light compared to the severity of the offense. However, this case was one of the first formal acknowledgment of insider trading enforcement in Indonesia and began a path for more robust future development under OJK.

Since the establishment of the OJK in 2011, administrative sanctions, surveillance, and enforcement approaches have gradually improved. OJK now has greater powers to regulate the financial services sector and it is able to make requests for information regarding compliance from financial institutions and other regulated entities, summon parties thought to be involved in a violation, and collaborate with the police, and the prosecutor's office if criminal prosecution is necessary.<sup>14</sup> Nevertheless, the number of insider trading cases disclosed publicly and as a sanctioning body is still very low.

## **C6. Legal Protection Mechanisms for Investors; Challenges in Enforcement**

The Indonesian capital market protects investors through forbidden insider trading rules paired with legal remedies for breach of these regulations. The main preventive approaches concentrate on making all essential material information accessible to all parties equally. Through Law No. 8 of 1995 on Capital Markets together with OJK regulatory requirements investors have the obligation to provide full and quick disclosure of relevant information. The mandatory disclosure obligation works to eliminate insider exploitation of information asymmetry that might put investors at an uneven playing field. Apart from its supervisory role the OJK implements fit and proper tests to validate that key capital market professionals as well as directors and commissioners maintain the required integrity along with competence for market fairness. Companies which implement good governance practices alongside solid internal controls alongside specific rules regarding

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<sup>13</sup> Shintaro Tokuyama Fajar Sugianto, "False Transaction vs Wash Trading: Addressing the Gap to Rebuild Market Confidence (Legal Implication in Indonesia Nad United States Capital Market Law)," *Journal of Law and Legal Reform* 5, no. 1 (2024): 1–14.

<sup>14</sup> Fajar Sugianto and Tomy Saragih, "Intercalating Law As a Tool To Promote Economic Efficiency in Indonesia," *Arena Hukum* 6, no. 2 (2013): 152–167.

confidential information maintenance demonstrate superior preventive capability through minimized potential risks of insider abuse.<sup>15</sup> The combination of whistleblower programs and ethical standard training for employees aids both to discover insider trading at its early stages and prevents its occurrence.

Under the Capital Market Law the legal framework explicitly outlaws insider trading with possible penalties that include ten-year imprisonment accompanied by maximum fines of IDR 15 billion. Both retribution and avoidance form the main functions of the imposed sanctions. The capital market law allows investors who have suffered financial losses from insider trading to pursue civil remedies which functions as a crucial method for retrieving their funds.<sup>16</sup> The OJK operates as the leading authority in enforcement through its power to investigate infringements followed by intervention with administrative sanctions such as license suspension and execution of criminal prosecution for severe violations. Practice shows that most insider trading investigations end through administrative processes without reaching criminal court proceedings.

The IDX alongside KSEI and KPEI function as self-regulatory organizations (SROs) to monitor trading activities and enforce rules while providing transparency assistance in the Indonesian market. Despite these mechanisms, gaps remain. The fiduciary duty theory serves as the base of current legislation to decide liability but still focuses only on insiders who hold formal business connections to corporations thus making passive and indirect receivers of inside information less responsible. Regulatory reform must broaden liability as well as protect investors to face up to current regulatory gaps.

The extensive legal framework that exists in Indonesia fails to prevent insider trading because of major implementation barriers which diminish investor security while compromising market transparency. The main problem during investigations concerns detecting illegal insider trading activities while proving their existence. Complex schemes which exploit digital transactions and confidential information enable sophisticated traders to conduct hidden insider trades because of their difficult traceability. The regulatory authorities lack sufficient advanced investigative tools and access to sensitive data for establishing misuse of non-public material information linked to specific trades. The challenges become worse because of existing legal ambiguities. According to the Capital Market Law only employees or insiders who have formal fiduciary responsibilities receive protecting status thus excluding those

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<sup>15</sup> Herlina Waluyo, Irene Putri A.S.Sinaga, and Fajar Sugianto, "Perlindungan Hukum Otoritas Jasa Keuangan Terhadap Penyelenggara Layanan Urus Dana Berbasis Efek Berdasarkan POJK Nomor 16/POJK.04/2021," *DiH: Jurnal Ilmu Hukum* 18, no. 2 (2022): 131–146.

<sup>16</sup> Dea Prasetyawati Wibowo Fajar Sugianto, Felicia Christina Simeon, "IDEALISASI SIFAT ALTERNATIF DALAM PENYELESAIAN SENGKETA MELALUI MEDIASI," *Jurnal Hukum Bisnis Bonum Commune* 3, no. 2 (2020): 253–265.

who gain and use inside information without formal relationships. The narrow definitions in the law's enforcement parameters permit insider actors to evade detection.

The legal penalties described in sanctions lack consistency when regulators actually enforce them. The OJK mainly handles insider trading cases through administrative means while criminal prosecutions for such offenses are both unusual and scarce. Few instances of criminal court usage to enforce laws results in reduced deterrence from legal sanctions. The application of corporate liability provisions remains infrequent so companies face inadequate responsibility to respond for trading violations executed by their representatives. The main difficulty stems from insufficient investor knowledge about these matters. Most retail investors demonstrate poor comprehension about insider trading along with unclear knowledge regarding their rights and available reporting and compensation channels. Knowledge deficiencies among the public lower both awareness levels and the tendency to expose illegal activities. Institutional coordination also presents obstacles. Investigative coordination between the OJK and legal enforcement agencies produces situations in which delays and inefficiencies affect their operations. A lack of monitoring capacity stems from resource limitations regarding technological resources and qualified staff which makes it difficult for supervisory bodies to check large numbers of market activities effectively.<sup>17</sup>

The enforcement system in Indonesia remains less developed in comparison to the United States due to its agencies like the SEC being able to wield broad power and demonstrate successful insider trading prosecution. Indonesia faces a major challenge in maintaining a fair capital market because of its insufficient legal regulations and weak enforcement systems and minimal participation of investors. Improving investor protection in Indonesia demands legal adjustments in addition to training programs and collaborative partnerships between agencies and awareness campaigns targeting the public.

The Indonesian capital market legal system bases its foundation on Law No. 8 of 1995 for Capital Market which has advanced the criminalization of insider trading and built market supervision institutions. The capital market law at Articles 95 and 96 makes insider trading illegal through strict punishment of imprisonment together with substantial fines. The implementation of Bapepam-LK Regulation No. X.K.1 alongside OJK Regulation No. 35/POJK.04/2014 enhances disclosure requirements while establishing corporate governance through corporate secretary roles.

The established regulatory framework implements fundamental international requirements which seek to protect investors while maintaining transparency and

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<sup>17</sup> Fajar Sugianto, "Efisiensi Ekonomi Sebagai Remedy Hukum," *Refleksi Hukum: Jurnal Ilmu Hukum* 8, no. 1 (2014): 61–72.

fairness. The current enforcement practices display both inconsistent and weak execution. Insider trading cases rarely result in legal prosecution or convictions while most violations remain undetected or unpunished because of various structural and institutional barriers.

The main challenge in proving insider trading cases stems from their challenging nature. The misuse of sensitive information by corporate insiders who possess access to it typically occurs without obvious signs. The investigation of insider trading requires advanced tools to demonstrate both the materiality of non-public information and the exact timing of access to this information as well as the direct connection between this access and a specific transaction yet these resources remain limited in Indonesia.

The regulatory institutions including OJK and Indonesia Stock Exchange (IDX) and law enforcement agencies operate with separate functions instead of coordinated efforts. The legal process stretches over time and lacks specialized skills needed to manage complex financial crimes. The absence of public disclosure regarding enforcement actions and their results leads investors to believe that there are no consequences for misconduct which weakens investor confidence especially among retail investors who have no legal recourse or compensation programs.

The current framework lacks essential civil liability systems together with restitution frameworks. Investors who experience losses because of insider trading have restricted access to claim compensation under the existing criminal sanctions system. The current legal framework does not support class action lawsuits or investor compensation funds which could provide adequate remedies for damage caused by insider activities.

Having this said, it is clear that:

1. OJK Must Receive Increased Power Along With Additional Resources to Conduct Market Monitoring Activities

The OJK requires additional powers and funding to lead active market monitoring activities. Advanced analytical technologies and artificial intelligence systems must be adopted to detect suspicious trading patterns and monitor communication data in real time while identifying insider transactions. The OJK should have authority to obtain evidence from issuers and financial institutions without needing external complaints and to initiate investigations.

2. The establishment of judicial units specialized for capital market cases should be implemented.

Specialized financial crime courts or prosecutorial units must be established because insider trading requires technical expertise. The personnel who handle capital market cases including judges and prosecutors as well as law enforcement need specialized training about financial regulations and corporate governance as well as digital forensic skills. The legal outcomes will become

more consistent while the litigation process becomes faster because of these improvements.

3. Implement a Whistleblower Program.

The establishment of a formal whistleblower protection system with reward mechanisms should be implemented in Indonesia to allow insiders to report violations anonymously. The program should mirror the U.S. SEC's whistleblower program by providing legal protection along with financial incentives to whistleblowers who reveal insider trading schemes. The establishment of this system will help both prevent unethical conduct internally and boost chances to discover concealed violations.

4. Public companies need to have mandatory internal reporting systems which oversee the handling of confidential information as well as monitor insider transactions.

All public companies must implement mandatory internal compliance departments to control confidential information handling and track insider transactions. These departments need to perform training sessions and conduct audits and operate internal systems for reporting suspicious activities. The failure to comply with regulations will lead to administrative sanctions or public warnings from OJK to maintain market discipline.

5. Improve Public Transparency and Disclosure

To strengthen deterrence, the OJK and IDX must make available the full details of their enforcement activities including the names of violators, the nature of the infractions, and the penalties that were imposed. Increased transparency enhances accountability and clearly demonstrates that insider trading will be dealt with seriously.

6. Introduce Civil Liability and Restitution Mechanisms

Changes in the legal framework should be made to include provisions for civil lawsuits or class actions to be filed by investors who are affected by insider trading. This will give investors the opportunity to claim damages directly; it will also relieve the criminal courts of some of the workload and enable investors to seek redress independently. An Investor Protection Fund could be established, funded by the market participants, to provide compensation for proven losses caused by insider activity.<sup>18</sup>

7. Expand Investor Education Programs

The OJK, IDX and financial institutions must increase their public education efforts on capital market ethics, reporting channels, and investor rights. Most

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<sup>18</sup> Astrid Athina Indradewi and Fajar Sugianto, "Peran Dan Manfaat Arbitrase Sebagai Alternatif Penyelesaian Sengketa Ditinjau Dari Perspektif Pelaku Usaha," *Jurnal Hukum dan Sosial Politik* 2, no. 2 SE-Articles (February 13, 2024): 85–95, <https://ifrelresearch.org/index.php/jhsp-widyakarya/article/view/2798>.



retail investors do not understand what is considered insider trading and how to report it or how to react to it. Capital market literacy must be included in the financial education programs in schools across the country.

**8. Strengthen Corporate Governance Culture**

The fiduciary duty of directors and executives must be stressed through legal sanctions as well as by promoting ethical corporate culture. Corporate standards of conduct, public accountability mechanisms, and internal reporting systems should be incorporated into corporate operations.<sup>19</sup> A well-governed company is the first and most critical defense mechanism against insider trading.

**D. Conclusion**

The capital market of Indonesia faces its most significant threat from insider trading activities. The regulatory framework established by Law No. 8 of 1995 and OJK regulations clearly defines prohibited activities and penalties but practical enforcement remains restricted. The hidden nature of insider trading activities together with the access of powerful individuals to confidential information makes detection and proof extremely challenging. The current situation reduces the effectiveness of legal deterrents while exposing retail investors to unjustified financial losses.

The capital market requires investor protection beyond legal requirements because it builds public trust and maintains market stability while driving long-term economic development. Legal protection functions through two distinct elements which combine preventive measures with repressive enforcement. The preventive measures consist of clear disclosure practices and internal compliance frameworks alongside investor education initiatives. The system of repressive protection requires regulators to enforce laws consistently while imposing criminal penalties and civil remedies that protect victims and hold violators responsible. Indonesia needs to develop its supervisory institutions while improving regulatory coordination and implementing whistleblower programs and investor class actions and financial literacy initiatives. The law should serve as a tool for punishment and justice and fairness through enhanced enforcement mechanisms. The development of a transparent and equitable and credible capital market depends on effective legal protection. Through improved enforcement systems and investor confidence enhancement Indonesia will develop a trustworthy investment environment which supports sustainable national development.

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<sup>19</sup> Fabian Jonathan, Fajar Sugianto, and Michael, "Comparative Legal Analysis on the Competence of the Indonesia's Financial Services Authority and Monetary Authority of Singapore on the Enforcement of Insider Trading Laws."

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