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Beyond Conventional Insider Trading: Indonesia's Shadow Trading Dilemma

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Abstract
Shadow trading represents an emerging challenge in financial regulation, involving the use of material nonpublic information (MNPI) by corporate insiders to trade in the securities of companies other than their own. Traditionally falling outside the scope of the classical insider trading theory—which is centered on fiduciary duty—shadow trading remained largely unregulated and unprosecuted. This changed in 2024 with the landmark U.S. case *SEC v. Panuwat*, where the Securities and Exchange Commission (SEC) successfully prosecuted the first shadow trading case. The SEC extended the Misappropriation Theory by introducing the novel "Market Connection" element, thereby establishing a legal foundation for prosecuting shadow trading as a form of insider trading. This paper critically examines the implications of this legal development for Indonesia, where the existing Capital Market Law, enacted in 1995, has not kept pace with evolving financial crimes. The law's continued reliance on outdated fiduciary-based frameworks creates significant regulatory gaps, particularly in dealing with indirect or unconventional trading schemes. Employing a normative juridical method and comparative analysis, this study evaluates the capacity of Indonesia's current legal framework to address shadow trading and explores how regulatory strategies and enforcement mechanisms adopted by the U.S. SEC may inform much-needed reforms to strengthen Indonesia's capital market oversight and investor protection.

Keywords: Shadow Trading; Investor Protection; Regulatory Reform

A. Introduction

Shadow trades has been recognized as a largely undocumented yet pervasive mechanism through which corporate insiders evade regulatory oversight. The term "shadow trades" refers to the practice of trading—either personally or through the corporation—in the securities of other companies based on material nonpublic information (MNPI) acquired from the insider's own firm. Legal questions have emerged

regarding the permissibility of such trades, as shadow trading falls outside the scope of the classical theory of insider trading, which traditionally addresses transactions involving the securities of the insider's own company. As a result, shadow trading has long occupied a legal grey area, with prosecutions virtually nonexistent.

However, this has changed with the groundbreaking case of *SEC v. Panuwat*. Panuwat, then head of business development at Medivation, Inc., purchased shares in Incyte Corp. shortly after learning of Pfizer's planned acquisition of Medivation—anticipating that the deal would affect Incyte's stock price due to market correlations within the biopharmaceutical sector. The resulting increase in Incyte's share value earned him over $100,000. In April 2024, the U.S. Securities and Exchange Commission (SEC) successfully prosecuted Panuwat, marking the first formal recognition of shadow trading as a form of insider trading.[1] Crucially, the SEC formally introduced the "Shadow Trading" legal theory by extending the Misappropriation Theory and adding the "Market Connection" element to establish liability, thereby setting a new precedent for future enforcement.

The formal recognition of shadow trading under U.S. securities law underscores the pressing need for jurisdictions like Indonesia to keep pace with the evolving nature of financial crime. A central challenge lies in the limitations of Indonesia's current Capital Market Law, which is increasingly viewed as outdated. Enacted in 1995, during a period when the national capital market was still in its developmental phase, the law has failed to evolve in tandem with the complexities of modern financial transactions.[2] Capital Market Law Consultant Indra Safitri has emphasized this shortcoming, noting that the law continues to rely heavily on the classical theory of insider trading, which narrowly focuses on breaches of fiduciary duty.[3] This reliance has resulted in critical legal loopholes—particularly in addressing indirect or unconventional forms of misconduct such as shadow trading.[4]

At the same time, Indonesia's capital market has experienced substantial growth and has emerged as a cornerstone of the national financial system. Advances in digital

[1] "Panuwat Insider Trading Verdict Foreshadows More Civil and Criminal Enforcement." *Wiley*, www.wiley.law/alert-Panuwat-Insider-Trading-Verdict-Foreshadows-More-Civil-and-Criminal-Enforcement. Accessed 4 May 2025.
[2] 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.
[3] Wardhani, Latifah K. "UU Pasar Modal Lemah Atasi Insider Trading." Hukumonline.Com, www.hukumonline.com/berita/a/uu-pasar-modal-tak-bisa-atasi-insider-trading-lt4dba2b371c571/. Accessed 4 May 2025.
[4] 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.

infrastructure and greater access to financial information have contributed to increased public participation. According to data from the Indonesia Stock Exchange, daily trading volumes in 2023 ranged from 12.589 trillion to 23.155 billion shares. By September 2024, the Exchange reported a total of 6,001,573 Single Investor Identifications (SID), representing the addition of over 744,000 new investors in less than a year.[5] With this trend expected to continue, the urgency for a more comprehensive and adaptive regulatory framework—one that can effectively address complex trading schemes such as shadow trading—has become ever more apparent. Strengthening the legal foundation is not only essential for safeguarding market integrity, but also for reinforcing investor confidence in an increasingly dynamic and digitized financial ecosystem.[6]

In light of these considerations, this paper seeks to examine whether the current regulatory framework governing Indonesia's capital market is adequate to protect investors and companies from the emerging threat of shadow trading. It also aims to provide insights into how Indonesia can develop or reform its policy framework by drawing lessons from the United States. Specifically, the paper will explore the following key issues:

a. What is the current state of Indonesia's capital market regulatory framework, and is it sufficient to safeguard market participants from the risks posed by shadow trading?
b. What is the current institutional capacity of Indonesia's financial regulatory authorities, and what strategies or regulatory approaches can be adopted from the U.S. Securities and Exchange Commission (SEC)—as the primary capital market regulator in the United States—in addressing and prosecuting insider trading cases?

B. Research Methods

This paper adopts a normative juridical research methodology combined with a comparative approach. The comparative dimension frames the analysis by examining and contrasting the legal and regulatory frameworks of Indonesia and the United States. The normative aspect focuses on a critical evaluation of the legal structures governing financial crimes—particularly insider trading—in both jurisdictions. Primary legal

[5] *The Number of Stock Investors in Indonesia Surpasses 6 ...*, www.idx.co.id/en/news/press-release/2224. Accessed 4 May 2025.

[6] 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.

sources include Indonesia's capital market laws and regulations, alongside the rules and regulations issued by the U.S. Securities and Exchange Commission (SEC).

C. Analysis and Discussions

C. 1 Doctrinal Foundations of Insider Trading Law in Indonesia and the United States

C. 1. 1 Indonesia's Insider Trading Framework: A Fiduciary-Based Approach

Indonesia's principal legal instrument in addressing insider trading is Article 95 - Article 98 of Law No. 8 of 1995 concerning Capital Markets ("Indonesian Capital Market Law"). While the Indonesian Capital Market Law does not expressly define insider trading in a singular provision, it fundamentally prohibits securities transactions for personal gain undertaken by "insiders" who possess material nonpublic information ("MNPI")[7]. Under Article 95 of the Indonesian Capital Market Law, insider trading is deemed to occur when three cumulative elements are present:

1) the existence of an insider;
2) the existence of MNPI; and
3) the execution of a transaction prompted by the possession of the MNPI by the insider.
    a) Such transactions are classified into two categories, both of which prohibit insiders from trading in the securities of: (1) the Issuer or Public Company of the insider; and (2) any other company engaged in a transaction with the relevant Issuer or Public Company of the insider.

The same provision further defines and categorizes individuals and entities that may be legally recognized as "insiders" under the Indonesian Capital Market Law. This classification includes several groups:[8]

a. Commissioners, directors, or employees of the issuer or public company, encompassing individuals who hold leadership, operational, or other key organizational roles within the company, as governed by Law No. 40 of 2007 on Limited Liability Companies.
b. Principal shareholders of the issuer or public company, namely individuals or entities that directly or indirectly control at least 20% of the company's voting rights, or a smaller proportion as determined by the Capital Market Supervisory Agency (Bapepam), now succeeded by the Financial Services Authority (OJK).

[7] Material Non-Public Information (MNPI) refers to undisclosed information that is significant and relevant to events, developments, or circumstances likely to affect the price of securities on the stock exchange and/or influence the decisions of investors, prospective investors, or other interested parties relying on such information
[8] See Article 95 explanatory note

This category also includes majority shareholders as defined under Part Five of Law No. 40 of 2007.

c. Individuals who, by virtue of their position, profession, or business relationship with the issuer or public company, are capable of accessing inside information. Here, "position" refers to roles held in government, private institutions, or agencies; "profession" covers legal consultants and lawyers tasked with ensuring compliance with legal and regulatory frameworks; and "business relationship" includes connections arising from business dealings, such as relationships with customers, suppliers, debtors, and creditors.
d. Affiliated parties, including: (i) family relationships by marriage or descent up to the second degree, whether vertical or horizontal; (ii) relationships between individuals and their employees, directors, or commissioners; (iii) relationships between two companies sharing one or more directors or commissioners; (iv) relationships between a company and any individual or entity that directly or indirectly controls, or is controlled by, that company; (v) relationships between two companies controlled by the same person, directly or indirectly; and (vi) relationships between a company and its major shareholder(s).
e. Individuals or entities who, within the preceding six months, fell into any of the aforementioned categories are also deemed insiders under the law.

Drawing from the foregoing definition, it is apparent that the Indonesian Capital Market Law aligns with the classical fiduciary duty theory of insider trading. Under Black's Law Dictionary, fiduciary duty is defined as: "(1) A duty of utmost good faith, trust, confidence, and candor owed by a fiduciary (such as a lawyer or corporate officer) to the beneficiary (such as a client or shareholder); (2) a duty to act with the highest degree of honesty and loyalty toward another person and in the best interests of the other person (such as the duty that one partner owes to another)."[9] By adopting this framework, the Indonesian Capital Market Law adopts a relatively narrow conceptualization of insiders, limiting their designation to individuals who owe a fiduciary obligation to the company.

C. 1. 2 The Evolution of Insider Trading Regulation in the United States: From Fiduciary Duty to Misappropriation

Compared to Indonesia's regulatory framework, the United States' insider trading regime is widely regarded as the most advanced, having developed a comprehensive set

[9] "Examining Personal Representative and Trustee Fiduciary Duty." *MacLean Holloway Doherty & Sheehan, P.C.*, mhdpc.com/examining-personal-representative-and-trustee-fiduciary-duty/. Accessed 4 May 2025.

of legal theories, including the recently recognized "shadow trading" theory. The primary prohibition against insider trading in the United States is codified in the Securities Exchange Act of 1934 ("SEA"), specifically through Section 10(b) and Rule 10b-5. These provisions incorporate both the classical fiduciary duty theory and the misappropriation theory, which together form the foundation for the regulation and prosecution of insider trading.

Having addressed the concept of the classical fiduciary duty, we can look to U.S. practice to better understand the misappropriation theory. Unlike the fiduciary duty theory, the misappropriation theory possesses a broader scope, as it does not necessitate a breach of fiduciary duty by a corporate insider. This theory aligns with the requirements of Section 10(b) and Rule 10b-5 by focusing on the deceptive use of misappropriated information "in connection with the purchase or sale of a security." As established in United States v. O'Hagan, liability under the misappropriation theory arises from a breach of a duty of trust or confidence between the misappropriator and the source of the information. Such a duty is not limited to fiduciary relationships but extends to any context where a mutual expectation of trust and confidence exists between the parties.[10]

The misappropriation theory is triggered whenever the source of the information has a legitimate expectation that the recipient will maintain confidentiality. The Supreme Court in O'Hagan interpreted the "duty of trust or confidence" expansively to accommodate a wide range of relationships beyond traditional fiduciary ties. To provide greater clarity, the Securities and Exchange Commission (SEC) provide guidance in Rule 10b5-2, which outlines three non-exclusive examples where a duty of trust or confidence is presumed to exist:[11]

a. where a person agrees to maintain the confidentiality of information;
b. where there is a history, pattern, or practice of sharing confidences between the communicating parties, thus creating a mutual expectation of confidentiality;
c. and where confidential information is obtained from a spouse, parent, child, or sibling.

It is important to note, as clarified in the preliminary note to Rule 10b5-2, that these examples are illustrative rather than exhaustive.

Once a duty of trust or confidence has been established, a breach only occurs when the recipient misuses or improperly acquires the information and subsequently trades

[10] Pritchard, Adam C. "United States v. O'Hagan: Agency Law and Justice Powell's Legacy for the Law of Insider Trading." B. U. L. Rev. 78, no. 1 (1998): 13-58.
[11] M.Nagy, Donna. "Insider Trading, Congressional Officials, and Duties of Entrustment." *Boston University Law Review,* vol 92: 1105, pp. 351 **https://www.bu.edu/law/journals-archive/bulr/documents/nagy.pdf**

based on the misappropriated information. Accordingly, the misappropriation theory seeks to prevent individuals who possess confidential information from exploiting it for personal gain in the securities markets. However, if the recipient discloses their intent to trade using the confidential information to the source and obtains explicit consent, the act does not constitute misappropriation, and no insider trading liability arises under this theory.[12]

C.2 The Concept of Shadow Trading

C.2.1 Short Story of SEC v. Panuwat

Matthew Panuwat served as a senior officer at Medivation Inc., a mid-sized biopharmaceutical company specializing in oncology and headquartered in San Francisco, California. In August 2016, during the course of his employment, Panuwat received confidential, material nonpublic information indicating that Pfizer Inc. intended to acquire Medivation. Within minutes of receiving this information, Panuwat purchased short-term, out-of-the-money call options in the common stock of Incyte Corporation—another mid-sized biopharmaceutical company with a similar oncology focus. Panuwat anticipated that Incyte's stock price would rise materially upon the public announcement of the Medivation acquisition, given its comparable market positioning. By trading in advance of the announcement, he realized a profit of $107,066 as Incyte's stock jumped 8%.

The SEC found that Panuwat had expressly agreed to maintain the confidentiality of any nonpublic information obtained during his tenure and to refrain from using such information for personal benefit. Furthermore, Panuwat had signed Medivation's insider trading policy, which explicitly prohibited employees from profiting based on material nonpublic information, whether by trading Medivation's securities or the securities of any other publicly traded company.

C.2.2 Assessment Through the Lens of Misappropriation Theory and Market Connection

At its core, the alleged illegality of shadow trading is grounded in the misappropriation theory, which posits that an individual engages in securities fraud when they breach a duty owed to the source of material nonpublic information by misusing that information for personal gain, thereby depriving the source of its exclusive

[12] S. Davis, Harry. "Overview of the Law of Insider Trading." Insider Trading Law & Compliance AB 2017, pp. 23 https://legacy.pli.edu/product_files/Titles/4553/%23172874_Insider%20Trading%20AB%202017_20161005095421.pdf

use. Shadow trading typically involves an individual affiliated with one company (Entity A) executing trades in the securities of another publicly traded company (Entity B)—often a competitor or a firm within the same supply chain—based on material nonpublic information acquired through their relationship with Entity A.

The *Panuwat* case underscores the evolving nature of the misappropriation theory within the legal framework of insider trading. It is particularly complex because it challenges the traditional requirement that the misappropriated information must concern the company whose securities are traded. In this instance, Panuwat did not trade based on any misappropriated confidential information related to Incyte, the company in which he invested, but rather on sensitive information about acquisition discussions between his employer, Medivation, and Pfizer—information entirely unrelated to Incyte (as elaborated in Section C.2). Panuwat's legal team highlighted that, in all prior SEC enforcement actions under the misappropriation theory, the misappropriated information had the materiality and a direct connection to the company being traded—an element absent in this case, and one they argue is essential to establish liability.[13]

At the heart of the SEC's argument at trial was the assertion that a "market connection" existed between Medivation and Incyte, thereby establishing the materiality of the misappropriated information. This market connection refers to a significant economic relationship between two or more companies such that material nonpublic information (MNPI) concerning one could reasonably be expected to influence the stock price or investment decisions related to the other. In the context of shadow trading, materiality hinges on whether a reasonable investor would view the MNPI pertaining to one company as altering the total mix of information available about another company, thus affecting their investment judgment.[14]

The SEC contended that Medivation and Incyte were "closely comparable" entities within a narrowly defined oncology-focused biopharmaceutical sector. To support this claim, the Commission introduced a range of evidence—including expert testimony, analyst reports, and financial media coverage, demonstrating that Incyte was perceived as a peer company and a plausible alternative acquisition target, should the Medivation-Pfizer deal fall through. Ultimately, the court concluded that a reasonable investor could find that the MNPI regarding Medivation's acquisition was material to Incyte, given that

[13] Faulk, Kathryn. "Shadow Trading: Another Arrow in the SEC's Enforcement Quiver?" Securities Regulation Law Journal, vol.51, no.4 , 2023, pp. 353 **https://www.akingump.com/a/web/upbiVA7arUePPx8bBS4wrq/8y84CY/149133636_faulk_srlj_51no4-2.pdf**

[14] 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.

the takeover of a major competitor in a niche industry could signal broader market trends and increase the attractiveness of similarly positioned firms.[15]

Lastly, a crucial element in applying the misappropriation theory is the existence of a duty of trust and confidence between the defendant and the source of the material nonpublic information. The SEC contended that Panuwat owed such a duty, relying on two principal grounds. First, it was established that Panuwat acknowledged the confidential nature of internal communications he received concerning Medivation's anticipated acquisition. These emails, disseminated directly to him in the context of his professional role, triggered the presumption of duty under the first scenario outlined in Section C.1.2—where an individual agrees to maintain the confidentiality of information. Furthermore, the SEC introduced internal documentation demonstrating that access to the acquisition-related information was restricted to a limited group of high-ranking employees, from which a significant portion of Medivation's personnel was excluded. Panuwat, as part of this select group, was entrusted with information not available to the broader workforce. This exclusivity of access, grounded in his corporate position, supports the second presumption of duty described in Section C.1.2, wherein a duty arises from where there is a history, pattern, or practice of sharing confidences between the communicating parties, thus creating a mutual expectation of confidentiality. Second, the SEC provided evidence that Panuwat had a duty of trust and confidence through the confidentiality agreement and insider trading policy that Panuwat signed as a Medivation employee. The insider trading policy prohibits the employees to "*foreclose any misappropriation of Medivation's MNPI for his own personal trading gain by trading in the company's own securities or other publicly traded companies, including all significant collaborators, customers, partners, suppliers or competitors of the Company, or to disclose such information to a third party who does so.*"

C.3 Whether Indonesia Can Provide Shadow Trading Protection

Currently, Indonesia lacks any positive legal provisions that adopt the misappropriation theory, which is essential to regulate and address shadow trading. As a result, existing insider trading regulations fall short in providing adequate investor protection against the emergence of sophisticated trading practices such as shadow trading. The Indonesian Capital Market Law is arguably outdated in light of the evolving nature of market abuses.

Specifically, Article 95 of the Capital Market Law proves insufficient in addressing

[15] Ibid. 357

the characteristics of shadow trading. First, it limits the definition of insiders to those who are affiliated with the company whose securities are being traded, whereas shadow trading typically involves insiders who possess material non-public information (MNPI) but conduct trades in economically related companies with which they have no direct affiliation. Second, Article 95 prohibits trading based on misappropriated MNPI only in relation to the company concerned or its direct transactional counterparties, while shadow trading involves trading in a third company that may merely belong to the same industry or be affected by the same market developments, without any direct transactional link.[16]

Furthermore, it is also important to note that insider trading is categorized as a financial crime under Indonesian law as exemplified by Article 104 of the Indonesian Capital Market Law which stipulates that violations of Article 95 are punishable by imprisonment and fines. Consequently, its regulation is subject to the principles of criminal law. In this context, the principle of *nullum crimen, nulla poena sine lege praevia*—no crime and no punishment without prior legal provision—becomes particularly relevant. Since shadow trading is not explicitly prohibited under existing Indonesian law, individuals or entities engaging in such practices cannot currently be held criminally liable, notwithstanding the fact that such conduct may be deemed illegal in other jurisdictions.

In *Panuwat*, the SEC benefited from prosecuting an insider at a company operating in a niche market with few comparable firms. This scarcity made it easier for the SEC to argue that the information was material, as a clear "market connection" existed between the insider's company and the target. By contrast, such arguments would be more difficult in sectors like oil and gas, where numerous public companies occupy similar market positions. This situation indirectly highlights a critical gap in Indonesia's regulatory framework—specifically, the treatment of materiality and its connection to the broader market. Article 1 number 7 of the Indonesian Capital Market Law defines material information too broadly, failing to account for the materiality of information when used to trade in a different but economically linked company. A more refined approach would involve identifying "peer" companies within a relevant industry or sector as part of the market analysis when determining materiality. This would introduce a clearer market definition component and also serve as a safeguard, preventing traders from being wrongly prosecuted for using non-material information when trading

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

securities of unrelated companies.[17]

Therefore, to uphold the principle of market fairness, it is imperative for the Indonesian government to undertake regulatory reforms, particularly in the foundational provisions governing insider trading. The current legal framework must evolve to address emerging forms of financial misconduct, such as shadow trading, which exploit gaps in conventional insider trading definitions. Reforming these provisions is essential not only to enhance legal certainty but also to ensure the integrity of the capital market. An adaptive regulatory system will foster investor confidence and contribute to the creation of an efficient market that promotes broad-based participation.[18]

C.4 Financial Services Authority

C.4.1 Indonesian Financial Services Authority

To build institutional capacity capable of integrating regulation and supervision across the financial services sector, Indonesia established the Financial Services Authority (OJK) through Law No. 21 of 2011. As an independent body, OJK holds the strategic mandate to oversee the banking industry, capital markets, and non-bank financial institutions in a unified manner. Prior to the enactment of this law, the supervisory functions in Indonesia's financial sector were fragmented across three institutions: Bank Indonesia, which was responsible for overseeing commercial, Islamic, and rural banks; the Capital Market and Financial Institution Supervisory Agency (Bapepam-LK), which supervised capital markets and non-bank financial institutions; and the Ministry of Cooperatives, which handled oversight of financial activities conducted by cooperatives.[19] This fragmentation created challenges in coordination and weakened the effectiveness of financial regulation.[20]

The establishment of OJK was mandated by Article 34 of Law No. 3 of 2004, which amended the Bank Indonesia Law and required the formation of a supervisory body for

[17] 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.
[18] Fajar Sugianto, Velliana Tanaya, and Veronica Putri, "Penilaian Efisiensi Ekonomi Dalam Penyusunan Langkah Strategis Terhadap Regulasi," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 10, no. 3 (2021): 447.
[19] Herlina Waluyo, Irene Putri A.S.Sinaga, and Fajar Sugianto, "Perlindungan Hukum Otoritas Jasa Keuangan Terhadap Penyelenggara Layanan Urun Dana Berbasis Efek Berdasarkan POJK Nomor 16/POJK.04/2021," *DiH: Jurnal Ilmu Hukum* 18, no. 2 (2022): 131–146.
[20] Nurdin, Aulia Anjani, Rezky Fabyo Darussalam, and Muh Rozi Asri. "Peran Otoritas Jasa Keuangan Dalam Pengawasan Dan Pengaturan Lembaga Keuangan Di Indonesia." Media Hukum Indonesia, vol. 2, no. 4, Dec. 2024, p. 818. https://doi.org/10.5281/zenodo.14307286.

the entire financial services sector, separate from Bank Indonesia.[21] This mandate was realized with the enactment of Law No. 21 of 2011 on 22 November 2011. Although passed in 2011, OJK's authority was implemented in phases. On 31 December 2012, it officially assumed regulatory authority over capital markets and the non-bank financial industry from Bapepam-LK, and one year later, on 31 December 2013, it took over supervision of the banking sector from Bank Indonesia. In 2015, OJK expanded its scope by assuming regulatory and supervisory responsibilities over microfinance institutions (MFIs). This gradual transition was a strategic effort to consolidate supervision and strengthen OJK's institutional capacity to oversee Indonesia's entire financial system.[22]

Initially, based on Article 6 of Law No. 21/2011, OJK was tasked with regulating and supervising banking, capital markets, insurance, financing institutions, and pension funds. In response to developments in the financial industry, its mandate was expanded through the enactment of Law No. 4 of 2023 on Financial Sector Development and Strengthening (P2SK Law). Under this revised framework, OJK now oversees activities in the following sectors: (a) banking sector; (b) capital markets, derivative finance, and carbon exchanges; (c) insurance, guarantees, and pension funds; (d) financing institutions, venture capital companies, microfinance institutions, and other financing entities; (e) financial sector technological innovation, including digital financial assets and crypto assets; as well as (f) the behavior of financial services business actors, consumer protection, and financial education. OJK also carries out the function of supervising the financial sector in an integrated manner and assessing the systemic impact of financial conglomerates, while being responsible for the development of the financial sector through coordination with relevant ministries and institutions.[23]

In the capital market sector, the P2SK Law significantly enhances OJK's regulatory and supervisory authority. As outlined in the amended Article 5 of the Capital Market Law, OJK is authorized to regulate, license, and supervise a wide range of capital market activities. This includes the issuance of securities, the use of information technology in capital market operations, and fundraising through either conventional public offerings or electronic systems. OJK also licenses key institutions within the capital market

[21] Soedibyo, Anthonius Adhi. "KEDUDUKAN BANK INDONESIA DAN OTORITAS JASA KEUANGAN BERDASARKAN PERUNDANG – UNDANGAN TERHADAP PRODUK PERBANKAN." Lex Journal Kajian Hukum Dan Keadilan, vol. 1, no. 2, Dec. 2017, p. 3. https://doi.org/10.25139/lex.v1i2.557.

[22] Hukum Online. "Tujuan, Fungsi, Tugas Dan Wewenang OJK." Accessed 4 May 2025. https://www.hukumonline.com/berita/a/tugas-dan-fungsi-ojk-lt624e445a5e213/

[23] 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.

ecosystem, such as stock exchanges, clearing and guarantee institutions, and central securities depositories. To maintain market integrity and ensure investor protection, OJK is empowered to conduct inspections, enforce compliance, and impose administrative sanctions for violations of capital market regulations.[24]

One of the critical violations that fall under OJK's enforcement responsibilities is insider trading. According to Government Regulation No. 46 of 1995 concerning Procedures for Examination in the Capital Market Sector, Article 2 paragraph (2) authorizes OJK to conduct examinations for capital market violations, which includes requesting information or confirmation, requiring or prohibiting certain actions, examining and copying documents, and setting terms or granting permission to facilitate loss recovery. Insider trading investigations are carried out by Civil Servant Investigators (PPNS) who are legally empowered to investigate violations within the capital market under applicable statutory provisions. Investigations may be triggered by reports, complaints, signs of non-compliance with OJK obligations, or indications of misconduct in the capital market sector.[25]

Despite these provisions, the enforcement of insider trading regulations in Indonesia faces limitations. The current legal framework under the Capital Market Law (UUPM), which is grounded in the fiduciary duty doctrine, does not adequately cover actors outside the defined category of Insiders, such as third parties who exploit non-public information for trading purposes. As a result, OJK has limited ability to impose sanctions on such parties. While the UUPM provides for criminal and administrative penalties, it does not explicitly regulate civil sanctions. Civil claims must therefore be pursued individually under general civil law. Under Articles 103 to 107 of the UUPM, criminal sanctions for insider trading and market manipulation may include imprisonment for up to ten years and fines of up to fifteen billion rupiah. However, in practice, OJK's enforcement of criminal penalties has been less effective due to challenges in proving violations, limited legal capacity among law enforcement officers, and systemic barriers that hinder litigation. Consequently, many cases are resolved administratively, which weakens their deterrent effect and allows repeat violations to occur with minimal consequence.[26]

[24] 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.
[25] Kurniawan, Nando Dwi. *TINJAUAN YURIDIS TENTANG "INSIDER TRADING" DALAM PASAR MODAL DITINJAU DARI UU NOMOR 8 TAHUN 1995 TENTANG PASAR MODAL.* 2022. page 48-49. Skripsi thesis, Universitas Panca Marga.
[26] Ibid. 54-57

C.4.2 U.S. Institutions in Insider Trading Enforcement

The enforcement of insider trading laws in the United States operates within a highly coordinated institutional structure comprising the Securities and Exchange Commission (SEC), the Department of Justice (DOJ), and the Financial Industry Regulatory Authority (FINRA). Each institution serves a distinct function—regulatory, prosecutorial, or self-regulatory—yet their efforts are deeply interwoven. Together, they form a comprehensive enforcement regime that combines surveillance, regulation, civil enforcement, and criminal prosecution to ensure market integrity and investor protection.

Established in 1934 in response to the 1929 stock market crash, the SEC is the primary federal agency tasked with regulating securities markets. Its mandate includes protecting investors, maintaining fair markets, and facilitating capital formation.[27] Governed by five Commissioners appointed by the President with Senate confirmation, the SEC operates through six specialized divisions. These include: (1) Corporation Finance, which oversees disclosure and transparency; (2) Economic and Risk Analysis, which applies financial economics and data science to identify market risks; (3) Enforcement, which investigates violations and pursues civil actions; (4) Examinations, which audits compliance among market participants; (5) Investment Management, which regulates asset managers; and (6) Trading and Markets, which supervises key market actors including exchanges and broker-dealers.[28]

The SEC plays a central role in detecting and prosecuting insider trading. Through market surveillance tools and data analytics, it monitors unusual trading activity—such as volume spikes or abnormal price movements ahead of corporate announcements. It also administers a robust whistleblower program under the Dodd-Frank Act, offering financial incentives to individuals who report violations leading to successful enforcement actions. Once suspicious activity is identified, the SEC initiates investigations involving data collection, interviews, and financial analysis. Depending on the findings, the agency may pursue civil litigation or administrative proceedings. In cases where there is sufficient evidence of criminal intent, the SEC refers the matter to the DOJ.

The DOJ complements the SEC by pursuing criminal charges in serious insider trading cases. It operates under a higher burden of proof—beyond a reasonable doubt—

[27] Gratton, Peter. "Securities and Exchange Commission (SEC): What It Is and How It Works." Investopedia, 27 Apr. 2025, www.investopedia.com/terms/s/sec.asp. Accessed 4 May 2025.
[28] SEC.gov | Divisions and Offices. www.sec.gov/about/divisions-offices. Accessed 4 May 2025.

and has access to prosecutorial tools not available to regulatory agencies. These include wiretaps, search warrants, undercover operations, and the use of cooperating witnesses. The DOJ evaluates cases based on the strength of the evidence and the potential deterrent effect. Its enforcement targets typically include high-impact offenders such as corporate insiders and professional intermediaries entrusted with confidential information. Penalties for criminal insider trading can be severe, including up to 20 years in prison, multi-million-dollar fines, and asset forfeiture as stipulated under 15 U.S.C. § 78ff and 18 U.S.C. § 2B1.41.[29]

In determining whether to pursue a criminal case, the DOJ considers two main factors: (1) the ability to prove criminal intent; and (2) the potential impact of the case in creating deterrence. The DOJ focuses on cases that involve large profits from insider trading or that cause significant harm to investors. In addition, the DOJ also targets "gatekeepers" such as the company directors, accountants, and advisors who have substantial responsibility for protecting confidential information.[30]

As the capital markets abuses become more complex, the DOJ is strengthening its cooperation with the SEC to enhance enforcement efforts. Through this cooperation, SEC and DOJ share data, expertise, and resources to more efficiently identify and prosecute violations. This collaboration has been evident in high-profile cases, such as the simultaneous prosecution of 13 defendants in an insider trading scheme that generated more than $40 million in illegal profits, and the case of individuals who traded TravelCenter of America stock based on merger information obtained from their spouses. This cooperative framework extends to emerging areas such as "shadow trading," where insiders trade on confidential information indirectly linked to another firm. By sharing data, aligning investigative strategies, and pooling resources, the SEC and DOJ amplify each other's effectiveness in enforcing the law.[31]

Supporting these efforts is FINRA, the primary Self-Regulatory Organization (SRO) for broker-dealers in the U.S. securities market. Operating under SEC oversight, FINRA enforces ethical conduct among its members through licensing, rulemaking, and compliance monitoring.[32] One of the main tools used by FINRA is a data system known

[29] "*Insider Trading Claims: Defenses."* Jenner & Block LLP. pg 5. Accessed 4 May 2025. https://www.jenner.com/a/web/im88RixK1rTzJkUBhGE7jc/4HaE92/sadeghi-riely-practical-guidance-nov-2022.pdf
[30] Securing Integrity: The SEC and DOJ's Unified Front and Pursuit of Novel Legal Tactics Against Insider Trading and Corporate Wrongdoing | Insights | Vinson and Elkins LLP. www.velaw.com/insights/securing-integrity-the-sec-and-dojs-unified-front-and-pursuit-of-novel-legal-tactics-against-insider-trading-and-corporate-wrongdoing.
[31] ibid.
[32] Manning, Liz. "Financial Industry Regulatory Authority (FINRA) Definition." Investopedia, 1 Oct. 2024, www.investopedia.com/terms/f/finra.asp. Accessed 4 May 2025.

as the Central Registration Depository (CRD), which stores information related to individuals and entities registered in the securities market, as well as data related to violations or disciplinary actions faced by them. While the SEC is responsible for investigating and prosecuting larger insider trading cases, FINRA plays a role in detecting suspicious trading patterns among registered brokers and securities firms.[33] For example, if there is an unusual spike in trading activity in a particular stock ahead of a merger or acquisition announcement, FINRA will monitor those transactions and identify the traders involved. Through cooperation with the SEC, FINRA helps provide necessary transaction data to track the flows of trades and verify that any non-public information is being used for private gain. This method allows for early detection of potential violations.

Furthermore, if there are suspected insider trading violations, FINRA's Enforcement Department will initiate an investigation that may include reviewing trading patterns, requesting information from related parties, and conducting interviews with company officials. These findings may be forwarded to the SEC for further investigation if needed. In addition, FINRA has the authority to bring its own disciplinary actions, which usually involve a formal hearing process, with decisions made by a panel of industry experts. These decisions can be appealed to FINRA's National Adjudicatory Council (NAC), and ultimately to the SEC, as well as, if needed, to a federal appeals court.[34]

C.4.3 OJK vs. U.S. Financial Authorities

Indonesia can draw valuable lessons from the United States' law enforcement model, particularly in strengthening institutional frameworks and enhancing synergies between authorities. First, improving coordination between the Financial Services Authority (OJK) and law enforcement agencies is crucial. While OJK has the authority to investigate through its Financial and Economic Supervisory Agency (PPNS), the effectiveness of law enforcement is often compromised by limited resources, evidentiary challenges, and suboptimal coordination. To address these issues, Indonesia should consider establishing a formal and integrated cooperation framework, such as a special task force that handles violations within the capital markets sector.

[33] Ehret, Todd. "SEC's Advanced Data Analytics Helps Detect Even the Smallest Illicit Market Activity." Reuters, 1 July 2017, www.reuters.com/article/world/secs-advanced-data-analytics-helps-detect-even-the-smallest-illicit-market-acti-idUSKBN19L27J. Accessed 4 May 2025.

[34] "*Insider Trading Claims: Defenses."* Jenner & Block LLP. pg 5-6 Accessed 4 May 2025. https://www.jenner.com/a/web/im88RixK1rTzJkUBhGE7jc/4HaE92/sadeghi-riely-practical-guidance-nov-2022.pdf

In addition to improving institutional coordination, Indonesia should explore the development of semi-independent entities, like Self-Regulatory Organizations (SROs), which possess the authority to oversee and enforce ethical standards among industry players. While the Indonesia Stock Exchange (IDX) currently undertakes some SRO functions, its role in disciplinary enforcement and early detection of market misconduct remains limited. A model to consider is the U.S. Financial Industry Regulatory Authority (FINRA), an independent SRO that effectively complements the Securities and Exchange Commission (SEC), enhancing market oversight at a micro level.

Reforming the legal framework is another critical aspect that requires urgent attention. Indonesia's current Capital Market Law (UUPM) has limitations in addressing parties that acquire and misuse material non-public information through indirect channels or those who fall outside the formal definition of "Insiders." Revising these regulations is necessary to broaden the scope of insider trading to include third parties, such as consultants, advisors, and other individuals who access sensitive information and exploit it for personal gain. Furthermore, improving investigative capacity is essential for establishing an effective market surveillance system. Investigators need enhanced skills in both technical and legal areas, as well as access to modern technology that can facilitate real-time monitoring of suspicious trading activities. Advanced tools, such as data analytics and financial forensics, have proven effective in the United States and could be instrumental in improving early detection capabilities in Indonesia.

Lastly, Indonesia should seriously consider implementing a comprehensive whistleblower program that offers both legal protections and meaningful financial incentives. In many other jurisdictions, such programs have proven highly effective in uncovering insider trading and other complex violations that often escape traditional regulatory detection.[35] By ensuring whistleblower anonymity, personal safety, and providing adequate monetary rewards, Indonesia can encourage more individuals to come forward with critical information. This would not only enhance public participation in market oversight but also promote a culture of accountability and transparency within the financial sector. In the long run, this kind of program can help prevent wrongdoing and make investors feel more confident that the market is fair and trustworthy.[36]

[35] 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.

[36] 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.

D. Conclusion

Indonesia's current insider trading regulations, primarily grounded in a fiduciary duty approach, are insufficient to address the complexities of modern financial misconduct. The limitations of the Indonesian Capital Market Law, particularly its narrow definition of insiders and the absence of provisions addressing misappropriation theory, hinder effective enforcement and investor protection. In contrast, the United States has developed a comprehensive and adaptive regulatory regime that incorporates both fiduciary duty and misappropriation theories, allowing for a broader interpretation of insider trading that includes shadow trading. The U.S. enforcement model, characterized by the coordinated efforts of the SEC, DOJ, and FINRA, demonstrates the importance of institutional collaboration and the use of advanced surveillance techniques to detect and prosecute violations effectively.

To enhance its regulatory framework, Indonesia must undertake significant reforms. This includes broadening the definition of insider trading to encompass third parties who exploit non-public information, improving coordination between regulatory and law enforcement agencies, and establishing semi-independent entities to oversee ethical standards in the financial sector. Additionally, investing in investigative capacity and implementing a whistleblower program could further strengthen market oversight and deter misconduct.

By learning from the U.S. model and adjusting its rules to meet new challenges, Indonesia can build a stronger and fairer capital market. These changes are crucial not only for protecting investors but also for ensuring the integrity and efficiency of the financial system.[37] Such reforms will foster greater public participation and trust in the market, ultimately contributing to a more resilient and equitable economic environment.

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[37] Fajar Sugianto, "Efisiensi Ekonomi Sebagai Remedy Hukum," *Refleksi Hukum: Jurnal Ilmu Hukum* 8, no. 1 (2014): 61–72.

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