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The Principle of Transparency in Addressing Insider Trading in Capital Markets: A Theoretical and Practical Analysis

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ABSTRACT

This study examines insider trading crimes within the capital market, where the principle of information disclosure is fundamental. Insider trading constitutes a violation of this principle, leading to market inefficiencies and unfair advantages. Despite the regulatory framework established by Law Number 8 of 1995 on the Capital Market, which prescribes both administrative and criminal sanctions, enforcement mechanisms remain ineffective. This research aims to analyze the implementation of transparency principles in the capital market and assess the effectiveness of legal enforcement theories in addressing insider trading practices. Employing a normative juridical method with a statutory approach, this study utilizes both primary and secondary legal materials. The findings reveal that the current regulatory framework for identifying and prosecuting insider trading remains inadequate, particularly concerning criminal provisions. The weaknesses in Law Number 8 of 1995 hinder the realization of information transparency in the capital market, leaving legal protection and market transparency unfulfilled. Strengthening legal provisions and enforcement mechanisms is crucial to uphold market integrity and investor confidence.

Keywords: Capital Market; Transparency Principle; Insider Trading
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INTRODUCTION

The capital market plays a crucial role in fostering economic growth and national development, particularly in Indonesia (Kieso, 2018). It serves as an effective mechanism to accelerate a nation's financial progress by bridging entities in need of funding with investors seeking financial returns through various financial instruments. In essence, the capital market facilitates transactions between capital providers—those with surplus funds—and entities requiring financial resources (Setianti & Haryono, 2023). According to Article 1, Paragraph 13 of Law Number 8 of 1995 on Capital Markets, the capital market encompasses activities related to public offerings and securities trading, publicly listed companies associated with issued securities, as well as institutions and professions engaged in securities-related activities (Hardiyanto, 2023). In capital market activities, legal regulations play a pivotal role in ensuring compliance and maintaining market integrity. The legal framework guarantees adherence to established rules among market participants and is instrumental in overseeing daily market operations—from preventive measures to enforcement actions against violations (Hirawati & Harsono, 2023).

This legal structure fosters a sense of security for all stakeholders in the capital market. The primary legal foundation governing Indonesia's capital market is Law No. 8 of 1995, which aims to uphold the principle of transparency in providing material information and to prevent fraudulent activities in stock trading (Benuf et al., 2020). Furthermore, Chairman of the Capital Market Supervisory Agency Decree No. KEP-86/PM/1996 on Information Disclosure outlines key disclosure obligations for publicly listed companies (Septiari & Nasution, 2017). These obligations include reporting transactions such as stock purchases, business mergers, consolidations, joint ventures, dividend income, stock splits or dividend distributions, acquisition or loss of significant contracts, changes in corporate control, additional public share offerings, significant managerial changes, asset acquisitions or losses, labor disputes, legal proceedings, auditor replacements, and fiscal year adjustments (Sapiri, 2023).

Information transparency is a fundamental pillar in the investment world, playing a crucial role in ensuring the sustainability and integrity of capital markets. Transparency serves as the

core principle that allows investors to make rational decisions regarding stock purchases and sales. It acts as a legal safeguard, reinforcing corporate accountability through substantive transparency (Benuf et al., 2019). By enabling investors to access critical corporate information, transparency ensures a fair and efficient capital market, where all market participants receive the same quality of information simultaneously. From a legal standpoint, transparency guarantees the right to obtain material information, reinforced by sanctions for corporate negligence or non-compliance (Rahadiyan, 2020). One of the most significant threats to transparency in capital markets is insider trading—a form of financial misconduct where individuals with privileged access to non-public information engage in securities transactions for personal gain (Qatrunnada & Nurani, 2023).

This unethical practice creates an unfair advantage by allowing insiders to make informed investment decisions before the public becomes aware of critical market-moving information. As a result, the playing field is no longer level, as insiders exploit their exclusive position while other investors are left at a disadvantage (Harista et al., 2021). Insider trading is a persistent financial crime across various jurisdictions, including Indonesia, and undermines the integrity of capital markets. Insider trading is classified as a white-collar crime that is both prevalent and difficult to prove (Putra et al., 2012). It typically involves a situation where an individual or entity trades securities based on confidential, material information that has yet to be disclosed to the public, ultimately influencing the security's price (Stevani & Sudirman, 2021). By engaging in insider trading, perpetrators secure undue profits or avoid financial losses by executing transactions based on privileged knowledge. This results in an asymmetry of information that disadvantages other investors, leading to potential financial harm. More importantly, insider trading erodes investor confidence, damages market credibility, and contradicts the principles of transparency and trust—two essential foundations of a robust and ethical capital market (Friede et al., 2015).

Insider trading is not a phenomenon exclusive to Indonesia; similar practices frequently occur in various parts of the world. This issue has long been a subject of discussion within global capital markets (Fadlillah, 2019). However, despite its prevalence, there remains a significant lack of jurisprudence regarding insider trading cases due to the complexity of such cases. In practice, insider trading cases rarely progress to the investigation stage and are seldom adjudicated in court (Marginingsih, 2021). Becelius Ruru has asserted that investor and public protection can only be

achieved through legal certainty and enforcement, transparency, market supervision, an efficient trading system, and well-defined professional standards (Andaiyani et al., 2020).

As a nation governed by the rule of law, Indonesia should uphold legal certainty, ensuring that all aspects of society operate under clear and enforceable legal principles. The ultimate goal is to create a just, secure, peaceful, and prosperous society (Yusra et al., 2017). Legal philosopher H.L.A. Hart emphasized that a just legal system must incorporate three essential elements: obligation, morality, and rules. Law cannot be separated from moral values, as the absence of justice within a legal system indicates a failure in moral oversight by law enforcement authorities (Riantani & Nurzamzam, 2015).

The capital market should function as a platform where market participants operate based on trust, particularly through the principle of information transparency. This principle is explicitly regulated in Article 1, Point 25 of the Capital Market Law, which states: "*The principle of information disclosure serves as a general guideline requiring issuers, public companies, and other entities subject to this law to disclose, in a timely manner, all material information regarding their business or securities that may influence investors' decisions or the market price of such securities.*"

Fundamentally, fair securities trading refers to trading activities that occur naturally, driven by genuine supply and demand forces within an unmanipulated market mechanism. This means that market movements should remain uninfluenced by external factors that may distort price formation or investor decisions (Mait et al., 2023). Ensuring accurate and timely information disclosure by issuers and preventing specific parties from exploiting others' lack of knowledge are critical components of market fairness. Additionally, well-established trading systems and procedures play a crucial role in fostering fair securities transactions within the stock exchange (Pratama et al., 2024).

Information disclosure serves as a fundamental mechanism that caters to three key stakeholders in the capital market: issuers, investors, and intermediaries. For issuers, compliance with disclosure obligations is essential to ensuring market efficiency (Iman, 2020). For investors, transparent and accurate information serves as the foundation for making well-informed investment decisions. Meanwhile, intermediaries in the capital market—such as analysts, investment advisors, securities brokers, fund managers, and other financial intermediaries—bear

the responsibility of diligently investigating, filtering, and providing professional assessments of the information disclosed in public documents (Nurhasanah & Rahmatullah, 2020).

Legal protection for investors is a critical element in the realm of investment and business. This protection is manifested through both legal substance and regulatory structures, which together ensure legal certainty and investor security (Qureshi, 2020). However, investigating insider trading practices in capital markets presents a significant challenge, as establishing the materiality of facts within the framework of disclosure principles is inherently complex (Asraf & Desda, 2020). Moreover, the lack of clarity in the legal provisions of Law No. 8 of 1995 regarding legal safeguards against insider trading exacerbates this issue. The absence of robust legal protection for investors against insider trading not only fosters market injustice and illicit gains but also undermines market credibility, ultimately disadvantaging investors and eroding trust in the financial system (Nugraeni & Triyono, 2023).

METHOD

This study employs a normative legal research methodology to analyze the legal framework governing insider trading in the Indonesian capital market. A statutory approach examines relevant regulations, including Law Number 8 of 1995 on Capital Market, Financial Services Authority (OJK) regulations, and Indonesia Stock Exchange (IDX) trading rules (Disemadi, 2022). A conceptual approach explores the transparency principle in insider trading regulation, focusing on its role in market integrity, investor confidence, and corporate governance. The research relies on secondary data, including primary legal sources (statutes, government regulations, OJK guidelines), secondary sources (books, journal articles, legal commentaries), and tertiary sources (legal encyclopedias, financial reports). Document analysis is used to critically examine legal texts and academic literature on transparency in insider trading (Tan, 2021).

Three main approaches are applied. Legal interpretation utilizes grammatical, systematic, and teleological methods to evaluate statutory provisions. Comparative analysis assesses Indonesia's regulations against those in the U.S., the U.K., or Singapore to identify best practices. Doctrinal analysis explores the legal, economic, and ethical dimensions of transparency in insider trading regulation (Disemadi, 2022). This study aims to clarify Indonesia's insider trading legal framework, evaluate whether existing regulations promote transparency and fairness, and

propose regulatory improvements. By integrating legal and economic perspectives, it contributes to academic discourse and offers policy recommendations to enhance Indonesia's capital market regulations (Nafisatur, 2024).

DISCUSSION AND ANALYSIS

Insider Trading Practices and Legal Enforcement in Indonesia's Capital Market

Insider trading in capital markets is often not immediately recognized as a crime that causes direct financial losses. However, it has unique characteristics that distinguish it from conventional financial crimes (Soekarni et al., 2024). Unlike traditional offenses, insider trading revolves around privileged information rather than physical assets, does not require physical force, and relies on an individual's ability to interpret and exploit market conditions for personal gain. These factors make insider trading particularly difficult to detect and prove, yet its consequences are extensive and highly detrimental (Syahputra & Fibrianti, 2024).

Insider trading undermines the integrity of capital markets by distorting fair and efficient market mechanisms. One of its primary consequences is the creation of an unfair advantage among market participants (Putri, 2019). A fundamental principle of a fair market is equal treatment of all investors, where all participants should have access to the same information. However, insider trading disrupts this equilibrium by allowing a select group of individuals to capitalize on privileged, non-public information, creating an uneven playing field (Prasetyo & Latumahina, 2023). Additionally, insider trading distorts the price formation process. When certain individuals act on undisclosed information, market prices no longer reflect the true value of assets, leading to misleading signals for investors and an unfair allocation of financial resources. This distortion erodes confidence in market pricing mechanisms and weakens the overall efficiency of financial markets (Darnia et al., 2023).

Furthermore, insider trading poses a significant threat to the stability and sustainability of capital markets. An unfair market environment diminishes public trust, discouraging both individual and institutional investors from participating (Razali et al., 2022). Over time, this

widespread disillusionment can weaken investor engagement and ultimately jeopardize the long-term sustainability of the financial system. Beyond market inefficiencies, insider trading has severe repercussions for issuing companies (emiten) (Mulyawan, 2018). The erosion of investor confidence due to perceived unfairness can result in stock price volatility, making it difficult for companies to raise capital effectively. Meanwhile, insider trader's profit at the expense of ordinary investors, exacerbating market inequities and deepening distrust in financial institutions (Hutauruk et al., 2023).

The enforcement of laws against insider trading in Indonesia is primarily carried out by the Financial Services Authority (Otoritas Jasa Keuangan/OJK), the Attorney General's Office, and the judiciary. However, according to Rudi Hartono, the implementation of legal supremacy in the capital market sector still faces significant ambiguities and obstacles (Fajarianto et al., 2022). Law No. 8 of 1995 stipulates that the authority to investigate criminal offenses within the capital market lies with Civil Servant Investigators (Penyidik Pegawai Negeri Sipil/PPNS) at Bapepam (now integrated into OJK). However, Article 1 of the Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana/KUHAP) states that competent investigators are Indonesian National Police Officers (Polri) and specific Civil Servant Officials with special authority granted by law (Kristianti, 2021). Furthermore, Article 101(6) of Law No. 8/1995 specifies that the National Police only serve as assistants to Bapepam investigators in handling capital market offenses. This jurisdictional conflict has hindered the effective prosecution and adjudication of insider trading cases, leading to a minimal success rate in legal enforcement (Mengga & Ronal, 2023). Consequently, legal sanctions for violations in Indonesia's capital market remain vague and inconsistently applied.

The high prevalence of insider trading in Indonesia's capital market can be attributed to several key factors, including conflicts of interest and strong affiliations among insiders. These affiliations often stem from the market's tendency to prioritize personal relationships, networks, and close affiliations over regulatory compliance (Nitha & Westra, 2020). This cultural inclination towards nepotism and informal alliances has inadvertently created a market structure that facilitates and tolerates regulatory violations. Although Law No. 8 of 1995 prescribes both administrative and criminal sanctions for insider trading violations, in practice, companies tend to impose only administrative penalties without reporting the offense to the relevant authorities

(Fernando, 2022). According to Article 102 of the Capital Market Law and Article 61 of Government Regulation No. 45 of 1995, administrative sanctions may include written warnings, monetary fines, business activity restrictions, business suspension, license revocation, approval annulment, and registration cancellation. Further regulatory provisions on administrative sanctions are outlined in government regulations (Herdian & Sumiyati, 2021).

Many cases are not reported to law enforcement authorities due to the classification of certain offenses as minor administrative violations. As a result, measures such as written warnings and monetary fines are often applied internally without escalating the case to authorities for further legal action (Rohendi, 2014). This leniency in enforcement has weakened regulatory compliance and fostered a culture of impunity, ultimately undermining investor confidence in the integrity of Indonesia's capital market. To address these issues, legal reforms and stricter enforcement mechanisms are necessary to ensure greater accountability and deterrence (Permata & Ramli, 2019). The Indonesian government must strengthen coordination between regulatory bodies, eliminate jurisdictional conflicts, and enhance transparency in enforcement. Without a clear and consistent application of sanctions, insider trading will continue to thrive, threatening the overall integrity and stability of the country's capital market (Alit & Sumiyati, 2021).

Law No. 8 of 1995 outlines the identification of individuals who can be classified as insiders and stipulates various sanctions for violations, including criminal penalties. However, the provisions governing insider trading under the Capital Market Law (UUPM) remain inadequate and have not been fully implemented, particularly concerning criminal sanctions (Lutfiyah & Gozali, 2022). The Financial Services Authority (Otoritas Jasa Keuangan or OJK) faces significant challenges in enforcing insider trading laws. The regulatory framework established by Law No. 8 of 1995, Law No. 21 of 2011 on the Financial Services Authority, and their implementing regulations remains suboptimal, particularly in the enforcement of insider trading violations. The legal framework for prosecuting insider trading—an offense within the financial sector—requires urgent reform, modernization, and reinforcement (Junaedi & Salestia, 2020). OJK also encounters substantial obstacles in gathering sufficient evidence during insider trading investigations. Between 1995 and 2015, approximately 20 suspected cases of insider trading were examined by OJK (formerly Bapepam), yet none were conclusively classified as insider trading violations. The Prosecutor's Office also struggles to recognize the evidence submitted by OJK as a valid legal basis

for prosecution. Without complete and admissible evidence, the Prosecutor's Office is unable to proceed with legal action against alleged offenders (Jamil & Hayati, 2021).

In legal theory, the extent to which positive law binds judges and other legal authorities in the evidentiary process can be explained through three primary doctrines. The first is the theory of free proof, which rejects binding evidentiary rules and grants judge full discretion in assessing evidence (Maulana, et al., 2024). This theory is widely accepted as it provides flexibility for judges in seeking the truth. The second is the theory of negative proof, which prohibits judges from taking certain evidentiary actions unless explicitly permitted by law. This theory imposes restrictions on judicial discretion, as seen in Article 169 HIR, Article 306 RBg, and Article 1905 BW. The third is the theory of positive proof, which mandates that judges follow specific evidentiary procedures as prescribed by law. Under this doctrine, judges are obligated to undertake particular actions under certain conditions, as outlined in Article 165 HIR, Article 285 RBg, and Article 1870 BW.

In light of these challenges, there is a pressing need to refine Indonesia's legal framework for insider trading enforcement. Strengthening regulatory mechanisms, improving evidentiary standards, and enhancing judicial capacity are critical steps toward ensuring effective legal action against insider trading violations. According to the Securities Exchange Commission (SEC), one of the common strategies employed in insider trading to evade market surveillance is as follows: *"One way to avoid detection is to trade on days with higher trading volume, and we confirm that this is what insiders do. However, insiders typically do not engage in trading to the extent that it significantly increases the volume on a given day in a statistically abnormal manner. We find no evidence that insiders trade more aggressively as the announcement day approaches. Additionally, substantial evidence suggests that insiders avoid trading on days with abnormal market or individual stock returns, except for instances where stock purchases by insiders coincide with unusually high returns for the acquired stock."*

Based on the daily trading data monitored by the SEC, securities trading records can serve as both evidence and investigative leads in insider trading cases. These records undergo rigorous analysis, and if insider trading is proven, legal action can be taken. However, proving insider trading presents a significant challenge, particularly in the context of criminal law (Damayanti, et al., 2020). According to Article 184 of the Criminal Procedure Code, valid forms of evidence

include witness testimony, expert testimony, documents, indications, and statements from the suspect. Nonetheless, these evidentiary standards are often insufficient for establishing insider trading violations (Khairan, 2019). Under statutory law, there are five recognized forms of legal evidence: written documents, witness testimony, presumptions, confessions, and oaths. A critical analysis of these evidentiary categories reveals that they are inadequate for proving insider trading since transactions in the stock exchange are recorded as electronic data and printouts, which do not fall under the legally recognized category of documentary evidence as defined by the law (Mailangkay, Mangantar & Tulung, 2021).

The Principle of Transparency in Capital Markets

Insider trading can be likened to a form of theft, as it involves the misuse of privileged, non-public information for personal financial gain, undermining market integrity and investor trust. According to Article 1, Point 7 of Law No. 8 of 1995, material information consists of critical facts or occurrences that can influence securities prices on the stock exchange and impact the decisions of investors, prospective investors, or other stakeholders (Purboningtyas & Prabandari, 2020). The abuse of such information creates an unfair advantage, distorting the fundamental principle of a level playing field in capital markets law (Damayanti, et al., 2020). The role of information disclosure in the capital market is crucial for ensuring transparency and fairness. It serves three primary functions (Soekarni et al., 2024). First, disclosure acts as a cost-reduction mechanism, particularly in minimizing transaction costs and lowering the cost of capital. When material information is accessible to all market participants, the risk of asymmetric information decreases, fostering more efficient capital allocation (Maulana, et al., 2024). It enhances investor confidence by promoting accountability among listed companies and market participants. Investors are more likely to engage in capital markets when they trust that information is disclosed timely and accurately, reducing uncertainty and speculation. Information disclosure strengthens regulatory oversight and enforcement by providing authorities with a transparent framework to monitor compliance and detect market abuses, including insider trading (Kristianti, 2021).

To maintain a fair and efficient market, regulators must enforce strict transparency standards, ensuring that all market participants have equal access to material information. Strengthening regulatory frameworks, enhancing penalties for violations, and improving

surveillance mechanisms are essential steps in preventing insider trading. By fostering an environment of trust and integrity, capital markets can function as effective vehicles for economic growth and investment. Thus, promoting transparency is not merely a regulatory obligation but a fundamental necessity for sustainable market development (Siregar, 2017). A well-structured and standardized disclosure system reduces transaction costs associated with securities offerings, including issuance expenses, agreement preparation fees, and future settlement costs. By ensuring comprehensive and uniform information, disclosure enhances overall market efficiency (Rachmadini, 2019).

Second, information disclosure is a fundamental requirement imposed by capital market regulations. Regulatory authorities enforce disclosure obligations to assess the credibility and feasibility of issuers intending to offer securities in the primary market (Suardana, et al., 2020). Additionally, disclosure functions as a regulatory enforcement tool, imposing sanctions—such as license revocation—on market participants who violate transparency obligations. In this way, disclosure serves as a governance instrument to ensure that capital market actors operate within established legal and ethical boundaries (Purboningtyas & Prabandari, 2020). Third, transparency is an integral component of corporate governance, as it communicates the effectiveness of an issuer's management to market participants. A well-disclosed governance framework signals accountability, strengthens investor confidence, and promotes trust in the integrity of the capital market (Wijaya, 2022). By fulfilling these functions, information disclosure plays a crucial role in ensuring a fair, efficient, and well-regulated capital market, ultimately protecting investor interests and fostering economic growth (Tan, 2024).

Information transparency is crucial, as it plays a fundamental role in investment decision-making. Investors rely on accessible and accurate information to make informed decisions when buying or selling securities (Bhasudeva, et al., 2022). These informed decisions, in turn, contribute to the formation of fair market prices. A fair market price should accurately reflect the intrinsic value of a security, ensuring an efficient and transparent market. Issuers and publicly listed companies are legally obligated to disclose information, as stipulated in Article 86, Paragraph (1) of Law No. 8 of 1995. This regulation mandates the submission of periodic reports to the Capital Market Supervisory Agency (Bapepam) and their public disclosure (Soekarni et al., 2024). Additionally, it requires the submission of reports to Bapepam and public disclosure of material

events that may affect security prices, no later than the second working day after the occurrence of such events (Khairan, 2019).

Despite these regulatory requirements, violations of disclosure principles remain prevalent in capital markets. One significant violation is insider trading, where individuals exploit non-public, material information for personal financial gain (Mengga & Ronal, 2023). While the primary motivation behind insider trading is profit, such gains are considered unlawful as they are derived from privileged information available only to a select few (Hutauruk et al., 2023). This practice creates an unfair advantage, undermining market integrity and investor confidence. Fundamentally, the principle of transparency in capital markets aims to ensure market fairness by facilitating the accurate pricing of securities and providing essential information to market participants and regulatory authorities (Mulyawan, 2018). Therefore, the implementation of disclosure principles must be carried out diligently to safeguard investor interests and prevent insider trading violations (Syahputra & Fibrianti, 2024).

CONCLUSION

This study highlights the persistent issue of insider trading in Indonesia's capital market. The unique nature of this crime—relying on confidential information, lacking physical evidence, and depending on market analysis—makes it difficult to prove. Despite the market's emphasis on transparency to regulate participants, control transaction costs, and ensure compliance, insider trading continues to threaten market integrity by granting unfair advantages. Transparency plays a crucial role in fostering fair price formation and providing investors with accurate information for informed decision-making. However, enforcement remains a challenge. The Financial Services Authority (Otoritas Jasa Keuangan – OJK), the Attorney General's Office, and the courts oversee insider trading cases, but legal inconsistencies hinder effective prosecution. Limited success in handling financial crimes stems from overlapping investigative authority and unclear sanctions.

The prevalence of insider trading is driven by conflicts of interest and affiliated relationships within the capital market. While Law No. 8 of 1995 stipulates administrative and criminal penalties, enforcement remains weak, particularly in cases receiving minor administrative sanctions. Furthermore, the law is insufficient in defining insider trading violations, especially in its criminal provisions. A key obstacle is the difficulty in gathering evidence that meets Indonesia's

legal standards for prosecution under the Criminal Code. Strengthening regulatory frameworks and improving law enforcement are essential to uphold market integrity and investor confidence.

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