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COMPARATIVE LEGAL ANALYSIS BETWEEN THE COMPETENCE OF OTORITAS JASA KEUANGAN AND MONETARY AUTHORITY OF SINGAPORE ON THE ENFORCEMENT

Fabian JONATHAN
Universitas Pelita Harapan Lippo Village, Indonesia

Fajar SUGIANTO
Universitas Pelita Harapan Lippo Village, Indonesia

Tomy MICHAEL
Universitas 17 Agustus 1945 Surabaya, Indonesia

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Abstract:
This article shall therefore look into the competencies of both Indonesian and Singaporean capital market supervisory and regulatory bodies, namely Otoritas Jasa Keuangan and Monetary Authority of Singapore. It further assesses the effectiveness of each body in implementing law enforcement towards insider trading practices in specific. It shall also further evaluate the passiveness portrayed by the Indonesian counterpart when it comes to the eradication of wary trading activities in the market as well as variables that are weighed in towards its implementation. Normative-empirical research is used for this article as it takes legal principles, legal system, and comparative approach. The materials relied on for this article include an interview with a capital market lawyer, an analysis of the law and other supporting documents, as well as a comparative study. The nature of competence between Indonesia and Singapore's capital market supervisory and regulatory bodies is quite similar which adopts integrated approach towards regulation and supervision of the capital market with adequate authorities attributed to them. Since 2012, OJK replaces the role of Bapepam-LK to administer the Capital Market Law as an independent body. OJK is responsible for enacting rules and supervisory of the sector.

Keywords:
Comparative; Insider Trading; Law Enforcement

1. Introduction
The term investment has been really popular for quite some time as it spikes interest over various generations. This phenomenon has intercepted almost all countries in the world including South East Asian countries like Indonesia and Singapore. Singapore has been long known as one of Asia's economic powerhouses due to its position as one of the biggest economic hubs in Asia and even the world. On the other hand, Indonesia has gone through major economic developments over the past years and is recognized as one of the biggest countries as included in the G-20 forum. This leads to the notion that both Indonesians and Singaporeans have purchasing power with the potential of idle funds stored financially.

Investment is a way to turn idle funds to potentially generate profit in the future. There are numerous ways for one to invest their money into and it depends on each person's preference on the form of investment. Nowadays, investment instrument varies from foreign exchange, shares, property, even cryptocurrencies. However, the capital market has been one of the most prominent and long-used platforms used by the public to invest in shares, bonds, and other financial products that the market offers. In Indonesia, the capital market has been around since the Dutch colonization era in 1912 and has continued to exist until the present time. As of today, the Indonesian capital market is operated by Bursa Efek Indonesia ("BEI") as the stock exchange platform and overseen by Otoritas Jasa

Keuangan ("OJK") as the capital market regulatory and supervisory body. It operates based on Law Number 8 of 1995 pertaining to Capital Market ("Capital Market Law") as the prevailing law.

OJK was established within the enactment of Law Number 21 of 2011 regarding Otoritas Jasa Keuangan ("OJK Law") in an effort to create a developed, stable, and sustainable national economy with its main objective to form a comprehensive regulatory framework and a supervisory body of the financial services sector. In its means to touch all vital economic sectors in Indonesia, OJK serves as a regulatory and supervisory body for the banking and financial services sector with the goal to create an integrated and comprehensive system since the sector is deemed vital for the development of the national economy. Also, the financial sector has gone through various changes which resulted in a complex, dynamic, and interconnected system equipped with advanced technology hence the establishment of OJK is expected to accommodate them. A regulatory and supervisory institution is vital for the country as it fosters a healthy financial system providing a safe platform for consumers and OJK is established to meet those expectations.

Meanwhile, Singapore has its own Monetary Authority of Singapore ("MAS") established in 1971 following the enactment of the Monetary Authority of Singapore Act ("MAS Act"). In general, MAS holds the authority to regulate the financial services sector in Singapore. MAS acts as Singapore's central bank as well as financial regulator,[1] which gives them the authority to issue monetary policies and other macroeconomic supervisory duties. In its position as integrated financial supervisor, MAS oversee all financial institutions in Singapore including banks, insurers, capital market intermediaries, financial advisors as well as stock exchanges. It aims to reach its goal for Singapore to be promoted as a dynamic financial centre by providing a prudent and sustainable financial system.

All means of laws and regulations that have been set by the government in the field of capital market signifying an effort to protect investors. In essence, investors are the consumer of the capital market, and there is an obligation to protect consumer rights through the adoption of UN Guidelines for Consumer Protection. [2] Moreover, the protection of investors is very important as they are the life of the capital market which means that the existence of a capital market lies in them. A fully functional capital market requires investors to run hence protection of their legal rights is a must. Since any form of investment is full of risks, there is a huge possibility for investors to suffer loss but sufficient regulation and supervision to oversee the market will create a safety net for investors. In circumstances where the capital market can guarantee the protection of its investors, it gives rise to public trust as a safe space for investment which will lead to national economic developments. An investment-friendly country would have a fair, orderly, accountable, and sustainable capital market able to protect investors from any kinds of fraud and wary trading activities that are illegal.

Wary trading activities themselves may come in various forms and insider trading is one of the practices that has been deemed illegal. It is specifically regulated under Article 95 up to Article 99 of Capital Market Law, which defines insider trading as the activity of securities trading involving an insider of a respective public company providing insider information that pushes him/herself or another person to engage in purchasing or selling securities. In this sense, the employee has some sort of material information that may be crucial to the price of that particular company.

The threshold for an activity to be deemed as insider trading has been set however there lies a certain degree of complexity for the authorities to be able to prove the conduct of insider trading. Insider trading has protracted an ambiguity in its enforcement as there lies uncertainty in order to prove it especially since the use of advanced technology in the financial services sector. Herein, the burden of proof lies on the investigators to strictly detect suspicious transactions and take action upon them. The key aspect to eradicate insider trading practices is the commitment from the authorities and its intensity in enforcing the law to conduct investigation thoroughly towards companies and investors whether being big institutional investors or even retail investors.

Indonesia runs capital market activities based on Capital Market Law while Singapore has enacted Securities and Futures Act ("SFA"). Both countries have prohibited the practice of insider trading accordingly. However, in 2012 an insider trading case occurred concerning one of the listed companies in Indonesia, PT Bank Danamon Tbk ("BDMN"). The case involves Rajiv Louis, former head of UBS Indonesia who is suspected to have conducted insider trading. Rajiv Louis took advantage of insider information regarding DBS Group's plan to acquire a majority of BDMN stocks. In March 2012, he bought 1 million BDMN stock shares through his wife's account listed in Singapore.

The outcome of this case and other insider trading case that occurred in Indonesia has sparked a public opinion that OJK has not been very committed to investigating insider trading suspicions although they are the assigned authorities to carry out such activity. As previously mentioned, the protection of investors is a key in maintaining a healthy capital market however tracing back in its enforcement record, most insider trading practices in Indonesia end up in administrative sanctions whereas Capital Market Law has specifically prescribed the practice as a crime. In this sense, public investors and the market suffered while the perpetrator does not receive any form of deterrence.
With that being said, the author will discuss the following issues:

(a) How are the nature of competence of the capital market regulatory and supervisory body in Indonesia and Singapore?

(b) How is the enforcement of insider trading in Indonesia and Singapore during the acquisition of PT Bank Danamon Indonesia Tbk by OJK and MAS?

2. Methodology

This article utilizes normative-empirical legal research to further examine the implementation of the prevailing rules that have been enacted and how they set guidelines for any related parties in the capital market. This type of research produces a qualitative study in the form of descriptive information that seeks to portray present phenomena related to the topic of this research. This article uses a normative approach since it relies on various legal products such as positive law, legal principles, and legal doctrines. Meanwhile, this article also uses an empirical approach to further substantiate the findings, done through conducting interviews to dig in-depth into the implementation of positive laws in context and any legal issues that arises.
In general, there are 2 (two) types of data utilized in this research mainly being primary and secondary data. Primary data is obtained directly from the source done to dig in-depth information regarding certain topics that the research would like to highlight. Secondary data, on the other hand, is often derived from various legal materials which are relevant to this article done by conducting a literature study. The data used in conducting and compiling this article includes primary, secondary, and tertiary legal data.
The relevant data that is utilized within this article is obtained through:

a. Literature review

Secondary data is obtained from written materials which is sourced by conducting a literature study towards legal materials. It can be carried out through documents, books, law magazines, law journals, and other sources. The documents are accessed through academic sites such as Google Books, JSTOR, Ebsco, and others.

b. Interview

Primary data is obtained from the main source by means of an interview. It is sourced directly from experts in the capital market sector. Information obtained from an expert is considered as qualitative data which will be used for further examination. The interviewee is selected due to his familiarity and expertise in the capital market and its relevant bodies. The figure interviewed is Yohanes Aples where the author prepared a series of questions to gain practical information on enforcement of insider trading in Indonesia and OJK's systematics in eradicating such practices. Yohanes Aples is a capital market legal consultant registered with OJK who holds the manager partner position at Yohanes Aples & Partners law firm. He serves as Vice Chairman of the Association of Indonesian Business Law Consultants (Asosiasi Profesi Konsultan Hukum Bisnis Indonesia, APKHBI) and Head of Treasury Department for Indonesian Construction Dispute Resolution Institute (Lembaga Penyelesaian Sengketa Konstruksi Indonesia, LPSKI). Interview with Yohanes Aples was conducted in Yohanes Aples & Partners Law Firm in World Capital Tower on 26th November 2021 at 17:03 WIB.
After the legal materials and data have been compiled, the author uses qualitative data analysis. The qualitative analysis does not use numbers to present its findings but gives descriptions using words based on findings and therefore prioritizes the quality of data and not the quantity of it. The author will classify and filter the compiled data according to the quality and its truth which will then be arranged systematically. Then, assessment of the data will take place by utilizing the deductive method, taking a conclusion from a general view towards a concrete case that is being discussed, which will then be connected to the theories taken from the literature study. Finally, the author will come up with a conclusion that will be used to answer the issue that has been formulated in this research.

3. Results

3.2. Analysis on the Competence of Capital Market Supervisory and Regulatory Bodies in Indonesia and Singapore

Prior to OJK, Bapepam-LK holds the authority over the capital market but was deemed ineffective in delivering a robust financial services system failing to enforce laws strictly upon violations of Capital Market Law. [3] Consistent with the spirit of its predecessor, OJK is created to enact regulations and supervise the capital market but in better and more effective ways. OJK is expected to overcome problems that have been ongoing by creating an integrated, independent, and accountable financial services system that can provide protection for consumers and prioritize public interest.

Mainly, OJK is responsible for regulatory and supervisory functions. In terms of performing its regulatory duties, OJK has the authority to establish regulations in the realm of the financial services sector, issue OJK regulations, establish a procedural mechanism in the sector, as well as arrange its own internal organization. Subsequently, to run its supervisory functions, OJK holds the authority to determine operational policies of supervision, conduct supervisory duties such as inspection, investigation, and consumer protection run towards financial services institutions, issue written orders, as well as the issuer of various licenses needed by a business engaged in the sector.

Moving unto Singapore, its capital market first emerged in 1973 which has been overseen by MAS since the passing of MAS Act in 1970. Singapore Exchange ("SGX") undertakes the day-to-day regulation of the securities market and administers a number of rulebooks to govern the listing of securities in the platform. On the other hand, MAS still operates as the primary regulatory authority for the offering of securities to the public in Singapore. They have regulatory oversight over the financial services industry across various sectors. In achieving its objectives to make Singapore a dynamic international financial center, MAS performs six oversight functions, which covers enacting regulations, authorisation of financial authorities, supervision of financial institutions, financial surveillance, enforcement, and dispute resolution.

In exercising the powers vested to them in the capital market, MAS administers the Securities and Futures Act (Cap. 289) together with other regulations incorporated in Securities and Futures Regulation 2005. MAS has the power to administer SFA and SFR to financial institutions and other parties related to the rule of law. According to the Monetary Authority of Singapore Act ("MAS Act"), Part IV of the act stipulates the powers, duties, function that is vested to MAS. In relation to the capital market, MAS has the authority to issue directions to financial institutions, establish requirements for prevention of money laundering and terrorism financing, inspect compliance of institutions towards directions issued, approve and control of financial institutions, and other authorities in the realm.

OJK and MAS both gain their authority through means of attribution, signifying that the authority is newly established through a provision in the rule of law. In each of the aforementioned legislation, powers are conferred to the appointed institutions to regulate and overlook the market.

Table 3.1 Comparison of authorities held by OJK and MAS

Subject	Indonesia (Law Number 8 Of 1995 Regarding Capital Market)	Singapore (Securities And Futures Act)
Authorized Body	*Otoritas Jasa Keuangan*	Monetary Authority of Singapore
Nature	Supervisory and Regulatory Bodies of financial services sector	Singapore's central bank and integrated financial regulator
Approach	An integrated approach towards banking, capital market, insurance, pension fund, and other financial institutions. Authorities are attributed in Law Number 21 of 2011 regarding OJK.	An integrated approach that covers banking, capital market, insurance, payment services, and other financial institutions. Authorities are attributed in the Monetary Authority of Singapore Act.
Regulatory and	Prescribed under Article 8 of OJK Law to	Under MAS Act, the body is responsible

supervisory authorities in the capital market.	establish: a. implementing regulations for OJK Law and financial services sector b. issue regulations and decisions c. regulations on supervision of financial services d. determine duties of OJK e. procedure to issue written orders f. procedure to appoint statutory managers g. organizational structure h. procedures to impose sanctions In relation to supervision, OJK has the authority to: a. determine operational policies of supervision b. supervise implementation c. supervision, inspection, investigation, consumer protection in financial services institution d. issue written order e. appoint statutory manager f. impose administrative sanctions g. issue or revoke licenses in the financial services sector	for six functions: a. Enact regulations in a risk-based approach while maintaining principles of anti-money laundering and to combat terrorism financing b. Authorisation of capital market entities to carry out services in Singapore which covers brokers-dealers, fund managers, CIS trustee, licensed trust companies, financial advisers, markets and exchanges, clearing houses, trade repositories, and benchmark administrators. c. Supervision of financial institutions, to ensure compliance within financial institutions and detect market misconduct d. Financial surveillance to closely observe financial institutions and ensure consumer protection by directing the market mechanism. e. Enforcement of rules and regulations as prescribed by the law towards contraventions in the market f. Dispute resolution to resolve matters in scope of financial services
Authorities within law enforcement	Appoint civil servant investigator to carry out preliminary investigation and investigation in relation to contravention in capital market domain. The civil servant investigator may: a. Authentication of crime occurrence by receiving reports and examining to verify whether a contravention has taken place. b. Obtain information, by means of summon, examine, or request information any bookkeeping, records with the ability to search the location of those documents. c. Inter-institution authorities, request of data from telecommunications provider and assistance from other law enforcers. To inquire banks for financial report and block one's account if necessary	Holds the authority to investigate which includes the scope of: a. Examination of persons, requires examination towards persons to convey information relating to any contravention. b. Obtain information, order production/copy of books, conduct search, seize the documents, and produce the documents. c. Transfer of evidence, work closely with other institutions to convey their findings to police officers, public prosecutors, and other law enforcers in the jurisdiction.

3.2. Analysis on the Enforcement of Insider Trading between Indonesia and Singapore

Insider trading refers to unfair securities trading connected with the use of confidential information carried out by an employee of the company who due to their position is able to gain profit from securities trading since the piece of information has not been out in the public domain. Insider trading has the potential to create systemic risk and disruption to the market which permits unfair practices of individuals having the upper hand of such information, enabling them to reap more profit by purchasing or selling securities before the price has been incorporated with the information that will be made public. In this sense, the competition between fellow investors becomes unfair which will lead to market instability and public distrust since the public will no longer believe that the platform provides fair and healthy competition. Hence, the objection of insider trading is clear, to disable those close to a company to

abuse their position by making use of information concerning securities of that company in their possession to be taken into the extent of gaining personal advantage. [4]

In Indonesia, insider trading is stipulated under Articles 95 until 98 of the Capital Market Law. It states that insiders from a listed or public company who has insider information are prohibited to engage in the purchase or sell of the said listed or public company's securities or other companies in a transaction with them.

As explained in the elucidation of Article 95 Capital Market Law, insiders refer to:

(a) commissioners, directors, or employees of listed or public companies concerned;

(b) major shareholders of a company;

(c) individuals whom due to their position or profession or having a business relationship with the company enabling them to obtain information, and

(d) everyone who in the last 6 (six) months no longer holds the aforementioned position.

Under articles 95 and 96 of Capital Market Law, insiders are prohibited to engage in securities transactions whenever they are in possession of insider information, to induce other people to purchase or sell the said securities, or give insider information to another person. Every person is prohibited from unlawfully gathering information from insiders, a violation will attract similar penal sanctions with the previous articles. Article 97 of Capital Market Law prohibits any parties to deliberately in unlawful means obtain and at the end of the day is in possession of insider information. Violation of these prohibitions attracts penal sanctions not exceeding 10 (ten) years imprisonment and a fine not exceeding Rp. 15.000.000.000, - (fifteen billion rupiah).

The legal doctrine adhered to in Capital Market Law in relation to insider trading is a fiduciary duty. Fiduciary duty theory describes that every employee paid by the company to work for them has the duty to carry out their affairs properly. In a position of fiduciary duty, companies have the obligation of full and fair disclosure to the public. The obligation of disclosure applies to material information, is due to all listed companies who have carried out IPO which consists of obligation for annual report disclosure, incidental reporting obligations, corporate actions disclosure obligations, and obligations for good corporate governance.

Although supported by many parties, the view of insider trading in the fiduciary duty theory is seen as an under-regulated approach in comparison to misappropriation theory. The latter views insider trading in a much wider manner, covers outsider of a company, despite there is effort or not in obtaining the information, can also be held liable if trading using insider information.

Whereas in Singapore, insider trading is regulated in the Securities and Futures Act. It applies to acts occurring within Singapore in relation to securities of any corporation, whether formed or carrying out business in Singapore or elsewhere. It also applies to acts outside Singapore in relation to securities of a corporation that is formed or carries on business in Singapore. Prohibition of insider trading is stipulated in Article 218 and Article 219 of SFA. Article 218 regulates prohibited conducts done by a connected person in possession of inside information. Herein, a connected person refers to a person connected to a company, either being an officer of that company/related company, a substantial shareholder in that company/related company, or occupying a position that may give access to the information.

Article 219 regulates prohibition on other persons somehow in possession of the material non-public information. These other persons also fall under the prohibition of insider trading due to their knowledge of the information. In whatever ways or method of access to the information, everyone in possession of the information has the obligation to keep its secrecy, and prohibitions imposed towards connected persons are similarly applied herein.

The classification of connected persons and other persons has differentiation in the perpetrator, however, attracts the same kind of sanctions. In both cases the object being dealt with illegally is similar, the material non-public information, somehow due to their position or connection they ought to have direct or indirect access to the information. Pursuant to Article 221 of SFA, perpetrators in violation of Article 218 and Article 219 shall be guilty of insider trading and shall be held liable on conviction of a fine not exceeding S$250,000 (two hundred fifty-thousand Singaporean dollars) and/or imprisonment for a term not exceeding 7 years.

The enforcement of insider trading prohibitions in Singapore carries the misappropriation theory. Under misappropriation theory, outsiders of a company could also be held accountable for trading based on material non-public information. It is designed to protect the integrity of the capital market against abuses by outsiders to a corporation who in some ways have access to the confidential information of a company although the person does

not owe any fiduciary duty to the company. In this theory, the corporate outsiders owe their duty to the source of information.

Table 3.2 Comparison of insider trading prohibition and enforcement between Indonesia and Singapore

Substance Of Rules	Indonesia	Singapore
Provisions	Article 95, 96, and 97 of Capital Market Law prohibits insiders of a company in possession of inside information to purchase, sell, procure another person, or tip such information to other parties.	Articles 218 and 219 of SFA, prohibition of a connected person or any other person in possession of inside information. Such persons are prohibited to purchase, sell, procure others, communicate the information.
Approach	Person-based approach or those in a fiduciary duty to the company	Information-based approach or misappropriation theory
Scope of legal subjects	Insider of a company or anyone trying to obtain insider information unlawfully.	Connected persons of a company and other persons.
Sanctions	Criminal sanctions in insider trading attract imprisonment and fines in accordance with Article 104. Person in guilty of insider trading threatened with fine not exceeding 15 billion Rupiah and imprisonment not exceeding 10 years.	Pursuant to Article 221 (1) of SFA, contravention of insider trading shall be threatened with fine not exceeding 250.000 Singapore Dollars or imprisonment not exceeding 7 years.
Alternative Enforcement	OJK has the discretion to impose administrative sanctions over violations of rules and regulations.	MAS can bring a case through civil penalty action which requires no process if the perpetrator admits his actions to the face of the court. The court will issue an order for the perpetrator to pay a sum of the civil penalty with the base of calculation not exceeding: a. 3 times the amount of profit obtained or loss avoided b. 2 million Singapore Dollars

3.3. Analysis on the Enforcement of Insider Trading during Acquisition of PT Bank Danamon Indonesia Tbk

The case took place in 2012 which started from the negotiation process taking place between DBS Bank and Fullerton Financial Holdings ("FFH") where the former was interested in acquiring the latter's ownership of BDMN shares. The negotiation took place and at the time the parties decided not to disclose it yet to the public. Eventually, DBS announced the proposition to the public in April 2012. During the lapse of time between the negotiation of the parties and its announcement, on 30th March 2012, Rajiv Louis bought 1 million BDMN shares through his wife's bank account in Singapore.

After the case took place in 2012, MAS took a civil penalty action against Rajiv Louis in 2015 after they are aware of the purchase that took place. Although the purchase was made using Rajiv Louis' wife account, MAS was able to trace it back to Rajiv Louis who at the time of contravention occupies the position of Indonesia investment banking head of UBS AG. The transaction was influenced by the material non-public information that he had hence is a contravention of insider trading prohibition.

Subsequently, Rajiv admitted his actions to the face of court which results in an order to pay a civil penalty at the sum of S$434,912 ($313,857) which takes into account his $173,965 profit from the proceeds of purchase and sell of the said shares. He was guilty under Article 218 paragraph (2) of the SFA. At the end of the day, the acquisition deal did not occur due to several regulatory issues but Rajiv was still held liable for insider trading since there was a significant increase in value and price of the securities after the announcement was made. He took advantage of the lapse of time between the negotiation and the announcement to buy before the information has been incorporated in the market price and eventually sell them after the time of announcement where the market price has increased significantly.

In view of the enforcement by MAS, elements of the crime for insider trading needs to be established. Rajiv was held guilty under Article 218 paragraph (2) of SFA regarding prohibited conduct by a connected person in possession of inside information. Firstly, Rajiv Louis falls under the bracket of a connected person to the company pursuant to subsection 5 of the article since he occupies a position that may reasonably be expected to give him access to information that applies to the virtue of any professional or business relationship existing between himself and that company. In that, UBS, the company where Rajiv Louis is working for, has been appointed by Temasek Holdings Pte. Ltd. ("Temasek") as their financial advisers along with Bank of America-Merrill Lynch for the purpose of this acquisition. Temasek itself is the holding company of FFH who is a major shareholder of BDMN, the company DBS is negotiating with.

Being the head of investment operations, Rajiv Louis must have had a fair share in advising Temasek or at least get involved in the process. This particular position provides him all the details starting from the deal itself up until matters on shares price. That information should be sufficient for Rajiv Louis to know the initial BDMN shares price and its projection in the future, which he takes advantage of. Hence, he is a connected person to the company in dealing.

From this case and other insider trading cases adjudicated by MAS, civil penalty action is prioritized in the enforcement of the law since it is highly effective. MAS does not need to follow through with criminal proceedings and find sufficient proof which is both very costly. The penalties given are also deterrents that take into account the gain that the perpetrator has obtained due to his offense. The minimum cost of enforcement kept and the high amount of penalty inflicted to the perpetrator signifies an effective punishment.

Although the illegal practice took effect on an Indonesian listed company, OJK chose to let go of the matter and the law enforcement function is not implemented which gives rise to the impression that insider trading is permitted in the market. Whereas imposing sanctions on perpetrators is very crucial for the purpose of law enforcement, Rajiv Louis did not go through any criminal proceedings or subject to any administrative sanctions in Indonesia since OJK did not pursue the case.

3.4. Analysis on OJK's Law Enforcement at Hand

Since its takeover of the capital market in December 2012, OJK is known to opt for administrative sanctions when faced with the contravention of insider trading. There were some cases where OJK has conducted investigation towards but did not pass the prosecution stage since the public prosecutor is not ensured with sufficient evidence to try the case in criminal proceedings. At the end of the day, OJK chose to declare it as an administrative violation. Eventually, there is no single case where a contravention of insider trading is charged with criminal sanctions.

The degree of complexity in proving insider trading practice to the law enforcers indirectly omits criminal sanctions imposed towards the perpetrators when it creates a deterrent effect inflicted upon them. It can be said that the Indonesian criminal procedural law which OJK has to adhere to is not fit to enforce insider trading that in practice has grown rapidly following technological development.

In addressing cases with international elements concerning the Indonesian capital market or its listed companies, the law needs to accommodate the authorities to obtain information and evidence and potentially exercise jurisdiction from overseas. The tendency of securities trading which permits cross-border activities needs to be regulated, otherwise signifies the permission to carry out insider trading to occur in Indonesia. If there is no significant change to address this matter, irresponsible parties will take advantage of the loophole. The degree of complexity of contravention keeps on increasing while the protection remains at the same level which does not support an efficient market hypothesis. With that, the market is prone to the occurrence of market misconduct.

Firstly, the realm of insider trading goes beyond what has been laid out in the law. [5] Since the use of technology, the capital market realm has become too advanced which makes it hard for the law enforcers to trace contraventions. These transactions will just seam into the system by not showing any anomaly from it, leaving no room for suspicion to the authorities. In practice, those who intend to commit insider trading will not use their own identity to engage in the transactions. Instead, they will use the identity of people close to them to make sure the transaction will not leave any trace.

Secondly, there is a lack of proof in the underlying evidence that the authorities should gather. The insiders who try to make a deal with another person most likely will not put the agreement in writing. Instead, the dealings are all made based on a conversation either face-to-face or through a call which leaves no written document as evidence to sum it up. With that in mind, the authorities find it hard to collect sufficient evidence to bring the case up to prosecution due to the lack of proof gathered while in criminal procedural law only those prescribed in the law as evidence are eligible in the face of the court.

The direct evidence in insider trading is very rare and is more inclined to circumstantial evidence. With that in mind, there lies the need for the authorities to establish a chain of events and piece together the evidence. Since it is circumstantial, law enforcers need to be able to connect the dot between one evidence and the other to compose a story out of it that implies the act of insider trading.

Thirdly, the enforcement function of OJK is distracted by its duty to maintain public interest. Herein, the capital market itself is loaded with lots of risks in the first place since it deals with the capital of a listed company and on the other hand, also deals with the public's money. Enforcement of insider trading stipulations can affect one party or the other. If OJK decides to impose sanctions on listed companies or certain employees who are guilty of market misconduct, it will most likely devaluate its market price which effect will also take a toll on the public investors. On the other hand, fines given in small amounts will put the perpetrator in an advantageous position since the profit reaped is bigger compared to the compensation that needs to be paid.

From the scenarios mentioned, it leaves a dilemma for the OJK whether to provide strict law enforcement or protect the public interest. With no serious means of enforcement, the retail investors from the public will always be the ones receiving negative impacts. Opting for one means sacrificing the other, hence the enforcement function in OJK has been distracted for the sake of public interest.

Lastly, the enforcement culture in OJK has not yet been shaped equally as a whole. Being the super regulatory organization and independent body that OJK is does not automatically establish a strict enforcement culture. In reality, that culture needs to be generated from within the institution to all its employees without exception. The enforcement culture in OJK has yet to achieve the strict level that foreign bodies such as MAS have portrayed. By means of authority, the power attributed to them is adequate to carry out enforcement of law but in its implementation, the enforcement depends on each personnel's assertiveness and initiative. All written law enacted bears its soul on the authorities which put OJK in charge of it on the capital market sector. In this sense, the personnel are the ones who carry out the enforcement function and it depends on them how they would like to pursue each case.

However, enforcement does not always have to be from OJK. Besides the civil servant investigator, Indonesian criminal proceedings stipulate the role of the police as an investigator. The enforcement function does not fall merely on OJK as the police may take the case over and exercise their jurisdiction. In this sense, Indonesian National Police (known as "Polri") has their own investigatory department called Badan Reserse Kriminal Kepolisian Negara Republik Indonesia ("Bareskrim") that has been given the authorities over the investigation and preliminary investigation of crime.

Due to the rising number of disputes in regards to special crime, Polri has been mobilizing serious means of investigation towards economic crimes. Bareskrim has a division that is particularly assigned to investigate and supervise economic crimes which lately have also handled several capital market-related cases. Direktorat Tindak Pidana Ekonomi dan Khusus ("Ditipideksus") in a few years back have started to penetrate economic crimes in the capital market with landmark cases such as PT Jouska Finansial investment fraud.

As insider trading falls under the category of economic crime in the capital market, parties can now resort to conveying reports to the police as opposed to OJK. Polri has been intensely showing their means to eradicate all forms of economic crime since it results in public loss. With that in mind, the public or any parties at loss is not tied to merely waiting for OJK to take action. Polri has opened its doors to receive any report on economic crimes

including contraventions in the capital market sector, which provides room for any parties at loss to file such contraventions to the Ditipideksus where similar investigatory functions will be performed.
At the end of the day, the consideration of establishing a capital market regulatory and supervisory body goes back to the nature of the capital market, which serves as a funding platform for listed companies and as an investment vehicle for the public. This platform should be kept in a fair and equal manner by providing sufficient protection for all parties involved for it to continue its existence. The way to provide adequate protection is for the market to be heavily regulated. Therefore, capital market regulatory and supervisory bodies should be able to carry out its function in order to keep that balance so the nature of capital market would not deviate from its main purpose.

4. Conclusion

The nature of competence between Indonesia and Singapore's capital market supervisory and regulatory bodies is quite similar which adopts integrated approach towards regulation and supervision of the capital market with adequate authorities attributed to them. Since 2012, OJK replaces the role of Bapepam-LK to administer the Capital Market Law as an independent body. OJK is responsible for enacting rules and supervisory of the sector. As part of supervision, OJK also runs the enforcement in the capital market by means of criminal proceedings or inflicting administrative sanctions. However, OJK has been passive in its implementation of enforcement towards illegal transactions. In Singapore, MAS undertakes the capital market regulatory and supervisory functions, assigning them authority to enact regulations, authorization, supervision, enforcement, and also dispute settlement. MAS administers SFA upon all parties in the capital market, acting as the gatekeeper of financial institutions in Singapore. In terms of law enforcement, MAS has been very strict in imposing provisions upon contraventions occurring in Singapore or concerning Singapore companies. Contraventions can be pursued either as a crime or through a civil penalty action approach.

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