

Insider Trading: Law of the Republic of Indonesia Number 8 of 1995 on Capital Market from Typewriters to Digital Era

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Abstract

Introduction to The Problem: Symmetric information is an essential factor in the capital market. Symmetric information will create an efficient capital market. Insider trading is one of the things that makes asymmetric information. The regulations on the capital market determine the criteria for insider trading. Insider trading is people who have non-public information on the company and earn financial benefits from non-public information.

Purpose/Objective Study: This research aims to determine the insider trading criteria on the Indonesian Capital Market Law Number 8 of 1995.

Design/Methodology/Approach: This research uses the normative juridical method. The study utilizes several cases that occur in countries as a discussion.

Findings: This research concludes that the definition of insider trading consists of stakeholders who have interests and non-public information on public companies. The scope of insider trading is also extended to family members of stakeholders. Stakeholders include management, related companies' employees, officials, suppliers, shareholders, and their family members. The definition of family members is the spouse, children, and parents. The definition of insider trading should be extended to the current regulations. The related individuals must carry out the obligation to report share ownership.

Paper Type: Research Article

Keywords: Asymmetric Information; Capital Market; Insider Trading; Law

Introduction

President of the Republic of Indonesia, Joko Widodo, announced that the COVID-19 vaccine is free for all Indonesians (Syakriah, 2020). The Indonesian government has several pharmaceutical companies involved in manufacturing and distributing the COVID-19 vaccine (Sholichah & Johan, 2022). Kimia Farma is a state-owned pharmaceutical company. Kimia Farma is a public listed company on the Indonesian



Stock Exchange ([Indryani et al., 2021](#)). Kimia Farma's code is listed as KAEF in the Indonesia Stock Exchange ([Hermansjah et al., 2021](#)).

Indonesian President, Joko Widodo, announced the free COVID-19 vaccine on 16 December 2020 ([Firmansyah & Haryanto, 2021](#)). On the same date, at 11.44 AM, President Joko Widodo's son, Kaesang P., wrote down \$KAEF? on his Twitter account. At 1.19 PM, Kaesang P. tweeted, "Something will fly, but it is not an airplane." At 1.31 PM, Kaesang wrote in his tweet again, 'Something's flying right there.' Jokowi announced that the Indonesian government is providing the COVID-19 vaccine for free. KAEF's shares shot up ([Detik.com, 2020](#)).

KAEF's share price rose 2.54% to 4,440 IDR/share after the announcement of the free COVID-19 vaccine. The composite stock price index rose 1.65% to reach the level of 6,109 at 14.43 ([CNBC, 2020](#)). Changes in the price of KAEF are described in table 1.

Table 1. The Changes in KAEF Share's Prices on 16 September 2020

Hour (WIBB)	KAEF Share's Price	Changes in price compared to Previous Prices
09.00	4,400	
09.30	4,310	-2.05%
10.00	4,290	-0.46%
11.30	4,490	+4.66%
14.00	4,440	-1.11%
14.30	4,440	0.00%
15.00	4,430	-0.23%

Source: Google.com

Are the tweets of Kaesang coincidences, or has something been known beforehand? Do the actions of Kaesang meet the criteria of insider information? ([Detik Finance, 2020](#)).

Carlyle Group, a private equity firm, fired an executive for insider trading. The executive is Rajiv Louis. The Monetary Authority of Singapore (MAS) fined the executive USD\$ 316,000 due to an insider trading transaction in the share transaction of Bank Danamon, Indonesia ([Johan & Ariawan, 2021a](#)). Louis benefits from non-public information from the proposed acquisition of Bank Danamon by Development Bank of Singapore (DBS) Group, Singapore ([Indopremier Sekuritas, 2015](#)). Louis uses his wife's account to make transactions in Bank Danamon, Indonesia.

A former head of a rental storage company in Japan, Palma, named Shinsuke Tsuoka, did insider trading with his friend. They bought shares in Palma before the announcement that the Japan Post Group company would acquire a 20 percent stake in Palma. Tsuoka gave this information to his friend Hirayama, who also bought shares of Palma. Authorities imposed criminal acts charges on them ([Agustina, 2019](#)).

Monetary authorities in Singapore and Japan can prove that both transactions are insider trading. They carry out transactions on their behalf or through someone close to them. They have already benefited from insider trading transactions. Suppose they used used-public information and posted it on social media in the public domain. This non-public information affects investor decisions or stock price movements ([Patil & Bagodi, 2021](#)). Can the authorities classify this type of transaction as insider trading?

Very few researches on insider trading related to social media and those close to insider trading have been done. This research studies the sharing of information of a company code of a state-owned pharmaceutical company on Twitter by the son of the President of the Republic of Indonesia before the President announced the plan to provide free vaccines in Indonesia. This research will contribute to the development of the capital market and laws since 1995. Social media did not develop rapidly in 1995. Retail trading with the application has increased since the COVID-19 pandemic in 2020 ([Dannenberg et al., 2020](#)).

This research answer the question: is the definition of insider trading in Law of the Republic of Indonesia Number 8 of 1995 on the Capital Market (PM Act) still appropriate during the period of trading with digital applications?

The Capital Market Law regulates the disclosure of non-public information ([Bhuana et al., 2021](#)). Material information is information or facts that can affect the price of securities of a public company or may influence shareholders' or investors' decisions in making investment decisions based on Article 1 of Law of the Republic of Indonesia Number 8 of 1995. On the other hand, a public company that does not provide material information may be subject to sanctions in the form of fines and crimes ([Agusta, 2020](#); [Johan & Ariawan, 2021b](#)). Openness is one of the principles of good corporate governance in a company ([Harahap et al., 2020](#)). This is also regulated by the laws and regulations in the capital market. Information disclosure in the capital market is absolute ([Herlina, 2018](#)). The capital market is defined as a meeting place for sellers and buyers to conduct securities transactions. Capital market activities require legal instruments that govern them to run regularly and fairly for all parties involved ([Suardana et al., 2020](#)).

Based on Article 7 of Law of the Republic of Indonesia Number 8 of 1995 on Capital Market, material information is information regarding merger, acquisition, consolidation or the formation of joint ventures; stock split or share dividend distribution (stock dividend); income and dividends of an extraordinary nature; acquisition or loss of essential contracts; a significant new product or invention; changes in the company's financial year; and changes in control or substantial changes in management; as long as the information can influence the price of securities and decisions of investors, potential investors, or other parties with interest in the information or facts ([Mochtar & Rahayu, 2021](#)).

Based on Article 86 of the Indonesian Capital Market Law, issuers whose registration statements have become effective or public companies are required to submit



periodic reports to the Financial Services Authority (FSA/OJK) and announce the information to the public. They shall also submit information to the Financial Services Authority and announce the material events that could affect the price of securities to the public no later than the end of the second working day after the event occurred (Leonard & Heriyanti, 2018).

The principle of transparency in the capital market means that issuers and capital market supporting professionals must convey information regarding material information regularly, correctly, and truthfully so that this material information affects investors' decisions to invest in the capital market (Wisudawan, 2015).

Openness is the principle of transparency by companies in an initial public offering, which is an essential factor in making investors decide to buy or sell securities (Pertiwi Indra; Pratiwi, Tia; Perdana, 2019). Uneven distribution of information on a transaction between parties is called asymmetric information (Johan, 2021a). Asymmetric information is a condition where one party has information that the other party does not know (Chernonog & Avinadav, 2019). The company's management is the party who knows more about the company than the investors in the capital market (Hidayah & Ferawati, 2013). Asymmetric information is a condition where one party has better information than the other party (Bergh et al., 2019). Based on the Indonesian Capital Market Law, the obligation to report material information is a maximum of 2 working days from the transaction or event (Day D+2).

Asymmetric information comes from Fama's theory (Hallunovi, 2018). Asymmetric information arises in a market that is classified as weak form or weak form (Johan & Ariawan, 2021c). Asymmetric information theory was also introduced by George Akerlof, who is familiar with the term "The Market for Lemons". Buyers do not know the quality of lemons. The seller knows more about the quality of the lemon. This theory became known as the quality assurance theory (Hayati, 2020). The problem of asymmetric information is a problem that occurs in various sectors of business life. This problem also occurs between banks and customers (Kabul & Afriwan, 2021).

Based on the Stock and Exchange Commission (SEC) 's Rule 10b-5, to ensure insider trading transactions occur based on the tipper-tippee theory, the government needs to prove that the information provider benefits from the information provided that the information recipient knows the benefits obtained (Woody, 2019).

The implementation of corporate governance is still fragile in public companies, primarily due to the behavior of taking profits by using weaknesses in regulations and weaknesses in penalties in capital market regulations (Sya'bani, 2014). Modern corporate governance standards and principles are vital in developing countries, such as Vietnam, China, India, Indonesia, Myanmar, Bangladesh, and others (Dat et al., 2020).

Based on the Financial Services Authority Law, Financial Services Authority authorities carry out investigations into financial institutions' violations, including

banking, insurance, pension funds, financing institutions, and other financial service institutions ([Wiriadinata, 2014](#)).

Insider trading is a crime in the capital market, which is very difficult to prove, even in a developed country like the United States. It is difficult to establish the practice of this crime ([Amelia, 2016](#)). Insider traders earn up to 35% profit for 21 days, and the information is shared via social networks. Dissemination of information through social networks increases the efficiency of information dissemination ([Ahern, 2017](#)). The disclosure of information on prices and volumes in response to news shows implications for securities trading ([Rogers et al., 2016](#)). The number of stock transactions the Chief Executive Officer conducts is highly correlated with the compensation package ([Brodmann et al., 2019](#)).

Methodology

This research studies several insider trading cases or those suspected of being insider trading in Indonesia, Singapore, and Japan. This study uses the normative judicial method. Information and legal material are secondary legal material and information. This study obtained legal material from various news sources. This research studies the laws and regulations of each country ([Johan, 2021b](#)).

Results and Discussion

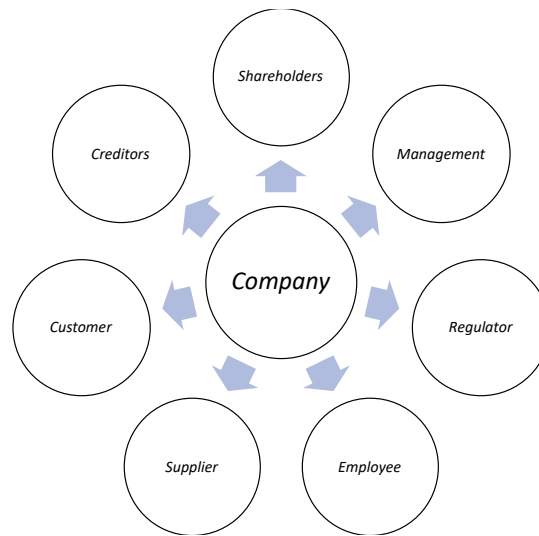
Law of the Republic of Indonesia Number 8 of 1995

According to Article 95 of the Indonesian Capital Market Law, insider trading is an insider of an Issuer or Public Company who has internal information who is prohibited from buying or selling the securities of the Issuer or Public Company; or other companies that conduct transactions with the Issuer or Public Company concerned.

Insider means commissioners, directors, or employees of an Issuer or Public Listed Company; major shareholders of the Issuer or Public Listed Company; an individual whose position or profession or business relationship with the Issuer or Public Company allows that person to obtain inside information; or a Party which within the last 6 (six) months is no longer the party as referred to previously. Insiders referred to as persons by position are persons in positions of government institutions, entities, or agencies. A business relationship is defined as a working relationship or partnership in business activities, including, among others, customer, supplier, contractor, customer, and creditor relationships. This is illustrated in Figure 1. What is meant by inside information is material information owned by insiders that are not yet available to the public. Based on Article 1 of the Indonesian Capital Market Law, Material Information or Facts are important and relevant information or facts regarding events, incidents or facts that can affect the price of securities on the stock exchange and or decisions of investors, potential investors, or other parties with interest in such information or facts.



Figure 1. Company Stakeholders



Based on Article 96 of the Indonesian Capital Market Law, insiders referred to in Article 95 are prohibited from influencing other parties to purchase or sell such securities; or provide inside information to any person who reasonably presumes can use the information to make a purchase or sale of securities.

Article 97 of the Indonesian Capital Market Law stipulates that any party who tries to obtain inside information from insiders against the law and then obtains it, is subject to the same prohibition as the prohibition that applies to insiders. Any party who tries to get insider information and then obtains it without violating the law is not subject to restrictions that apply to insiders as long as the Issuer or Public Company provides the information without limitation.

Parties who violate the provisions of articles 95, 96, and 97 can be subject to a maximum imprisonment of 10 years and a maximum fine of 15 billion rupiahs. The parties in question can consist of individuals or companies.

Dissemination of Information by the Family of State Officials or Public Servants

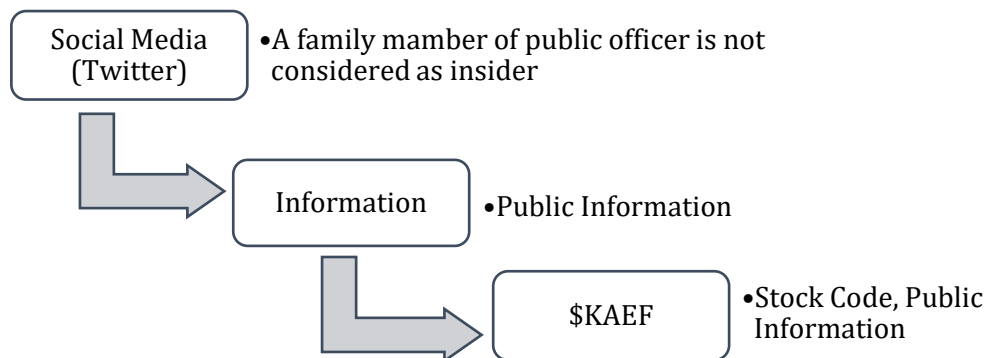
A state official or public servant is included in a person's category because his position is a person in a role in a government institution, entity, or body. State officials must convey information to the public on a policy taken. A president must openly convey an information policy to the public, especially during a pandemic. Therefore, state officials must deliver policies, not because of non-public information on companies. Information regarding the provision of free vaccines is a government policy, not a company policy. This information cannot be categorized as non-public company information.

The official's children are not included in the category of people in the company. Based on the definition of Article 95 of the Indonesian Capital Market Law. Insiders are commissioners, directors, or employees of an Issuer or Public Company; significant shareholders of the Issuer or Public Company; an individual whose

position, profession, or business relationship with the Issuer or Public Company enables that person to obtain inside information. The official's son cannot be categorized as insider trading.

Sharing information via Twitter with the contents "\$KAEF?" cannot be classified as material information. KAEF is the stock code for Kimia Farma. Apart from KAEF, it is also marked with a "?" (question mark). KAEF is not essential and relevant information or facts regarding events, incidents, or points that can affect the price of Securities on the Stock Exchange and/or decisions of investors, potential investors, or other parties interested in such information or facts. The definition of material information is based on Article 1 of the Indonesian Capital Market Law. A question mark indicates a question that requires an answer.

Figure 2. Description of Information Dissemination of Children of State Officials



Information Dissemination in the Digital Age

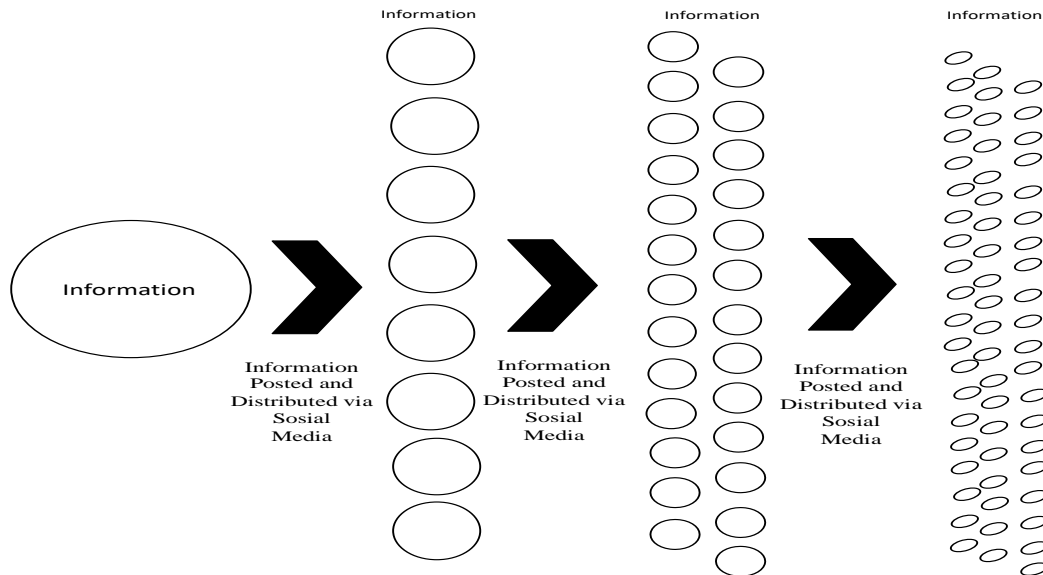
Information dissemination has become very massive in the digital era (Ahern, 2017), which can be done simply by posting social media information. Information will be immediately seen or read by tens of thousands to millions of people. If social media accounts have tens of thousands of followers, this account's followers will re-tweet or forward it to other social media. Social media accounts will continue to spread or re-tweet them repeatedly. Information that was previously non-public will become public information. This pattern of information dissemination is shown in Figure 3.

The discoverer of the first information will benefit from time. Information discoverers take advantage of the information that is disseminated. The next recipient of the information will benefit less. The recipient of the latest information will suffer a loss. This information can be in the form of information about shares.

The delivery of this information is not conveyed equally, but from certain circles to other circles and so on. The delivery of information will go viral until the information becomes public information. The last party to receive the information will be the party that does not benefit.



Figure 3. Patterns of Information Dissemination through Social Media



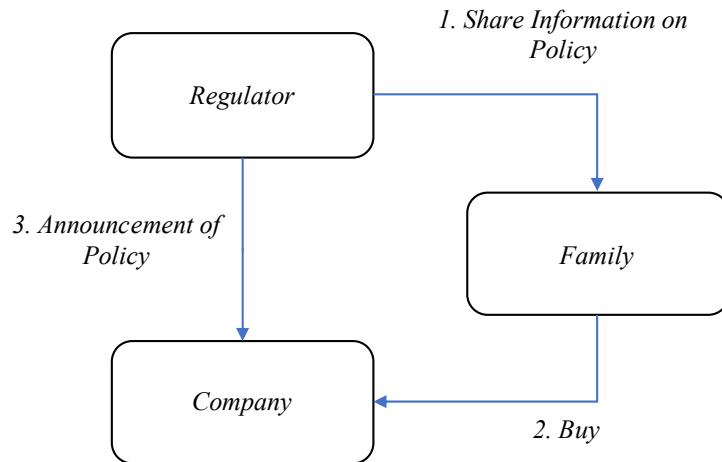
Dissemination of Information can be through messengers such as WhatsApp, Telegram or social media such as Facebook, Instagram, and others. Whatsapp groups can consist of more than 200 members, while Telegram can consist of thousands of followers. As for Facebook and Instagram accounts, the number of followers can reach millions of people.

The speed of information dissemination in the digital age is also breakneck. A recipient of the information will easily resend it to others. The spread of this information is known as going viral. The dissemination of this information has become a concern of regulators (BBC Indonesia, 2019). Information providers have also limited the amount of forwarding information (CNBC, 2020).

Redefining Insider Trading

Determining insider trading transactions is not an easy thing. In the case of the children of state officials who disseminate the information, it is suspected that it is non-public information. Financial authorities need to investigate the ownership of shares by the offspring of officials who publish information on Twitter or any other social media. Has the official's son or family member purchased and benefited from the information related to his parent's announcement? Investigations can be carried out by knowing the ownership, sale, and purchase of shares on behalf of the person concerned.

Figure 4. Family Involvement in Insider Trading



Source: Research Result

The definition of insider trading in Indonesia needs to be redefined based on the related information instead of the people. Related information is the dissemination of information that causes insider trading. Related people are based on the relationship of people related to the information center. Based on the Indonesian Capital Market Law, information dissemination is still based on insiders related to the information.

Based on the cases in Singapore and Japan, Singapore and Japan's regulations have embraced the information relation system. The wife of an executive in Singapore was penalized for insider trading. In Japan, the executive's friend was punished for obtaining information from his friend and profiting from insider trading transactions. This is illustrated in Figure 4 below.

Authorities need to adjust the definition of insider and non-public material information in line with digital technology development. The massive and rapid dissemination of information has changed people's lives. The flood of information has transformed people's lives. Insiders or people related to securities transactions are not only the people associated but also people who obtain information and gain profits without having a relationship with public companies whose securities are traded. A restaurant waiter, a photocopy waiter, a document carrier, or anyone who may obtain non-public information must be included in the insider trading criteria.

Insider trading is the party that obtains non-public information and uses it to gain profits or minimize losses. The authorities can determine the minimum criteria for share price movements and transaction volume so that transactions are classified as abnormal and fall into insider trading.

Conclusion

The Indonesian Capital Market Law has been in place since 1995. Technological developments have changed from the era of fax machines to the typewriters to the



digital age. Technological developments have changed from person-to-person information dissemination to person to multiple people. The spread of this information is massive and fast. The information disseminated is in the form of public and non-public information.

Various parties disseminate non-public information. Non-public information can provide benefits or reduce losses to the party who obtained the information. Information is rapidly disseminated through physical meetings and communication tools, such as social media. Unrelated parties can also share and get non-public information. These parties take advantage of being the owners of the information. These parties are classified as insider trading group.

The Indonesian Capital Market Law still classifies insider trading based on people related to the information. The Capital Market Act needs to change from related people to related information. With the change to related information, the Indonesian Capital Market Law may adapt to the age of information. Amendments to the Capital Market Law need to be made immediately. The amendments will create legal certainty and protect capital market investors. Amendments to the capital market law will also adapt the regulations to technological developments.

This study suggests that the capital market authority amend capital market regulations following information technology developments. Public listed company's management needs to be more careful in providing non-public information. Providers of information may also be subject to sanctions. Non-public information must be discussed privately, not in the public area.

Research has several limitations; the research is based on economic and legal aspects only. Further research can include other variables such as politics, period of capital market development and macroeconomic conditions.

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Declarations

Author contribution : Author 1: initiated the research ideas, instrument construction, data collection, analysis, and draft writing; Author 2: revised the research ideas, literature review, analysis, and the final draft; Author 3: added view on a global perspective on the legal issue and literature review, analysis.

Conflict of interest : The authors declare no conflict of interest.

Additional information : No additional information is available for this paper.

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