International Journal of Law
www.lawjournals.org
ISSN: 2455-2194
Received: 19-04-2026, Accepted: 20-05-2026, Published: 04-06-2026
Volume 12, Issue 2, 2026, Page No. 354-360

Formulation of criminal sanctions for insider trading in the Indonesian capital market

Agus Saputra[1], I Wayan Parsa[2], I Made Dedy Priyanto[3], I Made Walesa Putra[4]
Faculty of Law, Udayana University, Bali, Indonesia
DOI: https://doi.org/10.66856/ijl.2026.12.2.12190

Abstract
Crimes committed in the capital market are often considered to have no visible losses that can be clearly seen directly. Forms of capital market crimes regulated in Law No. 8/1995, include Insider Trading. Article 95 of Law No. 8/1995 only provides restrictions on prohibited transactions, among others, those carried out by insiders of issuers who have material information that are prohibited from making transactions to sell or buy securities of issuers or other companies. This research uses a normative method, the research approach is a process of solving problems through predetermined stages, so several types of approaches are needed, including: legislative approach, comparative legal approach, legal history approach, and case approach. The method used in processing and in the analysis of legal materials used in this study is legal interpretation analysis. Law No.8/1995 which currently still uses fiduciary duty theory, so that in determining insiders it is still not able to ensnare the second party who receives information from insiders (insiders), better known as tippees; The legal construction of insider trading in the draft law on the capital market in the perspective of ius constituendum, based on the implementation of misappropriation theory.

Keywords: Criminal sanctions, insider trading, capital market

Introduction

The spirit of the Indonesian nation which is based on Pancasila and contained in the Constitution of the Constitution of the Republic of Indonesia of 1945 (Constitution of the Republic of Indonesia of 1945) provides democratic freedom to all citizens to develop the national economy while still paying attention to the balance and unity of the Indonesian people. These provisions are reflected in Article 33 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia. In this context, financial economic law is part of the economic law that regulates various activities in the capital market sector. Financial economic law is one part of economic law, one of whose aspects regulates activities in the capital market. Quoting Marzuki Usman in the book written by Pandji Anoraga, stated that the capital market is a complement in the financial sector to two other institutions, namely banks and financing institutions [1]. So that economic law is an inseparable part of the investment process in the capital market.

Investment is often interpreted as the activity of setting aside some funds to be placed in investment facilities in the hope of reaping economic value in the future [2]. In general, investors will choose to invest their funds with financial considerations, namely considering returns and risks alone. In theory, against riskier investments, investors would expect higher returns. One of the means of investing appropriately is through the capital market. The capital market has a strategic role in national development as one of the sources of financing for the business world and a vehicle for investment for the community. In order for the capital market to develop, a solid legal foundation is needed to further ensure the legal certainty of parties who carry out activities in the capital market, as well as protect the interests of the capitalist community from harmful practices [3]. In line with the achievements in national development and in anticipation of economic globalization, the legal instrument that regulates the capital market which began with the issuance of Law Number 15 of 1952 concerning the Stipulation of the Emergency Law on the Exchange (Statute Book of 1951 Number 79) as a Law (Statute Book of 1952 Number 67) is considered no longer in accordance with the circumstances. Based on the above considerations, a new legal instrument regarding the capital market was established, namely Law No. 8 of 1995 concerning the Capital Market (hereinafter referred to as Law No.8/1995) which plays an important role in ensuring legal certainty for parties who carry out activities in the capital market in order to avoid existing types of capital market crimes.

Crimes committed in the capital market are often considered not to show losses that can be clearly seen directly [4]. Crimes in the field of the capital market in general do not always cause losses that can be seen directly. One form of criminal offense regulated in Law Number 8 of 1995 concerning the Capital Market is insider trading. The term insider trading is a special terminology in the world of capital markets that refers to the actions of internal parties (corporate insiders) to conduct securities transactions by utilizing important information that is exclusive and has not been published to the public or investors.The crime of insider trading is a form of violation in the capital market that causes anxiety for investors. The regulation is listed in Article 95 of Law Number 8 of 1995. However, this provision still creates unclear norms because the law does not provide strict limits on who belongs to the insider category. In Article 95 of Law No. 8 of 1995.

Article 95 of Law No. 8/1995 only provides restrictions on prohibited transactions, among others, those carried out by insiders of issuers who have material information that are prohibited from making transactions to sell or buy securities of issuers or other companies. However, with the development of technology and the global market that affects the securities transaction system, it causes material

information related to trading on the stock exchange, can move from the first party (tippees) who is an insider in the issuer to the second party (tippees) who is not an insider in the issuer. Therefore, the second party (tippees) according to Article 95 of Law No.8/1995 cannot be charged with the crime of insider trading because they are not part of the insider as formulated in the article. There is a need for regulations regarding the classification of insiders applied in Law No. 8/1995.

A comparative study of the law related to the crime of insider trading in Indonesia can look at the regulation of insider trading in the United States regulated in the United States Capital Market Law called the Securities Exchange Act of 1934 Rule 10b5-1. So that the Government of Indonesia can emulate the United States Government by adhering to the misappropriattion theory in the formulation policy of the Capital Market Bill (hereinafter referred to as the Capital Market Bill) in the future perspective (ius contituendum). Misappropriattion theory, which does not distinguish law enforcement for tippeers or tippees, this theory emphasizes the misuse of material information, so it is considered to be able to provide more firmness in law enforcement. This is important to provide legal certainty for investors in transactions on the stock exchange, so that it can increase investment activity and also have an impact on improving the Indonesian economy.

Research Methods

This research uses normative methods, normative research in this scientific paper further examines the content of laws and regulations, according to Soerjono Soekanto, normative law research is research that is carried out by researching literature materials or secondary data [5]. The study of normative law or literature includes research on legal principles. The research approach is a process of solving problems through predetermined stages, so several types of approaches are needed, including: legislative approach, comparative legal approach, legal history approach, and case approach. The method used in processing and in the analysis of legal materials used in this study is legal interpretation analysis, namely by interpreting the content of related laws and regulations and legal argumentative analysis, which is a process of reason used as a basis for conveying a constancy. Drawing conclusions from analysis uses deductive thinking, which is a way of thinking in drawing conclusions from general things to specific things that are answers to problems based on research results, and descriptive techniques are by using an as-is description of a certain situation and condition.

Results and Discussion

The Urgency of Penal Policy in the Prevention of Insider Trading Crimes in the Indonesian Capital Market

Efforts to overcome criminal acts basically rely on two main instruments, namely the penal route through the enforcement of criminal law and the non-penal route that utilizes mechanisms outside the criminal realm [6]. The term policy itself absorbs the word policy from English or politiek in Dutch. In Indonesian literature, this word is often equated with the term "politics", so the concept of criminal law policy is also popularly known as the politics of criminal law. Regarding the definition of the politics of criminal law, Mahmud Mulyadi explained it as follows:

The term policy comes from the English word "policy" or the Dutch word "politiek". The term in Indonesian is often translated as the word "politics", therefore criminal law policy is commonly called criminal law politics. According to Mahmud Mulyadi, it provides an understanding of the politics of criminal law, namely: "Criminal law politics is an effort to determine in which direction the enforcement of Indonesian criminal law will be in the future by looking at its current enforcement." According to Sudarto, the implementation of criminal law politics basically involves a strategic selection process in order to produce an ideal criminal legislation product, which is not only based on the value of justice but also on the principle of utility [7]. Meanwhile, A. Mulder (as quoted by Barda Nawawi Arief) details the scope of criminal law politics into a policy line that establishes three main points, namely [8]: a. Limitations and urgency of changes or updates to current criminal regulations; b. Preventive measures that can be pursued to anticipate the occurrence of criminal acts; c. Mechanisms and procedures for the implementation of the investigation, prosecution, trial, and execution process of criminal decisions.

In principle, efforts to reduce crime are an inseparable unit from public protection (social defence) and the realization of social prosperity (social welfare). On this basis, the fundamental purpose of criminal law politics is to protect society for the sake of achieving common welfare, which positions this policy as an integral part of social policy (social politics). Nevertheless, the use of penal instruments must pay attention to certain limitations (the limiting principles), including [9]:

1. Criminal law should not be applied solely on the basis of revenge motives;
2. Criminalization should not be imposed on acts that do not cause real harm or threat;
3. Avoid formulating criminal sanctions if the legal objectives can still be effectively accommodated through other instruments that are more persuasive or lenient in nature;
4. Criminal law should not be used if the adverse impact of the imposition of sanctions actually outweighs the negative impact of the crime itself;
5. The formulation of criminal prohibitions should not trigger greater destructive power than the actions to be prevented;
6. Criminal regulations should not contain prohibitions that are contrary to the aspirations or support of the wider community.

In Sudarto's view, carrying out criminal law politics is essentially to determine policy choices in order to produce optimal criminal legislation, while still prioritizing the fulfillment of the principles of justice and effectiveness [11]. Furthermore, the scope of criminal law politics is mapped in detail by A. Mulder (in Barda Nawawi Arief) as a policy guide to formulate: a. The extent to which positive criminal rules need to be revised or updated; b. What strategies can be implemented to prevent criminal acts; c. How the law enforcement system—starting from the stage of investigation, prosecution, trial, to criminal imposition—should be carried out.

The synergy of crime prevention is actually closely intertwined with efforts to protect the community (social defence) and the achievement of social welfare (social

welfare). Therefore, the final orientation of criminal law politics is to ensure public safety in order to realize the benefits of society, making it an integral part of social politics. However, in operating penal facilities, there are a number of limiting principles that must be heeded, namely:

1. The use of criminal law is prohibited oriented towards the aspect of pure retribution;
2. Criminal sanctions should not be applied to acts that do not have the potential to harm or harm;
3. The establishment of criminal rules must be avoided if policy targets can be met through other alternative routes that are more proportionate;
4. Criminal instruments should not be used if the harm or negative impact of law enforcement is actually greater than the criminal act;
5. The prohibition created should not trigger consequences that are more dangerous than the anticipated crime;
6. Criminal law should not contain prohibitory norms that lose legitimacy or support from the public.

There is a reason why the practice of insider trading is prohibited in the capital market industry. The main reason is that insider trading practices violate the disclosure principle. The existence and duality of the principle of openness in capital market law is so important that if it cannot guarantee this principle of openness, the capital market law is considered to still be unable to enforce the capital market industry. Openness about material facts as the soul of the capital market is based on the principle of openness that allows the investor to make a decision to buy or sell shares. According to Bismar Nasution, there are at least three functions of the principle of openness in the capital market, which include the following:

1. Maintaining Public Legitimacy and Trust in the Market: Investors' confidence plays a crucial role; this is because the fading of public trust in the capital market ecosystem has the potential to trigger the phenomenon of large-scale capital flight, which can ultimately depreciate to destroy the stock market.
2. Building an Efficient Market Mechanism: The efficiency of this market is closely intertwined with the implementation of a mandatory disclosure system. This principle serves to supply data and technical information needed by professional market participants and shareholders.
3. The Urgency of the Principle of Openness in Minimizing Fraud: Transparency plays an important role as a preventive fortress that protects investors from various modes of fraud. This form of early protection (protector) includes prevention of misleading actions and misrepresentation from the early stages.

Legal doctrine is constantly evolving to outline in depth the limits of information that must be disclosed by persons with disclosure obligations. However, the same legal instrument must be able to mitigate risks while still providing protection for the private or confidential interests of the party that is required to carry out such transparency [12]. In relation to the principle of capital market transparency, the normative obligations of issuers regulated in Law No. 8/1995 and its implementing regulations, are substantially operational obligations for the company's management—especially the board of directors. On the basis of the same legal logic, every prohibition or legal limitation that binds issuers is actually a direct instruction for the management to be considered and carried out in an accountable manner, in order to prioritize the company's interests and interests.

The capital market legal system is basically built on a philosophical foundation that prioritizes full disclosure of information. Although there is an integration between the openness function and the supervisory aspect, the main orientation remains on the protection of investor interests and macro capital market stability. On that basis, the regulation mandates the Financial Services Authority (OJK), which was previously Bapepam and the stock exchange, to carry out the functions of regulation, supervision, and the imposition of administrative and criminal sanctions for violators of the principle of disclosure. Nevertheless, a crucial question arises about the extent to which contemporary financial reporting models are able to anticipate financial crime modes that have the potential to trigger capital market scandals, so that investor losses or the collapse of public confidence can be avoided.

The imposition of criminal sanctions is often the main instrument to crack down on perpetrators of financial statement manipulation aimed at deceiving investors or the public. However, the process of proving the existence of an element of intentionality or fraudulent motive requires an in-depth investigation and often involves other actors, such as the accountant who also prepares the financial statements. This effort to prove this is certainly not easy because the degree of success is largely determined by the effectiveness of the applicable law enforcement system, although it is still not a guarantee that the capital market ecosystem will be completely sterile from similar financial crime practices [13].

All provisions that apply in the capital market are still regulations made by the previous capital supervisor, namely Bapepam. Thus, until now, the provisions that apply in the capital market are still legacy provisions of Bapepam whose supervision and enforcement of these regulations are transferred from Bapepam to the OJK as a supervisor in the Indonesian Capital Market [14].

Law No. 8/1995 still uses the classic theory of determining insiders, namely only people or parties who have a fiduciary duty relationship with the company. Meanwhile, other people or other parties outside of the relationship of trust cannot be categorized as insiders. Therefore, in determining the perpetrators of insider trading, first must be seen from the aspect of the perpetrator (subject) and secondly from the system of conduct/deeds (object). If viewed from the perpetrator's side, then subjectively, the analysis must be based on fiduciary duty theory and misappropriation theory. A person who has a fiduciary duty when a person has the capacity and a person who has the capacity if the business he transacts or the money/funds managed do not belong to him or not for his interests, but belong to and for the benefit of the other person, where the other pe2rson has great trust (great trust)) to him. In other words, a person who is trusted must have good faith [15].

In the corporate world, the management and other parties related to the company are categorized as trustees who must behave like trust holders. The Commissioner and the Board of Directors occupy the position of fiduciary in the mechanism of their relationship must be fair to manage the company. The relationship based on the theory of fiduciary duty originates from the common law legal system, an obligation established by law for a person who takes advantage of another person, where the personal interests of

others are taken care of by other persons, which is only a relationship between superiors and subordinates in a moment [16]. Understanding the relationship of trust holders, the common law system recognizes that people who hold trust naturally have the potential to abuse their authority. The relationship of the trust holder must be based on a high standard of behavior.

The relationship between a trusted person and a trusted person in managing everything related to this business is established in a fiduciary relationship. The concept of fiduciary is the same as trust which in law trust means trust given to a person who in this case is a trustee for the benefit of another party or cestui que trust with respect to the management of property that is included in the trustee's power for the benefit of another party [17]. In the theory of trust, it is more complete than the theory of fiduciary duty because trust focuses on trust, everything or everything, while fiduciary duty has restrictions on trust, for example, the Board of Directors can legally be exempt from all demands because it is related to responsibilities outside its authority which is called (judgment rule) while in trust, the trust is charged completely without limitation. The theory of trust was initially from the trust model which was then limited to the fiducairy duty model, so that these two theories are the basis for applying the principle of trust. Even though the two are different, both are still charged with care, loyalty, good faith, honesty, skills to a high degree or standard.

The trustee or person who is trusted in managing something is a trustee while the party who trusts the management is a beneficiary. In connection with the above theory, in the world of companies, the management, Board of Directors, Commissioners, Staff, Employees, and others and their derivatives are included in the category of people or parties who have a relationship of trust with the company that must be upheld in the highest trust in managing the company in question. Because the issuer and supporting institutions in the Capital Market are bound by the relationship of trust according to the fiduciary duty theory, these parties are categorized as insiders who are established in a work capacity relationship and have the opportunity to practice insider trading.

Based on the misappropriation theory, the wider community can also be categorized as insiders even though they only work as teachers, doctors, farmers, fishermen, and others without exception. Because the misappropriation theory says that anyone who uses inside information or information that is not yet available to the public trades stocks on the information is categorized as an insider. Even though the person who trades does not have a fiduciary duty with the company. The application of the misappropriation theory will make the concept of insider very comprehensive by stipulating in Law No. 8/1995 that applies to every person who uses information that is not yet available to the public (inside information) to trade stocks on the information is categorized as insider in insider trading, even though the person who makes the trade does not have a fiduciary duty with the company. Thus, outside of issuers or companies that will go public, investors or financiers, and supporting institutions and other supporting private institutions are categorized as insiders. However, Law No.8/1995 does not regulate the provisions of other parties who receive information indirectly from insiders but regulates information received from tippees as an insider category. In determining insiders in terms of their actions or behavior, it must be based on a combined theory, which combines the two theories above, namely the theory of the relationship of beliefs and the theory of abuse. These two theories are also applied in Law No. 8/1995 will be more effective and efficient in determining the insider category.

According to the author's discretion, as stated in Article 47 paragraph (1) of Law No.8/1995 which determines that the Police, Prosecutors, or Judges, Tax Officials, the Court, individuals in Bapepam, Stock Exchanges, Clearing and Guarantee Institutions, Issuers, Securities Administration Bureau, or other Custodians can be categorized as insiders even though the law only provides exceptions to these institutions. The determination of these institutions as insiders depends on the ways in which they are conducted. If it turns out that the conspiracy practice causes losses to the issuer, then these institutions fall into the insider category without exception. According to Sean P. Leuba, the categories of insiders consisting of commissioners, directors, major shareholders and employees of the company are classic examples of the determination of insiders in fiduciary duty theory or so-called traditional insiders [18].Law No. 8/1995 still uses this fiduciary duty theory in determining insiders.

It appears that Law No.8/1995 does not regulate the provisions of other parties who receive indirect information from insiders but regulates information received from tippees as an insider category. Only the recipient of information (tippees) who are unlawfully can be categorized as insiders. If there are parties who do not have a relationship of trust with the company but obtain the information and use it to cause changes in the share price to become losses, then the law cannot determine the character of such an act as an act of insider trading. The determination of insider trading indications is an insider act according to the concept of Law No.8/1995 is only determined by the element of "information containing material facts". The standards for determining insider trading in Indonesia are not the same as determining insider trading in the United States. The United States State actually omits the element of material fact, but considering that if there is a possibility that is considered substantial for shareholders that is very reasonable, and that reason is considered important to decide something, then the act is categorized as insider trading.

If the application of the theory is based on the misappropriation theory, there must be no fiduciary duty in determining insiders. Although in Article 97 of Law No.8/1995 only tippees who obtain information illegally are categorized as insiders, or even though the tippees do not have a fiduciary duty with companies or issuers or exchange management parties, then based on this theory of abuse, the actions of these individuals can be included in insider trading (insider trading)). Thus, if the above two theories are applied at the same time or combined, the law will be more efficient and effective for categorizing insider trading. It cannot be used as a benchmark only for people who have a relationship of trust, even though it has been proven that the act affects the stock price and results in losses to investors who transact securities in the Capital Market.

Formulation of Criminal Sanctions in the Crime of Insider Trading in the Indonesian Capital Market

In the regulation of the Indonesian capital market, the practice of insider trading is largely based on the existence

of a fiduciary duty relationship between the actor and the company where he works and gets access to insider information. However, in several articles in Law No. 8/1995, it can be noted that the lawmakers actually intended to include parties other than "insiders" as described in Article 95 of Law No. 8/1995. The party is a non-insider who gets insider information from insiders or commonly known as tippees. If we look at the regulation of Article 97 paragraph (2) of Law No.8/1995, it can be said that it is not only insiders who have a fiduciary duty to maintain the confidentiality of insider information. Article 97 paragraph (2) of Law No.8/1995.

If there is a party who submits a request for information to the issuer and obtains it instantly without a restriction clause, then the subject of the law cannot be charged with the prohibition that applies to insiders. The legal rationalization of this condition is considered logical, because the actions of issuers who open the information freely without a tendency to secrecy automatically change the status of the information to public consumption. Consequently, the data loses its qualification as "insider information" as constructed in the Explanation of Article 95 of Law No. 8/1995. On the other hand, if the process of transmitting information is accompanied by restrictive clauses such as the obligation to maintain confidentiality, then the receiving party (tippee) is mutatis mutandis bound by the prohibition of insiders regulated in Article 95 and Article 96 of Law No. 8/1995. Therefore, the recipient of the information is considered to have a duty to maintain the information. Thus, it can be concluded that the provisions in Article 97 paragraphs (1) and (2), are as follows:

1. If tippees try to obtain insider information and succeeds in obtaining it by unlawful acts, then he may be subject to a prohibition as referred to in Article 97 paragraph (1) of Law No.8/1995;
2. If tippees tries to obtain insider information and succeeds in obtaining it without committing any unlawful acts, but is restricted by the issuer, then he is prohibited from making securities transactions based on that information. This is regulated in the Explanation of Article 97 paragraph (2) of Law No.8/1995. The restriction means that the issuer provides the information on the condition that it maintains the confidentiality of the information. Therefore, securities transactions carried out based on this information are a violation of Article 97 paragraph (2) and are subject to a ban based on Articles 95 and 96 of Law No.8/1995. It can also be interpreted that the same applies in the case of insiders who provide such information to tippees;
3. If tippees tries to obtain insider information without committing an unlawful act and does not receive restrictions from the issuer, he may conduct securities transactions based on that information, without being subject to prohibitions as in Articles 95 and 96 of Law No.8/1995. This is because the information means that it is public and all parties have the right to get it.

Based on the above points, it can be seen that to become a party to the tippees regulated in Law No.8/1995, it is necessary to have an "effort" from the tippees themselves in obtaining insider information, whether with illegal acts or not. From there, weaknesses arise in the regulation regarding insiders or parties who are prohibited from making securities transactions. The weakness is that it is not regulated regarding tippees that get information from insiders passively (without making an effort).

When associated with misappropriation theory, then in fact the theory can reach all parties, both insiders as referred to in Article 95 of Law No.8/1995, or third parties as in Article 97 paragraphs (1) and (2) of Law No.8/1995. Therefore, by referring to the elements of misappropriation theory as described above, the element of whether or not there was an effort from tippees to obtain insider information is no longer taken into account. The determinant of whether he can be classified as an insider trader or not is whether he then makes securities transactions with the information and profits from the transaction. Thus, the essence of the theory is the misuse of information, namely insider information (which is still confidential) used for personal interests or certain parties who obtain the information. This material information is actually mandatory to be disclosed to the public. This is in accordance with the principle of disclosure, so that with this information shareholders or potential investors can consider whether to buy or sell shares of the issuer in question, or not to transact securities from the securities issued by the issuer.

With the application of misappropriation theory, it is hoped that the revision of the provisions, especially in Article 95 of Law No.8/1995, will be able to cover a broader insider classification. Therefore, it is necessary to establish new norms in Article 95 of Law No.8/1995, especially at the legislative level. In this regard, Hans Kelsen put forward a theory about the level of legal norms (Stufentheorie), which means that legal norms are tiered and layered in a hierarchy (order), in the sense that a lower norm applies, is sourced, and based on higher norms, higher norms apply, source, and are based on even higher norms, so on until a norm that cannot be explored further and is hypothetical and fictitious, namely the Basic Norm (Grundnorm).Regarding the classification of insiders or "insiders" is regulated in the provisions of Article 95 of Law No.8/1995 which is currently regulated.

Based on the implementation of misappropriation theory, it is necessary to make changes to the provisions in the Explanatory Chapter of Article 95 of Law No.8/1995 in the next Capital Market Bill (ius constituendum) so that there are no multiple interpretations

In practice, judges in Indonesia more often apply criminal sentences, especially prison sentences and fines, according to the Criminal Code, there is no possibility for judges to impose prison sentences or confinement cumulatively with fines. In the case of economic crimes, it is possible [19]. So that in providing criminal sanctions for insider trading perpetrators, it has specifically adhered to the double track system theory in Article 104 of the current Capital Market Law. Meanwhile, regarding the action of tippeers who notify material information to tippees, thus causing losses to investors. The acts committed by tippers and tippees in the provisions of the Criminal Code can be linked to Article 55 of the Criminal Code regarding participation. Moeljatno stated that what is meant by inclusion 2 is if there is more than one person involved in the occurrence of a criminal act. According to him, not all people involved can be said to be participants in the meaning of Article 55 of the Criminal Code, because all have their own categories that must be met [20]. Meanwhile, regarding the application of criminal sanctions using the theory of the double track system, which also imposes fine sanctions on the perpetrators, with special

minimum provisions and also formulated regarding participation, the provisions in Article 104 of Law No.8/1995 in the next Capital Market Bill (ius constituendum) need to be revised

Through the lens of the doctrine of vicarious liability (substitute liability), criminal sanctions are no longer limited to individual legal subjects, but can be extended to touch the corporate realm. In this frame of mind, the ideal regulation should not only place criminal fines as the main sanction, but also formulate a variety of other alternative sanctions for corporations. If correlated with Article 98 of Law Number 8 of 1995, Securities Companies are actually given legitimacy to execute purely securities transactions for the benefit of customers, in line with their function as an intermediary of securities traders who carry out excellent service obligations. In the operational corridor, the Securities Company does not in essence intervene by providing specific recommendations to the customer.abilif the principles in Article 98 are violated, the Securities Company can be categorized as having violated the prohibition of insider trading as stipulated in Article 95 and Article 96 of Law No. 8/1995. On that basis, by adopting a vicarious liability approach, the Securities Company bears the legal urgency to be held accountable as an entity included in the insider classification. Consequently, as a step to affirm the implementation of the substitute liability doctrine, the provisions of Article 105 of Law No. 8/1995 must be revised in the draft of the Capital Market Bill as the agenda of the upcoming ius constituendum.

In determining the criminal liability of corporations that conduct insider trading, the Vicarious Liability Theory is considered the most relevant to be applied. Through this theory, corporations, including securities companies, are seen as parties who must be responsible for the occurrence of unlawful acts, so that responsibility is not only imposed on individual perpetrators. Thus, when criminal acts are committed within the scope of corporate activities, the corporation as a unit can also be held criminally liable. The application of misappropriation theory in the legal construction of Article 95 of Law Number 8 of 1995 can provide a better guarantee of equitable distribution of information in the capital market. The main focus of this theory lies in the misuse of material information in securities transactions to obtain certain profits. The abuse occurs when information that should be published to the public is actually used for personal interests or leaked to certain parties in order to gain profits from securities transactions.

Misappropriation theory assesses an insider trading action based on the use of information underlying securities transactions, not on the status of the perpetrator. Therefore, when compared to the regulation in Law No. 8 of 1995, this theory has a wider scope and is more effective in reaching insider trading actors. The regulation in Law No. 8 of 1995 still focuses on the element of "insiders", namely certain parties who can be sanctioned if proven to be involved in insider trading.

However, the provisions in Law No. 8 of 1995 basically remain in accordance with misappropriation theory because they both emphasize the existence of securities transactions based on the use of confidential insider information. The difference is that misappropriation theory does not focus on the identity of the transaction perpetrator, but on the character of the material information used. As long as the information is still closed and used to obtain profits through securities transactions, then the action can be categorized as insider trading, regardless of whether the actor is an insider or not.

Conclusion

The formulative policy regarding the criminal threat of insider trading in Law Number 8 of 1995 concerning the Capital Market is regulated in Article 95. These provisions still use the traditional insider concept in determining parties who can be categorized as insiders. In the traditional concept, insiders include commissioners, directors, major shareholders, and company employees. Commissioners and directors are seen as insiders because they both have fiduciary obligations or obligations of trust and loyalty to the company. The regulation in Article 95 of Law No. 8 of 1995 shows that the scope of insiders is still limited based on the theory of fiduciary duty. These restrictions create loopholes in the application of insider trading rules. This is because the use of fiduciary duty theory has not been able to reach other parties who obtain information from insiders, which in capital market practice are known as tippees. Thus, the party receiving information from insiders is still difficult to be held criminally liable based on the current regulations. In the perspective of the ius constituendum, the legal construction of the crime of insider trading in the capital market draft law should adopt the misappropriation theory. Therefore, the explanation of Article 95 of Law No. 8 of 1995 needs to be revised by expanding the category of parties that can be considered insiders, not only limited to individuals who obtain information due to their position, profession, or business relationship with issuers or public companies, but also to include other parties who obtain and utilize material information that is confidential. The application of misappropriation theory in Article 95 of Law No. 8 of 1995 can provide better protection for the principle of information disclosure in the capital market. This theory does not focus on who the perpetrator of the securities transaction is, but rather on the character of the material information used in the transaction. As long as the information is still confidential and used to gain profits through securities trading, then the action can qualify as insider trading, regardless of the status of the perpetrator as a traditional insider or not.

References

1. Anoraga P, Pakarti P. Introduction to Capital Markets Revised Edition, Rineka Cipta, Jakarta, 2006.
2. Ahmad K. Fundamentals of Investment Management and Portfolio Revised Edition. Rineka Cipta, Jakarta, 2004.
3. Anoraga P, Pakarti P. Introduction to Capital Markets Revised Edition, Rineka Cipta, Jakarta, 2006.
4. Ahmad K. Fundamentals of Investment Management and Portfolio Revised Edition. Rineka Cipta, Jakarta, 2004.
5. Soekanto S, Mamudji S. Normative Law Research A Brief Review, Rajawali Press, Jakarta, 1995.
6. Mulyadi M. Criminal Policy: An Integral Approach to Penal Policy and Non-Penal Policy in Countering Violent Crimes, Pustaka Bangsa Press, Medan, 2008.
7. Arief BN. Criminal Law Policy, Prenada Media Group, Jakarta, 2011.

8. Arief BN. The Limits of Criminal Law Ability in Crime Management, Seminar Paper on Non-Penal Approaches in Crime Management, Diponegoro University, Semarang, 1996.
9. Walker N. Sentencing in A Rational Society, Pelican Book, London, 1972.
10. Nasution B. Openness in the Capital Market, University of Indonesia, Faculty of Law, Postgraduate Program, Jakarta, 2001.
11. Giysmar NA. Insider Trading in Securities Transactions, PT. Citra Aditya, Jakarta, 2002.
12. Sudaryanto A. Stocks and Bonds: A Summary of Theory and Practice, Atmajaya University, Yogyakarta, 2008.
13. Nasarudin MI. Legal Aspects of the Indonesian Capital Market, Kencana Prenada Group, Jakarta, 2010.
14. Pratomo EP. Traveling to the World of Mutual Funds, Gramedia Pustaka, Jakarta, 2009.
15. Cardoza BN, in Fuady M. Modern Doctrines in Corporate Law and Its Existence in Indonesian Law, Citra Aditya Bakti, Bandung, 2010.
16. Nasution B. "The Responsibility of the Board of Directors and Commissioners in the Management of Bank Limited Liability Companies", Paper Presented at the One-Day Seminar: The Responsibility of Bank Management in the Enforcement and Handling of Deposits in the Banking Sector According to the Limited Liability Company Law and the Banking Law, organized by Bank Indonesia and the Communication Forum of the Director of Banking Compliance, Surabaya, on February 21, 2008, 2008.
17. Fuady M. Modern Capital Market (Legal Review), Citra Aditya Bakti, Bandung, 1996.
18. Nasution B. Openness in the Capital Market, University of Indonesia, Faculty of Law, Postgraduate Program, Jakarta, 2001.
19. Saleh MR. Indonesian Criminal Stelsel, Aksara Baru, Jakarta, 1987.
20. Moeljatno. Experimental Delicacies and Inclusion Delicacies, PT. Bina Aksara, Jakarta, 1985.