CHAPTER I

INTRODUCTION

1.1 Background

Indonesia is an ever-growing country with an economic power that is recognized globally. The country has so much potential contained in its diverse natural and human resources giving birth to leading big industries of all sorts. Indonesia is the world's 4th most populous country holding position as the world's 7th largest economy in terms of purchasing power and is included in the G-20 group of nations.[1] In comparison to the other forum countries in G-20, Indonesia is ranked third after China and Korea in terms of economic growth amidst the Covid-19 pandemic.[2] The country has a crucial economic position in the world and has continued to project growth throughout the years.

The country has been going through major developments in its economy which signifies that its people have also gained economical advancements as it goes in a straight line with the country's position shown by World Bank's report which includes the increase of Indonesia's gross income per capita showing a number of US$ 3,911 in 2020.[3] This shows that the economy of Indonesians continue to develop resulting in people's power to buy goods and fulfill their needs. The data

[1] Deloitte Indonesia, "2020-2021 Investment Window into Indonesia", Report, Jakarta: Deloitte 2020-2021 series, pg. 16
[2] Office of Assistant to Deputy Cabinet Secretary for State Documents & Translation, "President Joko Widodo: Indonesia's economy ranks 3rd Among G20 Countries", https://setkab.go.id/en/president-jokowi-indonesias-economy-ranks-3rd-among-g20-countries/, accessed on 8 September 2021
[3] Kementerian Keuangan Republik Indonesia, "Ini Pertumbuhan Ekonomi Indonesia", https://www.kemenkeu.go.id/publikasi/berita/ini-pertumbuhan-ekonomi-indonesia-2020/, accessed on 8 September 2021

gained by the Minister of State-Owned Enterprises shows that the Indonesian middle-income class keeps on growing and at least there are 52 million people out of Indonesia's total population of 273 million people that are classified as middle-income.[4] The middle-income class shows a very huge potential since they have more buying power compared to the lower class, which means that besides fulfilling their needs, they have the remaining capital to buy other goods or services.

On the other hand, Singapore which is a neighbour country to Indonesia has been long recognized as one of Asia's economic powerhouses showing a significant gross domestic product of US$339,998,477 in 2020 foreshadowing its position as one of the biggest economic hubs. Singapore has also been determined as a developed country due to its high-income nature and is regarded as a country with one of the most competitive economies in the world.

Although a small region country, Singapore has a total population of 5.69 million people in which its gross domestic product per capita reaches US$59,797 as of the year 2020.[5] Singapore is considered as a country with a high-income economy which essentially also means a healthy wealth distribution towards the people as the country has shown rapid and stable growth in its financial condition which generates a high possibility of idle funds in the public.

Due to the nature of both countries majorly filled with middle-income to upper class, investment is a well-known practice in both countries. The term

[4] Maulandy Rizky Bayu, "Jumlah Kelas Menengah Indonesia Bakal Lampaui Penduduk Korea Selatan", https://www.liputan6.com/bisnis/read/4357710/jumlah-kelas-menengah-indonesia-bakal-lampaui-penduduk-korsel, accessed on 10 September 2021

[5] World Bank, "GDP per Capita - Singapore", https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=SG, accessed on 15 September 2021

"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 their preference on the form of investment. Capital market has been one of the most prominent and long-used ways in investing. Herein, investors are given the choice to buy securities and their derivatives such as bonds, warrants, options, or even mutual funds. The capital market provides the platform to bring together investors and issuing companies to buy and sell those products aforementioned.

In Indonesia, the capital market has been around since the Dutch colonization era in 1912 and has continued to cease its existence until the present time although it went through several closures for a number of years. As of the present time, 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. In order to ensure the safety and sustainability of the capital market, Indonesian government has enacted Law Number 8 of 1995 pertaining to Capital Market ("Capital Market Law") as the prevailing law.

The law aims to create an independent economy to increase the people's prosperity towards more equal, developed, and stable national advancements. Capital Market Law has set off standards for all listed companies which forces them to adhere to the principle of disclosure in order to ensure all activities in the respective market run in an organized, fair, transparent and accountable manner. With that in mind, certain practices that are considered harmful are prohibited followed by criminal sanctions.

OJK was established within the enactment of Law Number 21 of 2011 regarding *Otoritas Jasa Keuangan* ("OJK Law") under Indonesian government in its effort to create a developed, stable and sustainable national economy as a program for development in 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 emphasizing that the sector is deemed vital for the development of the national economy. Furthermore, on a global scale, the financial sector has gone through various changes and development which resulted in a complex, dynamic and interconnected system equipped with advanced technology hence the establishment of OJK is expected to overcome such issues. A regulatory and supervisory institution is vital for the country as it fosters a healthy financial and banking system providing a safe platform for consumers and OJK is established to meet those expectations.

Singapore also has its banking and capital market supervisory body being the 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,[6] which gives them the authority to issue monetary policies and other macroeconomic supervisory

[6] Money Authority of Singapore, "Who We Are", https://www.mas.gov.sg/who-we-are, accessed on 21 September 2021

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 prudent and sustainable financial system.[7]

In terms of economy, Indonesia and Singapore have some ties as both countries are part of the ASEAN economic community which is an economic forum made up of 10 countries across South East Asia. The community is created to support its member states in terms of the movement of goods and services, investment, and free flow of capital and human labour. In that, ASEAN has established a single market and production base with hopes that all member states are able to attain equitable economic development with a fully integrated and competitive economic region. Through the agreements made between member states, ASEAN has agreed to facilitate the movement of goods, services, investments, capital, and skills, increase trade and investment among member states, promote and expand regional production sharing and network as well as promote a higher level of transparency.[8]

This circumstance enables capital and investment to enter one country to another country in the forum. However, with that comes an obligation that states should have a comprehensive and safe financial services system to establish an

[7] Money Authority of Singapore, "What We Do", https://www.mas.gov.sg/who-we-are/What-We-Do, accessed on 21 September 2021
[8] ASEAN, "About AEC", http://investasean.asean.org/index.php/page/view/asean-economic-community/view/670/newsid/755/about-aec.html, accessed on 21 September 2021

investment-friendly country providing robust protection for the investors to ensure eligibility of their legal rights.

All means of laws and regulations that has been set by the government in the field of capital market signifying an effort to protect investors. In essence, investors are the consumer of capital market and that there is an obligation to protect consumer rights through the adoption of UN Guidelines for Consumer Protection.[9] 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.[10] A fully functional capital market requires investors to run hence protection of their legal rights is a must-have that goes without saying. 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.

Capital Market Law marks that the capital market is a means to conduct economic democratization signifying that investor should be provided legal protection especially since dealing with a large number of funds.[11] 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.

[9]Aripin Ahmad, "Capital Market Products and Investor Protection", European Research Studies Journal, Volume XXI, Issue 2, (2018), pg. 717
[10] *Ibid*, pg. 716
[11] *Ibid*, pg. 715

Wary trading activities itself 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 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 information provided may contain a possibility of an increase in price or volume of securities traded which are substantial in determining the company's position in the capital market. In essence, OJK and BEI do not allow any trading activities that make use of information gained from an affiliation of the company whether it might be managerial positions such as director and commissioner of a company, its employees, or even the shareholders who previously have gained such information that will certainly affect the company in the capital market.

Insider trading itself is considered unfair because it may generate a loss for other investors who are unaware of such information due to the secrecy of such and does not promote equality in the ability to access publicly-available information. Whereas capital market should uphold principle of fairness and equality, insider trading is in breach of it since there are certain parties in advantage due to their knowledge of material non-public information. Every investor in the capital market would like to obtain their goal to generate as much profit as possible which means that it is the duty of the facilitators, BEI and OJK, to provide a safe and fair platform that ensures transparency in every matter since there lies the obligation under the

principle of disclosure. Therefore, any kinds of illegal transactions are regulated under the law and OJK has the rights to adjudicate any violations to the rules and regulations stipulated thereof. They are created as a safety measure to eradicate all forms of illegal transactions by means of fraud, cheating, and other various kinds that exist. Protection of investors also includes accessibility of information since they need to make an informed decision before purchasing or selling any securities. With that in mind, Capital Market Law entails the obligation for all related parties to abide by the principle of disclosure.

The principle of disclosure is a general guide applicable to listed companies, public companies, and any other relevant parties to disclose any material information to the public in regards to their business or securities that may have an effect towards investor's decisions on the said securities or its price. The obligation is held to foster the public's trust towards the capital market and also to create efficient systematics to protect all the investors since it is crucial in keeping a healthy relationship to maintain the market's sustainability.[12] However, the limitations to such obligation are capped off only to the measure of such facts and information is considered material that may affect the securities along with its price.

Sharing of information itself is not prohibited by the law since there are freedom in disclosure however if a buy or sell activity is solely done because of that piece of information then it would be substantial that there exists a foul since it

[12] Ade Hendra Jaya, *et.al*, "Akibat Hukum Adanya Misleading Information pada Prospektus Ditinjau dari Hukum Pasar Modal", Kertha Semaya: Journal Ilmu Hukum, Vol. 1, No. 10 October 2013, pg. 3

enables the investor to get a head start in deciding to buy or sell the affected securities way ahead of the public.

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. Further troubled with the technological advancements in the financial services sector which provides the ability for investors to customize the trade mechanism, adding another degree of complexity for the authorities to prove an insider trading practice since it may involve an enhanced and complex method of transaction.

Insider trading has protracted an ambiguity in its enforcement as there lies uncertainty in order to prove it. Herein, the burden of proof lies on the investigators to go into the details and unveil any kind of contravention occurred. The key aspect to eradicate insider trading practices is commitment from the authorities and its seriousness in enforcing the law to conduct investigation thoroughly towards companies and investors whether being big institutional investors or even retail investors.

Pursuant to OJK Regulations No. 22/POJK.01/2015 regarding Investigation of Criminal Acts in the Financial Services Sector, OJK has been given the right to adjudicate matters and exercise their authority on criminal investigation conducted in the capital market. In this sense, the investigation authority is carried out by an appointed civil servant investigator who has been designated by OJK to conduct the investigation arising from violations in the financial sector field as stipulated under OJK Law.

Within the Singapore jurisdiction, the conduct of insider trading is punishable under the Securities and Futures Act ("SFA"). Singapore has adopted the "information connected" approach which lies the focus of enforcement through identifying what constitutes as insider information, as opposed to having to establish a connection between insider information and the person in possession. SFA itself is not strictly applied as a criminal offense to the violator in that it provides an opportunity for MAS to pursue a civil penalty action instead. Under section 221 of the SFA, criminal penalties are given to violators with threat of maximum 7 years imprisonment or fine up to S$250,000. On the other hand, section 232(1) of SFA, provides the opportunity for MAS to pursue a civil penalty action against the wrongdoer instead of pursuing it as a crime.[13]

With both countries regulating prohibition on insider trading, there was an occurrence of the practice concerning parties from Indonesia and Singapore. 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.

As predicted, BDMN's stock price plummeted and took momentum after the announcement of acquisition decision was made public. Rajiv Louis obtained a lot

[13] Singapore Legal Advice, "5 Things You Need to Know About Insider Trading", https://singaporelegaladvice.com/law-articles/5-things-you-need-to-know-about-insider-trading/, accessed on 22 September 2021

of profit from his previously purchased stocks which then later deemed conduct of insider trading since it was made before the announcement of the acquisition as such was still was around the corner.

MAS succeeded investigating the case and was able to prove the act in violation of the insider trading prohibitions laid out in SFA.[14] Eventually Rajiv had to take responsibility for his actions and pay the fine. Although the case was adjudicated by the Monetary Authority of Singapore, it took a toll on Indonesian capital market since it involves an Indonesian listed company.

It can be seen from the outcome of the case which eventually falls under the authority of MAS putting the position of OJK in question whether there has been a lack of seriousness from the Indonesian authorities to bring financial crime perpetrators to justice. Rajiv Louis' case occurred and took effect to an Indonesian listed company but then the sanctions were given by the Singaporean authority because the transaction took place from an account originating from Singapore. The case outcome is truly a shame for Indonesia whom based on the prevailing rules and regulations has been striving to have a fair, transparent, and accountable financial services system yet has failed to eradicate illegal transaction that puts the investor's position in jeopardy.

This particular circumstance sparked a public opinion that OJK has not been very committed to investigating insider trading suspicions although they are the

[14] Benjamin Tan, "MAS takes civil penalty action against former UBS managing director Vincent Rajiv Louis for insider trading", https://www.theedgemarkets.com/article/mas-takes-civil-penalty-action-against-former-ubs-managing-director-vincent-rajiv-louis, accessed on 25 September 2021

assigned authorities to carry out such activity.[15] As previously mentioned, protection of investors is a key in maintaining a healthy capital market, OJK has neglected their duty to properly adjudicate this case which doubt its authority in enforcing the law. Looking back in its enforcement record, most insider trading practices in Indonesia ends up in administrative sanctions whereas Capital Market Law has specifically prescribed the practice as a crime. However, enforcement of law whether given in form of administrative sanctions or penal sanctions are seldomly given to perpetrators although there are a number of occurrences of insider trading practice in Indonesia. Public investors and the market have suffered while the perpetrator does not get any deterrent effect from the fine given.

The main focus and discussion of this thesis will be the underlying rules and regulations pertaining to insider trading along with its implementation in enforcement which arise the question of whether OJK and MAS have been strictly adjudicating insider trading suspicions. As the regulatory and supervisory body of each respective capital market, it is crucial to ensure that the market is a safe space for investors to make sure of its sustainability while maintaining its credibility by strictly enforcing legal sanctions towards perpetrators of financial crime.

The author would like to look further into the implementation of insider trading practices and also the systematics on how the OJK and MAS along with its investigators process these kinds of cases. Furthermore, there also exists the need of assessment as to whether the prevailing rules and regulations in Indonesia are

[15] Ardian Junaedi, "Tindak Pidana Insider Trading dalam Praktik Pasar Modal Indonesia", Media Iuris, Vol. 3, No. 3 October 2020, pg. 312

sufficient enough in providing a sufficient legal basis that gives the power for OJK to adjudicate insider trading. Following up, the author would also examine the efficiency and effectiveness of OJK in law enforcement to come up with the conclusion whether OJK has been committed in eradicating financial crime. This is crucial since capital market works on a trust basis and OJK has obligation to provide a safe platform for the investors to store their money into.

In the end, strict enforcement is needed to avoid any possible insider trading activities in the future in which it needs OJK to carry out its enforcement functions in relation to the prevailing laws in the capital market. As it is stated under the goal of Law No. 8 of 1995 regarding Capital Market, the capital market has a strategic role in national economic development as one of the sources of funds for businesses and as a means of investment for the general public. By providing protection of investors, the capital market will gain its trust from the people and have the power to develop. Furthermore, such a goal can be realized if the capital market has a strong legal basis to provide certainty and legal rights of related parties that is crucial for its existence and also to protect the general good of the public from harmful practices. A strong and safe capital market leads to public trust which will then enhance the economic stability in the field of financial services, fulfilling the goal and aim of the creation of Capital Market Law and OJK.

Based on the description above, the author is interested to conduct in-depth research and analyse through this thesis with the title of "**COMPARATIVE LEGAL ANALYSIS BETWEEN THE COMPETENCE OF *OTORITAS JASA KEUANGAN* AND MONETARY OF AUTHORITY SINGAPORE ON THE**

ENFORCEMENT OF INSIDER TRADING PRACTICE DURING ACQUISITION OF PT BANK DANAMON INDONESIA TBK"

1.2 Formulation of Issues

In regards to the topic of this thesis, the Author will discuss the following formulation of issues:

1. How are the nature of competence of capital market regulatory and supervisory body in Indonesia and Singapore?
2. How is the enforcement of insider trading in Indonesia and Singapore during the acquisition of PT Bank Danamon Indonesia Tbk by OJK and MAS?

1.3 Research Purposes

The Author's purpose of writing this thesis is to answer the formulation of issues stipulated above, namely:

1. To improve jurisprudence in the future by knowing both OJK and MAS in each respective function, power, and authority as well as law enforcement in the capital market sector done within each country.
2. To resolve legal problems and improve jurisprudence in the future through means of knowing the method and systematics of both OJK and MAS in enforcement of contraventions in the domain within their effort to provide a transparent and safe market for all relevant parties in capital market.

1.4 Research Benefits

1.4.1 Theoretical Benefits

In theory, the Author hopes that this research will provide an in-depth analysis as to the effectiveness of OJK and MAS in enforcement of insider trading practices. The analysis will also go through the Law No. 8 of 1995 and SFA along with other various supplementary regulations as their legal basis. From the analysis, the author hopes that this research will successfully point out both countries' strengths and weaknesses of the current prevailing rules and regulations and whether a stronger rule of law should be considered in order to empower the financial authorities in enhancing the market.

1.4.2 Practical Benefits

Practically, the Author hopes that this research can give suggestions for the government in the realization of strong legal certainty in the capital market. The Author realizes that there are loopholes in the law enforcement that hinders the capital market's capacity to perform to its fullest potential which will surely affect the market and eventually hold up the goals of Law No. 8 of 1995 which is to provide legal certainty for all parties that are involved in activities in capital market and protect public interest from any kinds of harmful practices.

1.5 Framework of Writing

This thesis is arranged into five main chapters that will ease the readers to understand the discussion of this thesis.

CHAPTER I: INTRODUCTION

As the introductory chapter of the thesis, this part will draw context to the thesis by introducing the problem in enforcement of insider trading practice at hand. This chapter would also introduce the insider trading case that the Author would like to examine further. Furthermore, this chapter will also address the questions formulated for this thesis, the purpose of research, and benefits that may be obtained from it.

CHAPTER II: LITERATURE REVIEW

In the literature review chapter, the Author will divide this chapter into theoretical and conceptual framework. First, the Author will describe the theories that are relevant to this research being comparative legal study, law enforcement theory, and authority theory. Subsequently, the Author discusses the concept of acquisition and the underlying insider trading practice in general.

CHAPTER III: RESEARCH METHODS

This chapter will discuss in general the type of research, the type of data, data analysis technique along with the type of research approach. Then, it will be followed by the elucidation of type of research, data analysis technique, and research approach that the Author use to discuss the issues in this thesis.

CHAPTER IV: RESEARCH RESULT AND ANALYSIS

This chapter will discuss the research questions along with its proposed solutions. This chapter will be divided into three sub-chapters with two last

sub-chapters answering each respective research question as written in the chapter two of this thesis. Initially, this part will elucidate on the notion of market and efficiency and how insider trading creates instability in the market. The second sub-chapter will discuss the analysis on the prevailing authorities attributed to OJK and MAS in regulating and supervision of the capital market and whether the prevailing rules and regulations laid out in Law No. 8 of 1995 and other OJK regulations is effective in eradicating insider trading practices in Indonesia. Lastly, the third sub-chapter will analyse the enforcement of insider trading practice during the acquisition of PT Bank Danamon Indonesia Tbk at hand.

CHAPTER V: CONCLUSION AND RECOMMENDATION

This fifth and last chapter will explain the conclusion as an answer to the research issues imposed that has been analysed in chapter four. Furthermore, the Author will also give suggestions and recommendations towards the underlying issues of enforcement and probable provisions that could be added to better protect the Indonesian capital market that could possibly be adopted in the future to prevent any occurrence of harmful practices by strengthening the capital market-related authorities.