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False Transaction vs Wash Trading: Addressing the Gap to Rebuild Market Confidence (Legal Implication in Indonesia and United States Capital Market Law)

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Abstract
This paper is evidently about the legal comparison between Indonesia and the U.S on their views on market manipulation. There are several similarities between the Capital Market Law and SEA 1934, not only in terms but also in the elements. Articles 91 and 92 of Capital Market Law seem to mimic Section 9(a) (1) and (2) of SEA 1934. As both statues states similar prohibition in creating a misleading trading appearance and the purpose of inducing sales. This means that elements and tests applicable in the U.S. should also be applicable in Indonesia. Section 10(b) of SEA 1934 and SEC Rule 10b-5 serves to further supplement the application of Section 9 with its broad anti-

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manipulation provisions. Articles 91 and 92 of Capital Market Law cover the sales and purchase of stocks affected by the alleged manipulation that occurs only in the securities exchange as evident by the wording "on a/the Securities Exchange". This is also observed in Section 9(a) (1) and (2) of SEA 1934 wherein the scope is limited to transactions in the "national securities exchange". What this implies is that over-the-counter and block sales transactions are not protected under the statutes mentioned above. This issue is not addressed under the Capital Market Law, however Section 10(b) of SEA 1934 and its implementing regulation SEC Rule 10b-5 addresses this issue. Section 10(b) of SEA 1934 allows for broader authority of law enforcement as it includes "any security registered on a national securities exchange or any security not so registered". This implies protection for a wider scope of securities transactions.

Keywords
False Transaction, Wash Trading, Market Manipulation, Legal Comparison

Introduction

What differentiates a developing and developed country is the financial system, wherein the system is more developed in the latter. A financial system is a broad concept which points to the interaction of supply and demand for capital and other finance-related services.[1] A narrow concept of the financial system points to the financial sector. This part of the economy offers and provides financial services, for example the central bank, non-bank financial institution and more, to other sectors of the economy. This particular industry may be organized using markets. The financial market boosts economic development by enhancing physical capital accumulation as it extends a borrower's

[1] John G Gurley, "Comments," Journal of Economic Issues 14, no. 2 (January 2, 1980): 539–42, http://www.jstor.org/stable/4224937.

financial capacity, improves trade efficiency, and provides investors with the necessary funds to execute projects.

The type of financial market includes, capital market, money market, foreign exchange market, commodity market, derivatives market (consisting of exchange-traded and over-the-counter derivatives) and insurance market. The capital market refers to a place where stocks and bonds with long-term maturities are sold and purchased for the purpose of investment or trading. It is further divided into 2 (two) markets, namely stock and bond market. A well-developed stock market increases saving and the efficiency of capital allocation to productive investments which will increase the economic growth rate of a country.[2] By expanding the available financial instruments that savers may utilize to diversify their investment, the stock market aids in mobilizing domestic savings.

Share ownership in a well-developed stock market is able to provide investors with liquid means to share risks when investing in ventures. The stock market helps investors cope with liquidity risk by encouraging other investors who do not encounter liquidity shocks to sell their shares. This ensures that resources needed to satisfy short-term funding needs is not unnecessarily withdrawn from enterprises. The stock market is a big player in the distribution of resources in the private sector – presenting a major impact to the economy. When the government liberalize the financial system, it is important to grow the capital market to ensure that the allocation of capital is conducted efficiently.[3] If it is not well-developed, it will slow down trade and decrease the trust of foreign investors, which will have a negative effect on the economic growth of the country.

The stock market is beneficial to a country as it is a platform for liquid trading and price determination for a wide range of financial instruments that enables investors to distribute risks and match the maturity preferences of capital raisers (usually long-term) and investors (usually short-term). This encourages investment while simultaneously

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[2] Dewa Gede Wirama et al., "International Journal of Economics and Financial Issues Price Manipulation by Dissemination of Rumors: Evidence from the Indonesian Stock Market," International Journal of Economics and Financial Issues 7, no. 1 (2017): 429–34, http:www.econjournals.com.

[3] Peter A. Diamond, "What Stock Market Returns to Expect for the Future?," Social Security Bulletin 63, no. 2 (2000): 38–51.

reducing capital costs, thus leading to a long-term economic growth. It is important for market participants to uphold good market practices in order to have a well-developed stock market.

The stock market is not only an option for the stock resources and public investment of a business, it also promotes the infrastructure necessary for sales and purchase and other related activities. Capital market is very important for Indonesia's economy due to its 2 (two) functions, namely, (1) as an alternative for a company's capital resources and (2) public investment.[4] The capital resources obtained through the public offering may be beneficial for the development and expansion of a company to name a few. Moreover, by means of the stock market, the public may invest their money in accordance with their desired return and the risk characteristics of each instrument.

There are actions which may cause unfair business practices in the capital market, including market manipulation, fraud, insider trading and more. Market manipulation refers to the deliberate conduct intended to mislead investors by manipulating the security market or artificially influencing it. Manipulation may include a variety of methods designed to affect the supply of a stock or the demand for it which create false illustration or view of the market. They may include, but are not limited to, the publication of false or misleading company information; unfairly restricting the number of shares available to the public; or rigging quotations, rates or trades to create a false or deceptive image of security demand.

In the 17th century Amsterdam Stock Exchange, manipulators often spread out false news in local cafes, prompting other investors to sell or buy based on the inaccurate information circulated around the neighbourhood.[5] While stock market manipulation has been around for a very long time, it is no doubt that the current technological development and the introduction of internet transactions have a larger impact to a larger audience. This type of manipulation is causing problems to even developed stock markets. Manipulators tend to be

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[4] Gede Wirama et al., "International Journal of Economics and Financial Issues Price Manipulation by Dissemination of Rumors: Evidence from the Indonesian Stock Market."

[5] Yuna Hao et al., "Market Manipulation in Stock and Power Markets: A Study of Indicator-Based Monitoring and Regulatory Challenges," Energies 16, no. 4 (2023): 1–28, https://doi.org/10.3390/en16041894.

potentially knowledgeable individuals, including corporate insiders, brokers, underwriters, major shareholders and market makers. Presently, the market infrastructure, disclosure, regulations and enforcement of the Indonesian Stock Exchange (IDX) are definitely lower than developed markets in countries such as Australia, Singapore and more. This is a challenge as market manipulation is perceived to be a big impediment to the growth of the stock market.

Prices should reflect the stock's true value by the accounting information along with all the disclosed information regarding the particular listed company, without any judgment on behalf of the investors. When market manipulation occurs whether resulted from insider trading, fraud, or false transaction there are bound to be consequences which incurs loss not only to the market but also to the investors. These consequences include a loss of public trust in the honesty and correctness of the capital market, equal pricing of capital assets, a decrease in stock liquidity, investment deductions and an unoptimized distribution of resources and lastly, the decrease in economic development. Market manipulation research will be able to provide insights to the characteristics of manipulated stocks as well as the techniques used to manipulate such stocks, which will be beneficial in helping regulators design a better and more effective market surveillance.

Presently, *transaksi semu* ('false transaction'), a form of market manipulation, commonly occur in Indonesia. False transactions or more often called 'frying' of shares, is actually not a new story in the world of the Indonesian capital market. In principle, it is a transaction on the exchange that simply does not really occur. This is because the sales and purchase are conducted by the same party and designed by them. The purpose of this seemingly illicit deal is to gain money from investors stuck in it. Illegal transactions or 'frying' shares are very damaging to the market, because trading takes place unfairly.

Shares traded in this practice is now more commonly known as *saham gorengan* (or literally translated as fried stock, some refer to stir-fried stock. [6] This term does not have a strict definition. It may refer to a company stock whose increase is out of the ordinary because its

6 Jocelyn E. Gamble, "Stir-Fried Stocks" 23, no. 2 (1997): 181–215, https://journals.sagepub.com/doi/pdf/10.1177/009770049702300203.

movements are being engineered by market participants with specific interest. It also refers to stocks with volatile price movements and wide price range that is perfectly unnatural to the market. The prices of this type of shares can go up and down with high presentation and price movements are controlled by bookies.

At the other side of the world, Wall Street, as the trading center for the world's largest financial markets, has a significant effect not just on the U.S. but also on the global economy. The Wall Street-based New York Stock Exchange is a worldwide leader in terms of its listed company's average daily share trading volume and overall market capitalization. In addition to that, the Nasdaq Stock Exchange, which is the second-largest exchange worldwide, is also located on Wall Street.[7]

Despite having a developed stock market, market manipulations still occur in the U.S. market. In the U.S., Wash Trading is a form of market manipulation that is most similar to the practice of fried stock trading, rather than any other illegal transactions regulated in Indonesia.[8] Generally, wash trading refers to the simultaneous or near-simultaneous selling and re-purchase of the same security for the purpose of generating activity and increasing price.

It is a form of market manipulation where the parties involved conduct sham orders in order to create artificial movements in the volume and price in the market for their benefits. Wash trading inflates the price of the financial instrument that is traded, for example securities, as parties constantly conduct 'trades' to increase the price of the instrument. This is a bad practice as it causes unwitting and innocent parties to buy those financial instruments at artificially inflated prices.

Despite being used to increase the price of instruments in the market, wash trading can also be considered as a scheme to drive market prices downwards. Parties involved in the manipulation, either in the scenario of the price increase or decrease, is not exposed to real financial

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[7] Oliver Binz and John R Graham, "The Information Content of Corporate Earnings: Evidence from the Securities Exchange Act of 1934," Journal of Accounting Research 60, no. 4 (September 1, 2022): 1379–1418, https://doi.org/https://doi.org/10.1111/1475-679X.12425.

[8] Jesse M. Fried, Paul Ma, and Charles C. Y. Wang, "Stock Investors' Returns Are Exaggerated," SSRN Electronic Journal, no. November (2021), https://doi.org/10.2139/ssrn.3964177.

risks as they continuously gain from the deceitful methods conducted to create an illusion of trade in the market which impacts the prices and volume of instruments traded. Wash trading schemes also generate rebates and kickbacks from providers such as exchanges and brokers in addition to being initiated to manipulate rates.

Seen from these perspectives, both false transaction and wash trading are considered as illegal transactions in capital market. What differentiate the two so Indonesia capital market law, Law Number 8 of 1995 concerning Capital Market ('Capital Market Law') doesn't regulate nor recognized wash trading like the U.S under the Securities Exchange Act 1934 ('SEA 1934'), and vice versa.

Therefore, this writing focuses on the legal comparison on Indonesia and the U.S with formulation of issues: 1. The characteristics and indications of false transaction and wash trading as "frying" stocks create market manipulation; and 2. The legal comparison of market manipulation under Capital Market Law and SEA 1934, as well as on how they are regulated.

This research utilize the normative legal research, where principles, regulations, legal literature, and laws are used to help answering the two formulation of issues that is stipulated in this article. The authors chose to use the normative legal research, with legal comparative approach on the existing laws concerning market manipulation of both Indonesia (termed as false transaction-*transaksi semu*) and the U.S (termed as wash trading) as stipulated in Law Number 8 of 1995 concerning Capital Market, and the Securities Exchange Act of 1934. The aim is to evaluate and compare the quality of the legal norms at the given realm also known as qualitative data research. This given article will not apply the empirical nor the normative-empirical legal research.

False Transaction and Wash Trading as "*Frying*" Stocks Creating Market Manipulation

Securities exchange transactions refer to the "contract [pursuant to the applicable exchange regulations] between Members" of the exchange involving the "purchase, sale, borrowing, lending, or other contractual

agreement" on securities or its price. Although the Capital Market Law does not stipulate an express prohibition on market manipulation, certain provisions under the law should be applicable when addressing false transaction. False transaction is considered to be a scheme which falls under the category of market manipulation thus, prohibition on illegal transactions may fall under Article 91 and 92 of the Capital Market Law which stipulates:

> *Article 91 – "Every Person is prohibited from, directly or indirectly, taking any action that has the purpose of creating a false or misleading appearance of trading activity, market conditions or the price of Securities on a Securities Exchange."*
> *Article 92 – "Every Person, either alone or with others, with intent to influence others to buy, sell or hold Securities, is prohibited from making two or more Securities Transactions, that directly or indirectly cause the price of Securities on the Securities Exchange to rise, fall, or remain steady."*

Prohibited activities that create a deceptive representation of the information, include (1) securities transaction that do not represent any change in ownership, or (2) offers to sell or buy securities at a certain price made by a person in conspiracy with another person who offers to sell or buy the same securities at approximately the same price.

Meanwhile, wash trading may be understood as a form of securities trade where there is no change in the beneficial ownership of the security. It is an illegal stock manipulation scheme whereby simultaneous or near-simultaneous sales and purchase of the same security occurs to generate activity and increasing the price of the listed shares for the benefit of one party or more. In the practice of wash trading, inflation in the price of a financial instrument occurs as the manipulating parties execute continuous trading at increasing prices.[9]

It can be done with the same or different exchange members with the aim of shaping the price of the financial instruments up, down or

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9 Friedhelm Victor and Andrea Marie Weintraud, "Detecting and Quantifying Wash Trading on Decentralized Cryptocurrency Exchanges," Arxiv 2 (2021).

remain the same. This is done by creating the illusion that the prices are formed through reasonable transactions which gives the impression of active securities trading. It requires the use of strategies designed to make trades appear to be submitted to the open market, while at the same time negating the danger or price competitiveness of a market event. Since the resulting net financial status is close or equal to zero, it creates virtual financial nullity. This is considered harmful as it creates illusory market price movements.

The manipulation of security prices is regulated under Section 9(a)(1) of SEA 1934 [10] which reads the following:

> *"For the purpose of creating a false or misleading appearance of active trading in any security other than a government security, or a false or misleading appearance with respect to the market for any such security,*
>
> *a. to affect any transaction in such security which involves no change in the beneficial ownership thereof, or*
>
> *b. to enter an order or orders for the purchase of such security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties, or*
>
> *c. to enter any order or orders for the sale of any such security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price, for the purchase of such security, has been or will be entered by or for the same or different parties."*

Moreover, Section 9(a) (2) of SEA 1934 stipulates further prohibitions on transactions creating misleading trading activities:
"To effect, alone or with 1 or more other persons, a series of transactions in any security registered on a national securities exchange, any security

[10] "Securities Exchange Act of 1934," Pub. L. No. June 6, 1934, chaps. 404, title I, §1, 48 Stat. 881 (n.d.), https://uscode.house.gov/statviewer.htm?volume=48&page=881.

not so registered, or in connection with any security-based swap or security-based swap agreement with respect to such security creating actual or apparent active trading in such security, or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others."[11]

For claims of manipulation under Section 9(a) (1), the following elements must be met: (i) the existence of a wash sale or matched security; (ii) scienter; and (iii) the purpose of creating a false or misleading trading activity. Section 9(a) (2), on the other hand, involves a broader scope of actions as it involves (i) a series of transactions designed to create the appearance of trading or raises or decreases the price of a security; (ii) scienter; and (iii) with the aim of inducing the purchase of a certain stock. The aim of Section 9(a) of SEA 1934 is not to limit transactions which may increase or decrease the price of securities, but to maintain a free and open market wherein prices are determined by the natural supply and demand. [12]

In addition to Section 9 of SEA 1934, Section 10(b) of SEA 1934 stipulates a prohibition to wash trading:

> *"It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of national securities exchange –*
>
> *a.* …
>
> b. *To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, or any securities-based swap agreement any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.*"[13]

[11] "Securities Exchange Act of 1934."

[12] Will Kenton, "Securities Act of 1933 Definition," Investopedia.Com § (2020), https://www.investopedia.com/terms/s/securitiesact1933.asp.

[13] "Securities Exchange Act of 1934."

Upon reading, it is clear that there is no predetermined prohibition under Section 10(b) as the statute only makes it unlawful if a conduct contravenes "rules and regulations" prescribed by the Securities and Exchange Commission ('SEC').[14] Hence, when implementing Section 10(b) of SEA 1934, the SEC Rule 10b-5 concerning the Employment of Manipulative and Deceptive Devices is used [15]:

> *"It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,*
> *a. To employ any device, scheme, or artifice to defraud,*
> *b. To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or*
> *c. To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,*
> *d. In connection with the purchase or sale of any security."*

"Manipulative and deceptive devices" may be classified into 3 (three) categories, namely misrepresentations, omissions by those with the duty to disclose and manipulative acts.

Regardless of misrepresentation, omission, or manipulation, for a claim under SEC Rule 10b-5, the following elements must be met by the plaintiff: (1) employment of manipulative or deceptive device; (2) scienter; (3) "in connection with"; (4) reliance; (5) economic loss; and (6) loss causation. "Manipulation" is considered as a term of art when

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14 Shivaram Rajgopal and Roger M White, "Stock Trades of Securities and Exchange Commission Employees," The Journal of Law and Economics 60, no. 3 (August 1, 2017): 441–77, https://doi.org/10.1086/695691.
SEC is The Securities and Exchange Commission oversees securities exchanges, securities brokers and dealers, investment advisors, and mutual funds in an effort to promote fair dealing, the disclosure of important market information, and to prevent fraud. For further view, please elaborate more from https://www.sec.gov/

15 "Regulation S-X under the Securities Act of 1933, the Securities Exchange Act of 1934 and the Investment Company Act of 1940, Form and Content of Financial Statements..," n.d., https://search.library.wisc.edu/catalog/999687160902121.

associated with capital market.[16] It generally refers to practices with the intent of misleading investors by artificially impacting the market. This act connotes an "intentional and willful conduct" which aims to deceive or defraud.

In determining deception, there must be facts showing that investors are misled into believing that the prices in which they sell or purchase securities is determined by "natural interplay of supply and demand" that is free from interference from manipulators. Regardless whether deceptive trading activities or statements regarding value is used to conduct the alleged manipulation, it can be stated that an essential element in the claim is the incorporation of inaccurate information to the market.

Although manipulative devices generally point to trade-based manipulation, in Olympia Brewing[17], manipulation also infers the injection of inaccurate information or misrepresentation.[18] This is further supplemented by the inherent definition of 'misrepresentation' which includes "conducts" amounting to false assertion with the intent to deceive. In determining whether or not the injected information is substantial to the market, the materiality test will be used.

With regard to materiality, the reasonable investor standard will be utilized when assessing a particular information. This also aids in defining the scope of a particular company's disclosure obligations. Previously, the 'bright-line rule' is adopted when determining materiality of a certain information. This rule only obliges the disclosure of 'statistically significant' information; however, this was declined by the Supreme Court; opting instead to adopt the reasonable investor test. The notion of a reasonable investor seems vague and ambiguous; however, judicial decisions may aid in its interpretation[19].

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[16] Kenton, Securities Act of 1933 Definition.

[17] In Re Olympia Brewing Co. Securities Litigation, 613 F. Supp. 1286 (N.D. Ill. 1985) (n.d.).

[18] Samira Khodabandehlou and Seyyed Alireza Hashemi Golpayegani, "Market Manipulation Detection: A Systematic Literature Review," Expert Systems with Applications 210 (2022): 118330, https://doi.org/https://doi.org/10.1016/j.eswa.2022.118330.

[19] Elisabeth Keller and Gregory A. Gehlmann, "Introductory Comment: A Historical Introduction to the Securities Act of 1933 and the Securities Exchange Act of 1934," Ohio State Law Journal 49 (1988): 329–52.

A reasonable investor would view an information to be material if it would alter the total mix of information readily available. A reasonable investor understands market fundamentals which includes but is not limited to the time value of money, the dangers of trusting assumptions and more.[20] This standard reflects a fact-specific nature when determining materiality. A reasonable investor would take statements of opinion based on its full context. He would pay attention to the specificity of the opinion, the type of document, customs and practices in the relevant industry and surrounding texts (including hedges, disclaimers and conflicting information).

The scienter element refers to the intent to deceive, manipulate, or defraud. To sufficiently prove the existence of scienter, there must be facts indicating both the defendant's motive and opportunity to commit fraud or strong circumstantial evidence indicating conscious misbehavior or recklessness. Proof of scienter in a case of securities manipulation is the essence of the action which does not have to be established through direct evidence. The scienter requirement is fulfilled when it can be shown that the defendants pursued a course of conduct amounting to a market manipulation. There must be an obvious deviation from the ordinary standard of care with danger either known by or so obvious to the defendant.

For this element to be fulfilled, showcasing deliberate recklessness should be sufficient. Under Section 21D (b) (2) of the Private Securities Litigation Reform Act of 1995,[21] facts indicating a strong inference that the defendant acted with the abovementioned mental state must be presented. The standard of 'strong inference', in turn, is met when a reasonable person could infer that the defendant acted with scienter.[22] In determining this, the court should view all allegations holistically.

The connection with purchase or sale is met when the suit is brought forth by purchasers or sellers of the security in question. A potential buyer discovering the misstatement or investors who did not

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[20] Binz and Graham, "The Information Content of Corporate Earnings: Evidence from The Securities Exchange Act of 1934."

[21] "Regulation S-X under the Securities Act of 1933, the Securities Exchange Act of 1934 and the Investment Company Act of 1940, Form and Content of Financial Statements.."

[22] Victor and Weintraud, "Detecting and Quantifying Wash Trading on Decentralized Cryptocurrency Exchanges."

sell the security does not meet this element. This standard is established under the recognition that suits presented by non-sellers or non-purchasers poses a danger of exasperating discovery requests which could potentially delay normal business activity. Under the Birnbaum rule (purchaser-seller limitation rule that relates to the suffered significant injury as a direct consequence, he may seek private relief under rule 10b-5)[23], there are 3 (three) classes of potential investors barred from claims under SEC Rule 10b-5:

1. Potential purchasers who decided against purchasing due to unduly gloomy representations or omissions;
2. Actual shareholders of the issuer who allege decision against selling due to unduly gloomy representations or omissions; and
3. Shareholders, creditors, and others related to the issuer suffering loss in the value of investment as a result of insider or corporate activities.[24]

Investors under the first and second class may claim on behalf of related investors if the latter actually purchased or sold securities in question.

The 'reliance' element establishes the connection between the alleged violation and the transaction that occurred. Reliance is evident when an investor is aware of a company's statement and conducted transactions based on the information. This element is a requisite to proving the causal connection between the misrepresentation and the injury incurred by the plaintiff. To invoke the rebuttable presumption of reliance, the following conditions must be met:

1. Securities were traded in an efficient market;
2. Allegedly fraudulent information entered the market; and
3. The information was material.

It should be noted that prior to the class certification, the defendant must be presented with the opportunity to disprove this presumption by presenting evidence that the alleged misrepresentation did not affect the market price of the stock. Materiality of information is essential to the fraud-on-the-market theory but need not be established at the class

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23 Dennis K Larry, "Duquesne Law Review Securities - Securities Exchange Act of 1934 - Section 10 (b) - Securities and Exchange Commission Rule 10b-5 - Birnbaum Rule" 13, no. 2 (1974).

24 Merritt B Fox et al., "University of Michigan Law School Scholarship Repository Stock Market Manipulation and Its Regulation Stock Market Manipulation and Its Regulation" 1, no. 1 (2018): 67–126.

certification stage. When evaluating whether the case involves material misstatement or omission, the court may look beyond the asserted pleadings.

The element of causation, under Rule 10b-5, is generally divided into transaction causation and loss causation. Transaction causation mirrors the notion of reliance – where the investor is dependent upon market price in determining purchase.[25] Loss causation, on the other hand, requires the plaintiff to demonstrate a causal connection between the misstatement or omission and the economic losses suffered. This can be observed in the decline of stock prices following the corrective disclosure of the misstatement. To further assess this decline, expert witness may be required to conduct an event study which will help ascertain what portion of the decline is attributable to the misstatement. This allows an objective analysis of stock market prices as it disregards market or industry-wide events which may also impact the prices.

The concept of market manipulation is by nature quite abstract. There is no satisfying definition of this concept both in legal nor economic literature. This led to multiple attempts at regulatory, judicial, and scholarly level to define it. In the U.S., it is unlawful to "use or employ", in sales and purchase of any security, "any manipulative or deceptive device". [26] In Australia, transactions which have or likely to have an effect of "creating an artificial price" is prohibited. In European Union statutory law, on the other hand, clearly defines market manipulation as "transactions or orders to trade which give, or are likely to give, false or misleading signals" on the "supply of, demand for or price" of financial instruments, or which secure the price of financial instruments at "an abnormal or artificial level".[27]

The vague nature of this practice leaves the task of defining it mainly to courts on a case-by-case basis. There may be multiple variations on the definition of market manipulation, but it can be agreed that there are 4 (four) elements to a market manipulation, namely, a manipulative act or omission, intent, causation, and artificial price. The

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[25] "Securities Exchange Act of 1934."

[26] Derek Liu et al., "NFT Wash Trading Detection," Arxiv, 2023, 1–9.

[27] Victor von Wachter et al., NFT Wash Trading: Quantifying Suspicious Behaviour in NFT Markets, 2021.

main point of market manipulation is the distortion of price information in the market, causing it to be artificial. What is essentially manipulated is the value, supply and/or demand for the financial instrument in question.

Generally, market manipulation is divided into runs, contract-based manipulations and market power techniques. In runs, manipulators will take either the long or short position in a certain stock and inflates (pump-and-dump manipulation) or deflates (bear raids) the price while attracting liquidity to the stock. Once this is achieved, the manipulator will reverse his position at the inflated or deflated price. In a contract-based manipulation, manipulators will be profiting from a contract or market external to the manipulated market.[28] This form of manipulation is more mechanical as manipulators do not need to induce trade in the market. Market power techniques, on the other hand, involves the exploitation of market power.

It is then further classified into 3 (three) types, namely action-based manipulation, information-based manipulation and trade-based manipulation. Action-based manipulation is centred on actions that alters the actual or perceived value of the instruments traded. Information-based manipulation involves the spreading of false information and/or rumours. Trade-based manipulation, on the other hand, occurs when traders conduct the sales and purchase of stocks without taking any publicly observable actions with the aim of altering the value of the firm or releasing false information to change the price of the traded stock.

The focus should not only be placed mainly on the method of manipulation employed but also the effects of such behaviors towards market prices and its impact on the market's efficiency. Harmful market behavior, such as market manipulation, decreases the effectivity of the financial market which will eventually lead to diminished confidence in the market and losses of liquidity in the affected market.[29]

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[28] S. Abramova, M., Dubova, S., and Krivoruchko, Marxism and Digital Money as a New Reality of Social and Economic System., M. L. Alpi (New York: Information Age Publishing Inc., 2020).

[29] Victor and Weintraud, "Detecting and Quantifying Wash Trading on Decentralized Cryptocurrency Exchanges."

Having this said, fried stocks is one of methods which create false transactions and wash trading that forming market manipulation that they have similar patterns:

1. Abnormal trading volume
2. Price manipulation
3. Low liquidity
4. Proce correlation
5. Suspicious/unreasonable trading forms.

Legal Comparison between Capital Market Law and SEA 1934

The Capital Market Law stipulates a prohibition on 3 (three) types of activities, namely fraud, market manipulation and insider trading. The general understanding of market manipulation involves the fulfilment of 4 (four) elements, namely a manipulative act or omission; intent; causation; and artificial price. These elements are reflected under Article 91 of Capital Market Law which stipulates the following:

TABLE 1. Elements of Article 91 of Capital Market Law

No.	Elements	Explanation
1	Every Person	The definition of 'person' falls under Article 1(23) of Capital Market Law which includes natural persons, companies, partnerships, associations and organized groups.
2	Prohibited from, directly or indirectly, taking any action	This includes actions committed by oneself, by ordering others, or by conspiring with others.
3	Purpose of creating a false or misleading appearance	Acts conducted for this purpose includes: a. Conducting securities transactions with no beneficial change in ownership; (*vide* Article 91) b. Conducting a sales and purchase offer of securities at a certain price in collusion with another party making the same offer at a similar price; and (*vide* Article 92) c. Conducting a series of securities transaction that creates false

No.	Elements	Explanation
		security prices on the exchange as they are not based on the real sales and purchase power with the intention of benefitting themselves or other parties.
4	Of trading activity, market conditions or the price of Securities	Investors require information on trading activities, market conditions or the sales and purchase offer as basis for investing.
5	On a Securities Exchange	Pursuant to Article 1(4) of Capital Market Law, securities exchange refers to the party that organizes and provides a system and/or the means of facilitating the sales and purchase, namely the trading of securities, between parties.

Source: from Capital Market Law, collected and composed by authors.

In addition to that, Article 92 of Capital Market Law stipulates a prohibition against market manipulation. When analyzing Article 92 of Capital Market Law, the following elements must be observed, namely (1) person; (2) intent to influence; (3) directly or indirectly; and (4) causing the price of securities to rise, fall, or remain the same. This article provides a clear prohibition for anyone to engage in securities transactions that creates a deceptive trading pattern with the intent of benefitting themselves.

In the trading of fried stock, commonly associated with illegal transaction, parties either work alone or together to conduct actions that create a fake or misleading appearance to the market. Sales and purchase conducted in this transaction does not constitute a beneficial change on the ownership of securities purchased as both the buyers and sellers are most often than not the same party. Furthermore, these actions tend to be conducted with the aim of making prices of securities rise, fall or remain the same. This action has negative impact in the trading activity, market conditions and the price of the securities listed in the stock exchange as investors are unable to obtain accurate information due to the artificial pricing created by this action. Fulfilling all the elements stipulated under Articles 91 and 92 Capital Market Law, false

transaction should be generally accepted as a form of market manipulation.

The wording 'directly or indirectly' in Articles 91 and 92 and 'alone or with others' in Article 92 suggests that liability for the violation of said articles shall not be limited to the primary violator but also to the secondary violator. The Capital Market Law provides a remedy for any person suffering losses from illegal transactions in the stock exchange. Article 111 of Capital Market Law forms a basis for claims for compensation against the violator and any persons aiding said violator. This claim may be brought either jointly or severally with others filing for similar claims.

A similar occurrence to illegal transaction occurs in the U.S. securities market in the form of wash trading. Wash trading is a scheme whereby simultaneous or near simultaneous sales with no beneficial change in ownership is conducted for the purpose of inflating the price of the financial instrument being traded. Although SEA 1934 does not stipulate an explicit prohibition on wash trading, the Act stipulates prohibitions on the manipulation of security prices under Section 9(a) (1) and (2), specifically prohibiting manipulative trading practices.

As previously mentioned, claims of manipulation under Section 9(a) (1) must meet the following elements: (1) the existence of a wash sale or matched security; (2) scienter; and (3) the purpose of creating a false or misleading trading activity. Section 9(a) (2), on the other hand, involves a broader scope of actions as it involves (1) a series of transactions designed to create the appearance of trading or raises or decreases the price of a security; (2) scienter; and (3) with the aim of inducing the purchase of a certain stock.

In Graham v. SEC,[30] the term wash trade may also be called as wash sales as transactions generally involve no change in beneficial ownership. Manipulative purpose is proven circumstantially. The broad scope of the stipulated under Section 9(a) (2) of SEA 1934 means that manipulation cases will generally invoke this Section. A manipulation under Section 9(a) (2) of SEA 1934 is *prima facie* established when a person with "substantial, direct pecuniary interest" in an offering that "takes active steps" to affect the rise in the market.[31]

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[30] Graham v. S.E.C, 222 F.3d 994 (D.C. Cir. 2000) (n.d.).

[31] Graham v. S.E.C, 222 F.3d 994 (D.C. Cir. 2000).

Although some cases may provide an understanding on the statute, however, there seems to be a lack of discussion on how this Section must be interpreted as most cases seem to reiterate the language of the statute. Furthermore, some cases of Section 9 actions would require a form of "wilfulness" from the defendant which is much more stringent than the scienter requirement of Section 10(b).[32]

In regard to claims for market manipulation, Section 10(b) of SEA 1934 and its implementing regulation SEC Rule 10b-5 is more often used as it supplements specific statutory scheme of Section 9 of SEA 1934. The statutory text of Section 10(b) of SEA 1934 is not self-executing but it does imply the rulemaking authority of the SEC regarding manipulative and deceptive practices in the sales and purchase of securities. This raises the need for implementing regulations that are capable of addressing violations under the statute.[33] The adoption of SEC Rule 10b-5 expanded the scope of enforcement authority, which was previously limited to merely the sale of securities, to include the purchase of securities.

Looking into the legislative history of Section 10(b) and its implementing regulation, express right of action for private party is not recognized as the statute was intended to be a 'catch all' provision which would allow the SEC to expand their enforcement authority should new forms of manipulative and fraudulent practices arise.[34] However, federal courts shared the view that wrongs should have accompanying remedy which should include private right of action for monetary damages, not only the enforcement right of the government.

The use of the term 'manipulative' under Section 10(b) suggests an intentional conduct with the aim of deceiving or defrauding investors through controlling or artificially influencing the price of securities in the market. This means that although the wording of the implementing

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32 emilios Avgouleas, "The Mechanics of Market Manipulation," ed. Emilios E Avgouleas, The Mechanics and Regulation of Market Abuse: A Legal and Economic Analysis (Oxford University Press, September 1, 2005), https://doi.org/10.1093/acprof:oso/9780199244522.003.0004.

33 Fox et al., "University of Michigan Law School Scholarship Repository Stock Market Manipulation and Its Regulation Stock Market Manipulation and Its Regulation."

34 BINZ and GRAHAM, "The Information Content of Corporate Earnings: Evidence from the Securities Exchange Act of 1934."

SEC Rule 10b-5 points to fraud, its broad provision should allow the manipulation to fall under its scope. Similar to Section 9 of SEA 1934, provisions under the rule may be broken down into trade-based, vide SEC Rule 10b-5(a) and (c), and information-based manipulation, vide SEC Rule 10b-5(b).[35]

To bring private class actions against an alleged manipulation, the following elements of a market manipulation under SEC Rule 10b-5 must be fulfilled:

TABLE 2. Elements of Manipulation under SEC Rule 10b-5

No.	Elements	Explanation
1	Employment of manipulative or deceptive device	Manipulative device refers to the intentional and willful conduct to deceive or defraud36 which is seen when investors are misled to believe that they are trading at a price that is determined by natural supply and demand,37 not by the influence of manipulators. Intent Requirement:38 a. Connection with the sales and purchase of securities; b. Manipulative conduct: injecting inaccurate information or creating false demand; and c. Purpose of artificially affecting market price.
2	Scienter	Scienter refers to the mental state with the intent to deceive, manipulate, or fraud.39 In proving scienter, there must be: a. Facts indicating motive and opportunity to commit the fraud; or

35 Robert Heath, "Securities and Exchange Commission," Encyclopedia of Public Relations § (2014), https://doi.org/10.4135/9781412952545.n387.

36 U.S. Supreme Court, Ernst & Ernst v. Hochfelder, 425 U.S. 185 (1976) (1976).

37 U.S. District Court for the Southern District of New York - 153 F. Supp. 2d 489 (S.D.N.Y. 2001).

38 In Re Olympia Brewing Co. Securities Litigation, 613 F. Supp. 1286 (N.D. Ill. 1985).

39 Court, Ernst & Ernst v. Hochfelder, 425 U.S. 185 (1976).

No.	Elements	Explanation
		b. Strong circumstantial evidence showing conscious misbehavior or recklessness This is indicated through an obvious deviation from standard of care.
3	"In connection with" the purchase or sales of security	Only purchasers or sellers of affected securities may file a claim.40 41
4	Reliance	Reliance on the misstatement is evident when the investor is aware of the statement and conducts transactions based on such statement.42
5	Economic loss	Monetary loss.43
6	Loss causation (between the device used and the loss incurred)	Loss causation is evident through the negative impacts of the act or omission on the market.44

Source: from SEA 1934, SEC, and cases (as cited). Collected and composed by authors.

Wash trading fits as a manipulative act under Section 10(b) of SEA 1934 and SEC Rule 10b-5 as manipulators using this device aims to deceive investors by creating an artificial trading activity.[45] This would lead to the false assumption of an active market for a particular stock, thus creating an artificial demand and supply of said stock. This intent to influence the demand and supply must be present to establish wash trading as a form of illegal market manipulation. After establishing that the act, namely wash trading, fulfils the requirement of manipulative act, the subsequent elements must be proven to establish liability for violators.

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40 Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723 (1975) (1975).

41 Birnbaum v. Newport Steel Corp., 98 F. Supp. 506 (S.D.N.Y. 1951) (1951).

42 Archdiocese O F Milwaukee and Supporting Fund, Supreme court of the United States, 34 Black Scholar 21–23 (2004).

43 Kun Young Chang, "The Effective Regulation of Transnational Securities Fraud in Global Markets," Journal of International and Area Studies 12, no. 2 (January 2, 2005): 77–92, http://www.jstor.org/stable/43107122.

44 Vickie Lorene Rock and Petitioner V. Arkansas, "Supreme Court of the United States," International Journal of Clinical and Experimental Hypnosis 38, no. 4 (1990): 219–38, https://doi.org/10.1080/00207149008414524.

45 Rajgopal and White, "Stock Trades of Securities and Exchange Commission Employees."

There are several similarities between the Capital Market Law and SEA 1934 not only in terms but also in the elements. This is evident as upon closer look, the wording of Articles 91 and 92 of Capital Market Law seem to mimic Section 9(a) (1) and (2) of SEA 1934. As both statues states similar prohibition in creating a misleading trading appearance and the purpose of inducing sales. This means that elements and tests applicable in the U.S. should also be applicable in Indonesia. In addition to that, Section 10(b) of SEA 1934 and SEC Rule 10b-5 serves to further supplement the application of Section 9 with its broad anti-manipulation provisions. When comparing both legislations, there are several things to analyse.

First, the rationale behind the creation of Capital Market Law and SEA 1934 must be examined. The Capital Market Law was created for national development that is based on the 1945 Constitution and Pancasila to ensure just and prosperous people. Capital market serves as a source of funding and as a means for public investment. Drafters recognise that the capital market has a strategic role in national development and therefore, a strong legal foundation must be created for persons conducting market activities and to ensure protection against harmful practices which may cause losses. The rationale behind SEA 1934 is reflected in Section 2 where drafters recognise that regulation and control is needed as securities exchanges and over-the-counter markets affect the national public interest.[46] Mechanisms of the national securities system must be perfected to protect interstate commerce, the national credit, Federal taxing power, national banking system and the insurance of fair and honest market transactions.

Prices established through market transactions constitutes a basis in establishing the sales and purchase of securities, taxes owed to the state and the value of collateral for bank loans. Prices of securities are susceptible to manipulation and control, and the dissemination of such prices will yield excessive speculation and unreasonable fluctuations. For this reason, the Act allows SEC to adopt rules and regulations on the basis of public interest, investor protection and maintenance of a fair and orderly market. Drafters of the Capital Market Law viewed the

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[46] Fox et al., "University of Michigan Law School Scholarship Repository Stock Market Manipulation and Its Regulation Stock Market Manipulation and Its Regulation."

U.S. capital market as one that is liquid, efficient and credible. Therefore, it is not surprising that the policy behind the Capital Market Law reflects those of SEA 1934, namely regarding investor protection and the need for regulations governing market activities.

Second, it is important to determine the scope of the laws. Regarding the term of 'persons', Section 3(9) of SEA 1934 provides similar definition to the Capital Market Law for the term 'persons' as it includes natural person, company, government or political subdivision, agency or instrumentality of a government. Another important thing is to determine what constitutes securities. Comparing with the definition stipulated under Article 1(5) of Capital Market Law, Section 3(10) of SEA 1934 provides much more variations, which includes foreign currency, security-based swap and more.

Articles 91 and 92 of Capital Market Law cover the sales and purchase of stocks affected by the alleged manipulation that occurs only in the securities exchange as evident by the wording "on a/the Securities Exchange" in the articles. This is also observed in Section 9(a) (1) and (2) of SEA 1934 wherein the scope is limited to transactions in the "national securities exchange". What this implies is that over-the-counter and block sales transactions are not protected under the statutes mentioned above. This issue is not addressed under the Capital Market Law, however Section 10(b) of SEA 1934 and its implementing regulation SEC Rule 10b-5 addresses this issue. Section 10(b) of SEA 1934 allows for broader authority of law enforcement as it includes "any security registered on a national securities exchange or any security not so registered". This implies protection for a wider scope of securities transactions.

Third, laws and regulations are attached with certain rights and obligations to be observed. Investors investing in the capital market have the right to be protected and it is therefore, the government's obligations to ensure such protection. As reflected in the rationale of the drafters of the Capital Market Law and SEA 1934, strong emphasis is placed on the importance of investor protection. To do so, the laws established a regulatory and supervisory body with the authority to enact laws and regulations to ensure fair and orderly market practices.

Fourth, it is important to identify what causes a breach in the regulations. Manipulation constitutes a breach as is distorts information in the market which results in unfair market practices and possible

injury to the investors. A breach under Article 91 of Capital Market Law includes actions with the purpose of creating "false or misleading appearance" of trading activity, market conditions or the price of securities. This includes transactions with no change in ownership and offers made in conspiracy to sell or buy securities as the same price.

Similarly, a breach of Section 9(a) (1) of SEA 1934 also involves "false or misleading activity" which is then further elaborated to include transactions with no beneficial change in ownership as well as the sales and purchase of shares at substantially the same price, volume and time that is conducted by colluding parties. A breach of Article 92 of Capital Market Law involves actions designed to make prices of securities "rise, fall or remain steady" which creates deceptive trading activity with the aim of "inducing" purchase.[47] Section 9(a) (2) of SEA 1934 also stipulates the prohibition of creating an impression of active trading activity or "raising or depressing" the price of securities with the aim of "inducing purchase". [48]

The aforementioned statutes are more specific in nature when compared to Section 10(b) of SEA 1934 and SEC Rule 10b-5. Section 10(b) of SEA 1934 prohibits "manipulative acts" whilst SEC Rule 10b-5 prohibits schemes designed to "defraud".[49] It should be noted that although the wording of SEC Rule 10b-5 indicates fraud, the general idea behind the statute is the prohibition of manipulative devices. Manipulative acts are broad in nature; it may be understood that manipulation also infers the injection of inaccurate information or misrepresentation. Point II.9.1 of IDX Rule II-A prohibits sales and purchase with the aim of providing false or misleading activities through "information on JATS". Based on the wording, it can also be inferred that case of illegal transactions in Indonesia involves a certain degree of injection of inaccurate information or misrepresentation.

With regard to the misleading information circulated, Article 1(7) of Capital Market Law defines material information as "any important and relevant fact" which may "affect the price of securities" on the exchange or "influence the decision of investors". Similarly, Black's Law

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[47] Anugrah Muhtarom Pratama, et al. "The Regulation Of Disorgement In The Indonesia Capital Market: Remaining Concerns and Lessons From U.S." *Journal of Indonesian Legal Studies* 7, no. 2 (2022): 585-632.

[48] Heath, Securities and Exchange Commission.

[49] Heath.

Dictionary defines 'material information' as information that will be important to a "reasonable investor" in making decisions on the investment. In the context of an efficient market, materiality is reflected in the information that alters the price of stocks.

The Capital Market Law lists down information that may be considered as material, namely matters such as: (1) mergers, acquisitions, consolidations or joint ventures; (2) distribution of stock splits or stock dividends; (3) extraordinary income or dividends; (4) making or loss of an important contract; (5) new product or significant invention; (6) change in the company's financial year; and (7) important changes in management. SEA 1934, on the other hand, uses the materiality test to determine whether an information is material or not. This means that the scope is much wider than Capital Market Law as any information in the market may be considered material provided that the standard is fulfilled.

The standard utilized to determine materiality is the 'reasonable investor'. This is similar to the 'reasonable person' test that tort cases often utilize, but a 'reasonable investor' is more specific in nature as it concerns securities-based violations.[50] It should be noted that a 'reasonable investor' does not mean an actual person but merely a fictional character that would allow determination of materiality. Although fictional, the standard reflects a fact-specific nature with the presumption that the 'investor' is well-versed in market fundamentals.

With regard to reliance, U.S. courts often use the presumption of reliance test which requires the plaintiff to demonstrate that (1) securities were traded in an efficient market; (2) alleged fraudulent information entered the market; and (3) material information.[51] When assessing the Capital Market Law it is clear that investor require information on trading activities, market conditions or the sales and purchase offer as basis for making investment decisions. This reflects the idea of reliance.

What differentiates both country's laws is perhaps the introduction of Section 10(b) of SEA 1934 and SEC Rule 10b-5 which defines breach as the utilization of manipulative or deceptive devices which

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[50] von Wachter et al., NFT Wash Trading: Quantifying Suspicious Behaviour in NFT Markets.

[51] Gurley, "Comments."

impacts the price and supply and demand of shares. Claims under Articles 91 and 92 of the Capital Market Law does not stipulate the necessity of proving loss or transaction causation as required under the causal element of SEC Rule 10b-5. Articles 91 and 92 of Capital Market Law requires "purpose" and "intent", respectively, for a violation to occur which indicates the element of intent which is also evident in Section 9(a) (1) and (2). However, the Capital Market Law does not provide a standard in which intent may be measured. It merely mentions certain acts which may show the violator's intent in manipulating the market. Due to similarity in provisions, the intent standard and scienter used by U.S. courts should be applicable in assessing intent under the Capital Market Law. For a claim of breach, the elements of the statutes aforementioned must be satisfied by the plaintiff.

Fifth, there may be certain exemptions provided under the statutes. *Otoritas Jasa Keuangan*-Financial Services Authority ('OJK'), pursuant to Article 94 of Capital Market Law, may determine certain activities to not violate Article 91 and 92. These activities include: (1) stabilization of prices during a public offering provided that such stabilization is disclosed in the prospectus and (2) dealing in securities by a securities company that regularly acts as a market-maker in order to maintain a liquid market in such securities. The idea of disclosure principle, pursuant to Article 1(25) of Capital Market Law, is reflected here.

Claims for manipulation under Section 9(a) (1) and (2) of SEA 1934 is exempted when it involves securities traded outside the national security exchange. Claims under Section 10(b) of SEA 1934 and SEC Rule 10b-5, on the other hand, may be considered open-market manipulation instead if the element of intent is not established. Open-market manipulation are legitimate securities transactions which does not amount to wash trade when intent to artificially impact the supply and demand.

In addition to that, claims under SEA 1934 are subjected to a statute of limitation. Section 9(e) of SEA 1934 requires claims to be brought within 1 (one) year after the discovery of facts amounting to violations of Section 9(a) and within 3 (three) years of said violation. This limitation is not stated under the Capital Market Law. However, the law does consider violations of Articles 91 and 92 to amount to a

felony which implies that the statute of limitation under the Indonesian Criminal Law should be applicable.

Sixth, both the Capital Market Law and SEA 1934 provides remedies for parties experiencing loss from the alleged manipulative practice. Under Article 111 of Capital Market Law, persons suffering from losses due to a violation is entitled to sue, either jointly or severally, violators (both primary and secondary violators) of Articles 91 and 92. Similarly, Section 9(e) of SEA 1934 allows for persons who purchased and sold any securities at a price affected by acts or transactions prescribed under Section 9(a) of SEA 1934 to claim for injuries.

Actions brought under Section 9(a)(1) and (2) of SEA 1934 is often accompanied by Section 10(b) of SEA 1934 and SEC Rule 10b-5. Courts often rely more on Section 10(b) of SEA 1934 in manipulation cases. The language of Section 10(b) of SEA 1934 indicates the SEC's authoritative enforcement as opposed to the private class actions provided under Capital Market Law and Section 9 of SEA 1934.[52] Despite such implication, private class action for primary violators or Section 10(b) of SEA 1934 and SEC Rule 10b-5 is recognized as a form of juridical creation.[53]

The "in connection with" standard under SEC Rule 10b-5 requires the suit to be brought forth by purchasers or sellers of the security in question. Article 111 of Capital Market Law reflects this standard as is it explicitly stipulated under Article 92 of Capital Market Law to limit the scope to "buy, sell or hold" securities. It should then be implied that the persons referred to under Article 111 of Capital Market Law should be limited to the sellers or purchasers as well. However, the difference in the statutes lies in the violators' liability. Article 111 of Capital Market Law and Section 9(e) of SEA 1934 allows both the primary and secondary violator to be liable while Section 10(b) of SEA 1934 generally considers only the primary violator liable.

This raises the question for liability of secondary violators who aided and abetted in the alleged violation of SEC Rule 10b-5. Cases on secondary actors have been limited to SEC enforcement pursuant to Section 20(e) of SEA 1934. This is further emphasized by Janus Capital Inc. v. First Derivative Traders, stating that only the "maker" of a

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52 "Securities Exchange Act of 1934."

53 Kenton, Securities Act of 1933 Definition.

statement bearing "ultimate authority" can be found in violation of Rule 10b-5.[54]

In the recent Lorenzo v. SEC[55] the court expanded the primary liability stipulated under Rule 10b-5(a) and (c) for knowingly disseminating misleading statements to include those aiding and abetting. Despite such decision, the SEC's authority to apply enforcement actions on secondary actors does not change. But it is still unclear how secondary actors may be charged as it would not be right to charge them for the same degree of violation committed by the primary actors. This raises further question of (1) defining the amount of control over the said statement for liability to attach; (2) defining dissemination; and (3) clarifying the "device, scheme and artifice" under Rule 10b-5(a) and "act, practice or course" amounting to deceit under Rule 10b-5(c).[56]

Last, there are certain legal consequences that follows after the establishment of said breach. The Capital Market Law grants OJK the authority to impose administrative sanctions for violations of any provisions of the law pursuant to Article 102. Private class actions, on the other hand, may grant the violator imprisonment and/or fine pursuant to Article 104 of Capital Market Law and civil claim for compensation under Article 111. This differs from the approach taken by the U.S. as consequences mainly involve administrative penalty pursuant to Section 15(b) (4) and (6) of SEA 1934 and civil penalty pursuant to Section 21(d) (3) (B) and Section 21B(b) of SEA 1934 with the possibility of disgorgement under Section 21B(e) of SEA 1934. Although not often relied on, SEA 1934 stipulates criminal sanctions under Section 32. Unlike OJK, SEC has the authority to implement not only administrative sanctions but also seek civil penalties and implement criminal sanctions.

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54 "Regulation S-X under the Securities Act of 1933, the Securities Exchange Act of 1934 and the Investment Company Act of 1940, Form and Content of Financial Statements.."

55 Rock and Arkansas, "Supreme Court of the United States."

56 Liu et al., "NFT Wash Trading Detection."s

Conclusion

Activities in the capital market are regulated under the Capital Market Law in Indonesia and SEA 1934 in the U.S. Both laws recognize the importance of the capital market for the country and subsequently the need for investor protection. Illegal transaction is a form of market manipulation which falls under the scope of Articles 91 and 92 of Capital Market Law and Sections 9(a) (1) and (2) and 10(b) of SEA 1934 along with SEC Rule 10b-5. Although the laws are similar, the main difference lies in Section 10(b) and Rule 10b-5. The scope of the laws differs in terms of persons and transactions. There are more entities falling under 'persons' in SEA 1934 compared to the Capital Market Law. Transactions, through SEC Rule 10b-5, is expanded to include both securities registered and not registered in the securities exchange which is not apparent under the Capital Market Law. In addition to that, breach under SEC Rule 10b-5 is broader compared to Articles 91 and 92 of Capital Market Law and Section 9(a) as it prohibits "manipulative acts". This broad understanding leaves courts to determine whether or not transactions occurring fall under this category. Parties suffering losses due to illegal transactions are entitled to a private class action pursuant to Article 111 of Capital Market Law and Section 9(e) of SEA 1934. Similarly, private class action is also recognized under SEC Rule 10b-5 provided that the "in connection with" element is met. This is applicable both for primary and secondary violators.

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Domiunt aliquando leges, nunquam moriuntur

The law sometimes sleeps, but the law never dies