



RULES REGARDING MANDATORY EQUITY SECURITIES LISTING: IS IT POSSIBLE FOR A PUBLIC COMPANY WITHOUT LISTING ON THE INDONESIAN STOCK EXCHANGE?

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ABSTRACT

The Financial Services Authority has issued the latest regulation in the Capital Market sector, namely the Financial Services Authority Regulation Number 3/POJK.04/2021 concerning the Implementation of Activities in the Capital Market Sector. This paper aims to conduct a more specific analysis regarding the mandatory elements for a company that will conduct a public offering to list its equity securities on the stock exchange. The initiation of the obligation to conduct equity securities listing is carried out in order to reduce the intensity of backdoor listing or efficient efforts towards Initial Public Offering activities by acquiring a company whose shares have been listed on the Stock Exchange. This article was compiled using a normative legal research method. Based on Financial Services Authority Regulation Number 3/POJK.04/2021, the Financial Services Authority through the Depository and Settlement Institution conducts electronic securities listing which is not part of the securities collective custody. The Depository and Settlement Institution checks the conformity of the Securities records in the Depository and Settlement Institution with the records in the Securities Administration Bureau or the Public Company which conducts its own Securities administration. The mandatory to be listed for the equity securities of a public company closes legal loopholes for companies that wish to become public company using a procedure that is not in accordance with the provisions of the prevailing laws and regulations.

Keywords: registered; capital market; public company; securities

INTRODUCTION

Activities in the capital market have beneficial aspects that are quite influential for the state, at least as a driver of the country's economic ecosystem as well as an alternative investment through a public offering of securities.¹ British terminology states that the capital market also acts as a funding money market with regard to securities trading.² Products that can be found in the practice of buying and selling securities in the capital market system include stocks, bonds, and mutual funds. The existence of capital market is quite strategic³, considering that attention to the

capital market is not only given by the underfunded party, but also by the overfunded party due to the efficiency as well as the commercial value offered.

The practice of trading in the capital market includes activities, such as public offering, securities trading, public company related to the issued securities, and institutions and professions related to securities.⁴ These activities are in accordance with the provisions as stated in Law Number 8 of 1995 concerning the Capital Market (Capital Market Law). The activities in the capital market system tend to be complex, so the Government of Indonesia through Financial Services Authority Regulation Number 3/POJK.04/2021 provides new regulations that are quite strict in order to maintain stability and continuity in capital market activities.

The term of Self-Regulatory Organization (SRO) is certainly not a new thing in the capital

1 Lastuti Abubakar dan Tri Handayani, "Penguatan Regulasi Penghapusan Pencatatan Efek Oleh Bursa (*Forced Delisting*)," *RechtIdee* 15, no. 1 (2020): 72.

2 Yoyo Arifardhani, *Hukum Pasar Modal Di Indonesia* (Jakarta: Kencana, 2020), 7.

3 Ayup Suran Ningsih, "The Form of Justice in Resolving Capital Market Dispute Resolution," in *Proceedings of the 1st International Conference on Law and Human Rights 2020 (ICLHR 2020)*, 2021.

4 Mas Rahman, *Hukum Pasar Modal* (Jakarta: Kencana, 2020), 2.

market industry. Those who act as SRO are obligated to regulate the capital market system. Matters concerning regulations and industry professional standards that are the duties of entities included in the SRO will be accountable to the Financial Services Authority (*Otoritas Jasa Keuangan* 'OJK') which has functions in terms of supervision, examination, and investigation of the financial industry in Indonesia based on the Law Number 21 of 2011 concerning the Financial Services Authority.⁵

Becoming a public company (go public) is the dream of many private companies. This is a major milestone in the development of a company. The status of listing brings many advantages to the company. Some of these advantages include⁶ (1) access to capital markets and lower cost of capital; (2) enhanced reputation and company profile; (3) provide liquidity for investors to cash out; and (4) use of shares to pay for acquisitions, among others. However, going public is a costly process. The costs required to carry out this Initial Public Offering are not cheap and the completeness of many administrative documents in accordance with the provisions of laws and regulations which must be fulfilled. Traditionally, becoming a public company through an Initial Public Offering has been the main way for a private company to get listing status on the stock exchange. However, there are alternative steps to becoming a public company, namely through a reverse takeover (RTO) or reverse merger (RM) and acquiring of/taking over/the purchase of a company listed on the stock exchange. Both alternatives are similar, this means that both involve a private company taking over a public company. The main difference between the two lies in the ultimate control of the merged entity. In the RTO (or RM), the private company's shareholders will have control whereas, in the case of a sale, the shareholders of the public company will retain control. The process of becoming a public company through this way is generally known as backdoor listing (hereinafter referred to as BDL). Recently, the

5 Indonesia, Undang-Undang Otoritas Jasa Keuangan, Undang-Undang Nomor 21 Tahun 2011 tentang Otoritas Jasa Keuangan, Lembaran Negara Nomor 111, Tahun 2011.

6 Suwinto Johan, "Definisi Perseroan Terbuka Atau Publik Menurut Peraturan Perundang-Undangan Indonesia," *JURNAL MERCATORIA* (2021).

Financial Services Authority through Financial Services Authority Regulation Number 3/POJK.04/2021 in Chapter XII Article 63 states explicitly when the parties conducting a public offering of equity securities are required to list the equity securities in question to stock exchange and it is also required for them to register the equity securities in collective custody in the Depository and Settlement Institution (*Lembaga Penyimpanan dan Penyelesaian* 'LPP').⁷ The listing of securities on the stock exchange is referred to as listing.⁸ The Financial Services Authority Regulation Number 3/POJK.04/2021 as mentioned above have effectively replaced Government Regulation No. 45/1995 on the Implementation of Activities in the Capital Market (Government Regulation No. 45/1995). Another thing that is highlighted by the new regulation is the requirement to conduct an IPO before the company can conduct rights issue or private placement activities or other activities related to equity securities.

The policy of listing on the stock exchange as required by the Financial Services Authority has shifted the old provisions that exempt public companies from listing. Companies that have gone public under the previous provisions are not required to carry out equity securities listing. Based on an interview with the Deputy Commissioner for Capital Market Supervision I of the Financial Services Authority, it is known that the companies that have never carried out securities listing on the Indonesia Stock Exchange (IDX) are 6 (six) companies and 28 (twenty eight) go public companies that have been delisted from the IDX.⁹ This means that it is undeniable that this condition creates the necessity for companies to carry out the listing on the IDX which is nothing but to provide more extra protection to investors in carrying out transaction activities in the capital

7 Otoritas Jasa Keuangan, Peraturan Otoritas Jasa Keuangan Nomor 3/POJK.04/2021 tentang Penyelenggaraan Kegiatan di Bidang Pasar Modal, Lembaran Negara Nomor 71, Tahun 2021.

8 Paramita Prananingtyas dan Bella Tamora Debora Sitepu, "Kritisi Atas Proses *Listing, Delisting* dan *Relisting* di Bursa Efek Indonesia," *Diponegoro Law Review* 4, no. 3 (2019): 3.

9 Nur Qolbi, "OJK Wajibkan Perusahaan Terbuka Untuk Mencatatkan Saham Di BEI," Kontan.co.id, 2021, <https://investasi.kontan.co.id/news/ojk-wajibkan-perusahaan-terbuka-untuk-mencatatkan-saham-di-bei>, (Diakses: April 26, 2021).

market. The existence of a listing can also facilitate supervisory control from the Financial Services Authority. Another reason that encourages the implementation of this policy is the emergence of inequality in the market cap and the number of shares circulating in the public. Go public companies that are not listed in stock exchange will certainly not be listed in the calculation of market capitalization on the IDX. Therefore, the encouragement of the listing for go public companies is expected to increase liquidity in the capital market.

The enforcement of listing provisions based on the Financial Services Authority Regulation Number 3/POJK.04/2021 on public companies in the offering of equity securities provides a transition period of 2 (two) years. The company but has not registered and registered its equity Securities on the Stock Exchange and Depository and Settlement Institutions is required to conduct an IPO first if the company is in a situation of increasing capital within the period of 2 (two) years. However, if within 2 years the capital increases with the Pre-emptive Rights, then it must immediately fulfill the registration and registration of Securities in accordance with Financial Services Authority Regulation Number 3/POJK.04/2021 Article 3.

No doubt, the enactment of Financial Services Authority Regulation Number 3/POJK.04/2021 caused various reactions and responses from parties involved in the practice of the capital market system. This is caused by, for some issuers, the regulation mentioned above creates certain difficulties, while for investors, these policy benefits them in terms of increasing the scale of investment so that they are able to relax the economy. The regulations that are burdensome from the issuer's point of view are requiring companies that are going to go private to buy back shares. Companies that voluntarily conduct securities delisting (voluntarily delisting) or deleted intentionally by the Financial Services Authority or BEI orders (force delisting) must buy back the traded securities. On the other hand, the implementation of equity securities buyback in the practice of trading equity securities becomes the issuer's obligation to protect the company's capital or assets.¹⁰ This is a relief from the investor's side

10 Ana Mufidah, "Buy Back Saham Sebagai Sebuah

because the funds invested can be guaranteed by the implementation of securities buyback, but it is burdensome for the company or issuer, especially in a pandemic situation. Securities buybacks were also considered by several parties to be inconsistent with the National Economic Recovery (*Pemulihan Ekonomi Nasional* 'PEN') program which encouraged efforts for freedom of business. However, the practice becomes legal to be applied in Indonesia provided that it does not conflict with the rule of laws in Indonesia, specifically Law Number 25 of 2007 concerning Limited Liability Companies (Limited Liability Companies Law) and Financial Services Authority Decision.

Therefore, the author intends to examine: first, the capital market law in Indonesia and policy in the mandatory securities listing which is a mandate from Financial Services Authority Regulation Number 3/POJK.04/2021; and second, the mechanism for the policy in the mandatory securities listing in Financial Services Authority Regulation Number 3/POJK.04/2021 and analyze the possibility of a public company not to carry out securities listing on the IDX.

RESEARCH METHOD

Legal research is a know-how activity, legal research is carried out to solve legal issues faced. This is where the ability to identify legal problems is needed, perform legal reasoning, analyze problems encountered and then provide solutions to these problems.¹¹ This paper examines based on the normative legal research approach which is a form of legal research whose sources of analysis come from applicable laws and policies and are in sync with the legal issues in this paper, namely Financial Services Authority Regulation Number 3/POJK.04/2021. The normative legal research method that examines the law from an internal perspective with the object of research is legal norms.¹² This research was carried out by utilizing the statute approach and conceptual approach. The research data is the second-

Alternatif Kebijakan," *Jurnal Ekonomi, Akuntansi Dan Manajemen* XII, no. 1 (2013): 25.

11 Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi* (Jakarta: Kencana Prenada Media, 2014).

12 I Made Pasek Diantha, *Metode Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum* (Jakarta: Kencana Prenada Media, 2016).

level data obtained from primary legal data and library data covering various results of previous research. The data that has been collected is then analyzed using the literature study method which is carried out through the stages of identification, evaluation, and synthesis. Specifically, this paper contains the results of research using analytical descriptive concepts because the data obtained will be analyzed according to qualitative juridical methods and to be explained again through this paper.¹³

RESULTS AND DISCUSSION

A. Capital Market Law in Indonesia and Policy in the Mandatory Securities Listing as Mandated by Financial Services Authority Regulation Number 3/POJK.04/2021

The capital market acts as a tool or system that becomes a source of financing for companies that need funding for business development purposes.¹⁴ Another term regarding the capital market is a system that brings together buyers and sellers of securities depending on their intentions, although generally, it is to meet the company's funding needs.¹⁵ The existence of a capital market system has implications for increasing national development which is realized through efforts to equalize funding, national economic stability, public welfare, and encourage the growth of the country's economic ecosystem.¹⁶ As for the basis of the latest rules stipulated by the Financial Services Authority, namely Financial Services Authority Regulation Number 3/POJK.04/2021, it is explained about the general provisions of the capital market in Article 1 Chapter 1, so it can be concluded that there are 4 (four) components in the implementation of the capital market, including:

1. The first activity, public offering, which is defined as the activity of selling securities in the primary market;
2. The second activity, securities trading which is defined as the activity of buying and selling securities in the secondary market;

3. The third activity, the implementation of securities activities related to public companies is defined as the activity of a public company that is declared by the Financial Services Authority as an issuer and has the opportunity to conduct a public offering in the primary market; and
4. The fourth activity, institutions, and professions related to securities which shows that the implementation of securities trading involves institutions assisting at the securities offering in the primary and secondary markets, as well as involving Capital market supporting professionals such as Legal Consultants, Public Accountants, Appraisers, and Notaries.¹⁷

The definition of securities refers to Financial Services Authority Regulation Number 3/POJK.04/2021 which includes securities related to instruments of acknowledgment of indebtedness, shares, bonds, debentures, participation units of collective investment contracts, futures contracts on securities, and securities derivative instruments.

The type of capital market is divided, based on capital market law, into the form of a primary market, namely the trading of securities by the company before being listed on the stock exchange, while the secondary market are trading activities after the end of the primary market.¹⁸ Capital market activities involve various parties, such as investors, issuers, broker-dealer, securities trading, Capital market supporting professionals, guarantors, trustees, securities companies, fund managers, and securities administration bureau.¹⁹ As a result, the involvement of many parties in capital market activities requires qualified management and regularity established through a more dynamic legal mechanism.

In particular, the capital market mechanism is regulated in capital market law which has a broad scope relating to corporate regulation, capital market securities instruments, and capital market administration. The target is none other than covering juridical aspects, including information disclosure, investor protection, market order and modernization, professionalism and responsibility

13 Lastuti Abubakar dan Tri Handayani, *op. cit.*, 76.

14 Mas Rahman, *op. cit.*, 1.

15 Munir Fuady, *Pasar Modal Modern: Tinjauan Hukum* (Jakarta: Citra Aditya Bakti, 2017), 10.

16 C.S.T. Kansil dan Christine S.T. Kansil, *Pokok-Pokok Hukum Pasar Modal* (Jakarta: Pustaka Sinar Harapan, 2002), 38.

17 Mas Rahman., *op.cit.*, 4.

18 Yoyo Arifardhani, *op.cit.*, 9.

19 Fransiskus Paulus Paskalis, *Semakin Dekat Dengan Pasar Modal Indonesia* (Yogyakarta: Depublish, 2016), 4.

of capital market players, efficiency, and fairness.²⁰ Therefore, the capital market law regulates the capital market mechanism as a whole, thereby creating an orderly, efficient, and reliable funding flow for each party. The juridical responsibility system becomes an absolute stipulation which is the responsibility of the existence of capital market laws and policies because it relates to parties who must be responsible for losses in public interest. In short, the large number of parties involved in capital market activities makes it possible to participate in the contribution of juridical errors to other parties.

The definition of a stock exchange is a party that organizes capital market activities so that it contains a system that accommodates related parties to carry out supply and demand activities for products including in the definition of securities for the implementation of securities trading transactions for the 2 (two) sides.²¹ A stock exchange can also be defined as a mediator of stock transactions in the secondary market.²² In Indonesia, the task of facilitating securities trading transactions is PT Bursa Efek Indonesia (Indonesia Stock Exchange), which is a private legal entity.²³ Its existence has existed since 1912 with the initial goal of raising funds for plantation business actors. However, that period was the Dutch colonial era, so what was traded was the ownership of Dutch companies, which was limited to stocks and bonds only.

The function of the stock exchange in this country is described in detail in Article 13 Paragraph 1 of Financial Services Authority Regulation Number 3/POJK.04/2021 in the Explanation Section. The elaboration of the IDX function leads to a basic agreement in the form of maintaining capital market liquidity. Stock exchanges are needed in the capital market to ensure the implementation of securities trading

activities in an orderly and efficient manner, especially in regulating the pattern of share listing.²⁴ Thus, there is a dual role in the capital market which includes business function and regulatory function. Stock exchanges function in business or commercial because they provide services and earn income from providing services, such as listing, trading, transaction settlement, member fees, and market fees. The stock exchange also has a regulatory function because it enforces regulations on membership, trading, and securities listing to ensure the integrity and efficiency of the capital market. The authority of the stock exchange in the regulatory function is considered from the basic essence of the stock exchange as a forum for membership of companies that trade securities.

Further provisions relating to stock exchange membership are regulated in Chapter 2 Article 7 Paragraph 1 of Financial Services Authority Regulation Number 3/POJK.04/2021, which requires that membership only be reserved for shareholders who qualify as members. The most obvious membership characteristic is in the form of a non-profit company and it is not allowed to distribute dividends to its shareholders. Another characteristic is that the stock exchange members also play the role of shareholders.²⁵ Thus, the term of exchange mutualism emerged, which is a condition when a securities trading company wishing to become a member of a stock exchange must first own shares on the stock exchange. This mutualistic nature is the basic essence of the stock exchange because its activities are not profit-oriented. Stock exchanges will reduce access fees and trading transaction fees as cheaply as possible for exchange members. The nature of stock exchange mutualism also minimizes the ease of transfer of share ownership, so the transfer of shares can only be done if you leave the membership.

Furthermore, the definition of mandatory securities listing is the process of listing securities or shares on the securities register, so that they can be traded on the IDX.²⁶ Based on the IPO guidelines that have been formulated by the IDX, it is explained that the listing of equity securities

20 Munir Fuady, *op. cit.*, 13.

21 Yoyo Arifardhani, *op. cit.*, 4.

22 Desyanti Suka Asih, "Karakteristik Prinsip Keterbukaan Dalam Hukum Pasar Modal Di Indonesia," *Jurnal Advokasi* 6, no. 1 (2016): 13.

23 Sendita Aike Putri, Bambang Winarno, dan Heru Prijianto, "Pengawasan Bapepam-LK Terhadap Transaksi Efek Yang Berindikasi *Insider Trading* Pada Bursa Efek Indonesia," *Jurnal Hukum* (2013), 3, <http://hukum.studentjournal.ub.ac.id/index.php/hukum/article/view/1087>.

24 Mas Rahman., *op. cit.*, 66.

25 *Ibid.*, 75.

26 Paramita Prananingtyas dan Bella Tamora Debora Sitepu, *op. cit.*, 3.

on the stock exchange allows more information coverage by the media and securities company analysts so that it becomes a means of publication to improve the company's image in seeking funding sources.²⁷ The listing on the IDX is divided into 2 (two) listing boards, namely the main board and development board where the listing is carried out depending on the issuer approval and the basic requirements that are fulfilled in the initial listing submission process. Specific rules related to the obligation to list securities are contained in the Decree of the IDX Board of Directors Number Kep-315/BEJ/062000 concerning Securities Listing Regulation Number I-A: Regarding General Provisions for Equity Securities Listing on the Stock Exchange, as follows:

"The Stock Exchange lists the shares of the Prospective Listed Company that applies for listing on the Stock Exchange on the Main Board or Development Board based on the fulfillment of the initial listing requirements on each listing board in accordance with the provisions of Securities Listing Regulation Number I-B concerning Requirements and Procedures for Listing Shares on the Stock Exchange".²⁸

Listing on the main board is intended for issuers with large-scale businesses and have credible track records. While the listing on the development board is intended for issuers with medium-sized businesses and have positive prospects in their development. Those who have listed, they are required to do a company listing by listed all the shares paid up or issued. Further provisions relating to equity instruments that can be listed on the IDX are explained in point B.3, as follows:

"The category of Equity Securities listing on the Stock Exchange can be in the form of Shares; Equity Securities Other than Shares includes Pre-emptive Rights, Warrants, and other share derivatives; and Indonesian Depository Receipt".²⁹

27 Bursa Efek Indonesia, *Panduan Initial Public Offering* (Jakarta: PT Bursa Efek Indonesia, 2015).

28 Direksi PT Bursa Efek Jakarta, "Keputusan Direksi PT Bursa Efek Jakarta Nomor Kep-315/BEJ/062000 Perihal Peraturan Pencatatan Efek Nomor I-A Tentang Ketentuan Umum Pencatatan Efek Bersifat Ekuitas Di Bursa," no. 2000 (2000): 1–11.

29 *Ibid.*

Securities in certain names must be guaranteed at the time of listing on the stock exchange. Every company listed on the stock exchange is obliged to guarantee that the outstanding shares have equal rights and obligations. Equity securities other than shares are also possible to be listed and traded on the stock exchange if they are issued by a listed company whose shares are already listed in the listing segment. Approval, listing announcements, as well as the issuance of stock ticker codes are regulated by the IDX in order to support the securities trading system on the stock exchange.³⁰ Companies can seek extensive sources of capital funding through the IDX. Companies or issuers can also trade shares through securities companies or brokers who are members of the IDX.

Prior to the enactment of Financial Services Authority Regulation Number 3/POJK.04/2021, companies tended to carry out backdoor listings to avoid the complexity of the *listing process* in stock exchange. Backdoor listing is a capital market access strategy without having to go through the IPO (public offering) process on the stock exchange.³¹ This concept is in contrast to the mandatory securities listing which requires the listing of equity securities traded in the capital market. The IPO or going public is one of the systems provided by the IDX so that companies can conduct public offering of equity securities to the public so that they can raise funds in a wider range. This process also represents the transformation of a private company into a public company with more transparent and professional management.

The advantages of the go public companies shall include easy access to funding in the capital market, increasing trust in access to loans, growing professionalism, forming a positive company image, liquidity and possibility of divestment for founding shareholders, increasing employee loyalty, increasing company value, and maintaining business continuity.³² The benefits offered are one of the driving forces for the latest Financial Services Authority policy to encourage

30 Bursa Efek Indonesia, *op. cit.*, 4.

31 Yoga Partamayasa, "Back Door Listing: Kewenangan Badan Usaha Dan UMKM Untuk Melakukan Initial Public Offering Tanpa Melewati Proses IPO," *Media Iuris* 3, no. 3 (2020): 388, <https://doi.org/10.20473/mi.v3i3.19518>.

32 Bursa Efek Indonesia, *op. cit.*, 4.

companies to list equity securities on the stock market. The tendency of companies to carry out backdoor listing makes some equity securities not listed in the net capitalization in the capital market so the performance of the capital market does not reflect the valid value.

The Financial Services Authority through its latest rules as mentioned above emphasizes that the implementation of a public offering of equity securities must meet the following provisions: 1) must list equity securities on the Stock Exchange; and 2) register equity securities in collective custody in the Depository and Settlement Institution.

Referring to Article 1 Number 10 of the Capital Market Law, the Depository and Settlement Institution is the party that organizes central custodian activities for custodian banks, securities companies, and other parties.³³ The form of Depository and Settlement Institution is a company represented by PT Kustodian Sentral Efek Indonesia (KSEI). In the context of providing equity securities data collection services, KSEI has service functions in the form of electronic-based securities storage, securities transaction settlement, securities account administration, and distribution of corporate action results.³⁴

B. Mechanism of Mandatory Securities Listing Policy in the Financial Services Authority Regulation Number 3/POJK.04/2021 and Analysis of the Possibility of Public Company Not To Carry Out Securities Listing on the IDX

The mandatory securities listing is required for public companies that will sell their equity securities on the IDX. This is required by the Financial Services Authority based on the Financial Services Authority Regulation No. 3/POJK.04/2021 in order to create a conducive situation for the practice of the capital market system. Protection of investors from fraudulent issuers is pursued in this policy so that a healthier investment climate stability can be achieved, considering that fraudulent practices and/or other forms of fraud often occur in activities in the capital market system. In this regard, the position of a public company is not just a name that exists under the Financial Services Authority, so it must

be able to adjust to the listing policy. Provisions related to public companies are explained in Financial Services Authority Regulation No. 3/POJK.04/2021, Article 1 Paragraph 18, as follows:

“Public Company is a company whose shares are owned by at least 300 (three hundred) shareholders and has a paid-up capital of at least IDR 3,000,000,000.00 (three billion rupiah) or a number of shareholders and paid-up capital as determined by the Financial Services Authority.”

Based on the article above, it is concluded that the finances of a public company are at the upper middle level which of course has a fairly high operating activity. Therefore, public companies need capital market activities to obtain funding.

Meanwhile, efforts to fund a public company can also be carried out by means of a limited public offering which is implemented after the IPO, namely through the Secondary Public Offering (SPO). SPO is divided into 2 (two) types: 1) Private Placement specifically for investors who own directors shares which shares whose owners have the right to regulate / direct the company (so not necessarily majority shares). However, the sale of shares is carried out privately, so that only a handful of parties are involved, such as potential investors, companies, and certain institutions; and 2) Right Issues, which are further divided into 2 (two) categories, namely with Pre-emptive Rights (HMETD) and without Pre-emptive Rights, the shares sold are the latest shares.

The listing of shares or equity securities on the stock exchange and the process of going public are interrelated, companies need to submit a registration statement to the Financial Services Authority and submit an application for shares listing on the IDX by attaching documents in the form of company profile, IPO's Plan, underwriters, and information related to capital market supporting professionals, legal opinion given by legal practitioners, audited financial reports, appraisal reports, articles of association of public companies, prospectuses, and financial projections in the short and long term.³⁵

The IPO or going public process requires issuers to disclose information to the public.³⁶ Disclosure of information is carried out continuously or periodically in accordance with

33 Mas Rahman, *op. cit.*, 82.
34 *Ibid.*, 83.

35 Bursa Efek Indonesia, *op. cit.*, 5.
36 Mas Rahman, *op. cit.*, 322.

accounting standards and applicable capital market law. The financial reports are the basis for guidelines that are prepared continuously and used as a basis for assessing the feasibility of companies that will join the stock exchange. The financial report is also one of the documents that need to be submitted in the proposed company listing which also represents the company's consistency in presenting disclosure of information. Emphasis on policies related to documents required in the listing process is also stated in the Decree of the Board of Directors of the Indonesia Stock Exchange No. Kep-/BEI/-2018, as follows:

"The audited financial statements for the last financial year covering at least 1 (one) year and the last interim audited financial statement (if any) obtains an unmodified opinion".³⁷

The presentation of financial statements that will be proposed in the listing application must be free from manipulation practices. This is because the information presented is the key to capital market movements. Material facts or information is the sensitivity of the capital market that has been changed professionally by the perpetrators of fraud, so that investors who are victims of the crime are not aware of it directly.³⁸ Therefore, the materiality of an information document plays a very important role in investors' choices and decisions, and can even influence trading and securities prices. The information must be disclosed when conducting an IPO or at the time of listing securities. Provisions for information disclosure are mandatory, such as in the case of submitting reports to the Financial Services Authority. This is confirmed in Article 96 of Financial Services Authority Regulation Number 3/POJK.04/2021.

The basic principle that forms information disclosure is the presentation in full, true, and completed on time. The reports submitted to public announcements are classified as annual,

37 Bursa Efek Indonesia, Keputusan Direksi Bursa Efek Indonesia Nomor Kep-/BEI/-2018, (2018), <https://www.idx.co.id/media/2579/konsep-peraturan-i-v-papan-akselerasi-rmr.pdf>, (Diakses: April 26, 2021).

38 Paramitha Prananingtyas, Umi Rozah, dan Zelin A.T.A., "Tinjauan Yuridis terhadap Transaksi Efek yang Mengandung Unsur Tindak Pidana dalam Pasar Modal Indonesia," *Diponegoro Law Journal* 5, no. 3 (2016): 2, <https://ejournal3.undip.ac.id/index.php/dlr/article/view/12063>.

semi-annual, monthly, quarterly, daily, and incidental. Financial reports are also a tool that greatly influences the dynamics of the capital market, so they have the potential to be modified in order to damage the credibility of the capital market. The legal event related to the modification of information is a case of capital market fraud by the Board of Directors of PT Tiga Pilar Sejahtera Tbk (AISA). Company representatives present incorrect information regarding the amount in the financial statements, thus making the company look very good. This can affect investors' decisions in terms of investing their capital in PT AISA. The presentation of immaterial financial statements can cause distortions in the capital market to reduce investor confidence, even in a wide range it can disrupt the stability of the country economy. The incident of violating the law has violated one of the requirements for going public, namely a prospectus which requires issuers to present financial statements in their entirety without any attempt to disguise or conceal material facts.³⁹ The existence of a listing mechanism is expected to be able to filter out companies that are less credible in obtaining funding.

Financial Services Authority Regulation Number 3/POJK.04/2021 not only stipulates listing provisions for go public companies, but also regulates share buybacks in the transformation of a public company into a closed company, as follows:

"A Public Company that will change its status from a Public Company to a closed Company is obligated to: repurchase all shares owned by public shareholders so that the number of shareholders becomes less than 50 (fifty) Parties or another number as determined by the Financial Services Authority."

Relationships related to the capital market, stock exchange, and mandatory securities listing are quite complex. The reason is, Financial Services Authority Regulation Number 3/POJK.04/2021 confirms that company funding can be obtained through securities listing on the IDX. In other provisions, companies that will go private or delisting companies can buy back

39 Ribka Delia Hutabarat, "Tinjauan Yuridis Terhadap Pelanggaran Prinsip Keterbukaan Pada Praktek *Windows Dressing* Dalam Pasar Modal Indonesia," *JOM Fakultas Hukum* 4, no. 2 (2017): 2.

shares, so that the number of public shareholders becomes less than 50%. The 2 (two) main policies have the basic objective of protecting the interests of investors and increasing public confidence in the credibility of the capital market. If the shares of the listing company turn into delisting without a share buyback, of course, investors will lose money because the shares owned are no longer valuable. Thus, the policy of listing and buyback of shares is an alternative policy in order to create conduciveness in the capital market.

Below is the author's analysis of the possibility of a public company not listed on the IDX. Referring to the provisions of the Capital Market Law which requires that a closed company that intends to go public is required to meet the requirements for the acquisition of effective statements by the Capital Market and Financial Institution Supervisory Board (*Badan Pengawas Pasar Modal dan Lembaga Keuangan* 'Bapepam'), which then since the existence of Financial Services Authority, the authority is absolutely in the Financial Services Authority control. The condition is a mechanism before the company is allowed to list on the IDX. However, apparently, there are still a number of public companies that have not yet been listed on the IDX. So, does it allow companies only through the first door, without intending to go through the second door which is none other than the effect of listing effects on the IDX? Answering this issue, the author uses the legal basis referring to Article 1 paragraph (7) and (8) of the Limited Liability Companies Law on a public company that requires, as follows:

"Public Company is a company that has made a Public Offering and meets the two criteria regarding the number of shareholders and capital that must be paid in accordance with the provisions of the Capital Market Law."

Article 1 paragraph (22) of the Capital Market Law gives further rules that the terms of public companies, among others: 1) have at least 300 (three hundred) shareholders; and 2) Capital paid up at least IDR 3,000,000,000 (three billion rupiah).

The above provisions are considered to open legal gaps for public companies not to carry out securities listing on the IDX because the existing regulations do not mention that there is a mandatory element to be fulfilled. Furthermore,

the effective statements mean only apply in order to fulfill status, without any intention to sell securities on the IDX.

CONCLUSION

The latest developments in the capital market system in Indonesia have been updated through Financial Services Authority Regulation Number 3/POJK.04/2021 which stipulates the mandatory obligation to list the equity securities for public companies. The initiation of the mandatory equity securities listing is carried out in order to reduce the intensity of backdoor listing or efficiency efforts to the Initial Public Offering activity by being registered with another company through the acquisition process. Based on the Financial Services Authority Regulation Number 3/POJK.04/2021, the Financial Services Authority through the Depository and Settlement Institution conducts electronic securities listing which is not part of the securities' collective custody. The Depository and Settlement Institution checks the conformity of the Securities records in the Depository and Settlement Institution with the records in the Securities Administration Bureau or the Public Company which conducts its own Securities administration. The mandatory to be listed for the equity securities of a public company closes legal loopholes for companies that want to become public company using a procedure that is not in accordance with the provisions. Previous rules in the capital market industry in Indonesia do not adhere to an element of necessity for public companies to be registered on the IDX. The mechanism of securities listing policy has a connection with the Go Public process, because after obtaining an effective statement from the Financial Services Authority on the will of changes in the status of a closed company into a public company, then the company can submit an application for the equity securities listing on the IDX by attaching documents that are material requirements, such as company profile, IPO's Plan, underwriter, information about capital market supporting professionals, legal opinion given by legal practitioners, audited financial statements, assessor reports, public budget, prospectus, and financial projections in the short and long term.

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