

JURIDICAL STATUS OF STOCK EXCHANGE AND INVESTOR LEGAL PROTECTION IN FORCED DELISTING

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Abstract

The Stock Exchange has a role as a regulator of securities trading in the capital market. The Stock Exchange works for profit which is then aimed at developing securities trading activities in the capital market. Meanwhile, there is no form of legal protection for investors in the capital market which is specifically regulated in the law. The purpose of this study is to examine the juridical status of the stock exchange and to determine the legal protection for investors in the implementation of forced delisting. This study uses a normative legal research method, which is sourced from the Legislation by using a library research method. The results reveal that the Juridical status of the Stock Exchange is a company that has its own working rules, so it has differences compared to companies in general, and there is no form of protection for stock investors who experience forced delisting of issuers on the stock exchange. Investors are only given the opportunity to make sales in the negotiated market whose time is determined by the exchange. The findings of this research provide an explanation of the legal protections afforded to investors in the event that forced delisting is implemented.

Keywords: Capital Market, Legal Protection, Stock Exchange

1. INTRODUCTION

The Stock Exchange is a legal entity that has the main task as a means to carry out and regulate securities trading activities in the capital market. The Stock Exchange has played a very important role for a long time, if traced from its history. It has existed since the Dutch colonial era, namely in the context of raising capital from the public or called investors by members of the stock exchange. Viewed from a microeconomic point of view, namely for members of the stock exchange or called issuers, the Stock Exchange is intended to obtain fresh capital that can be used in the context of business expansion and so on (Barus, 2013).

From a macroeconomic point of view, the Stock Exchange plays an important role in efforts to move the wheels of the country's economy, so that securities trading activities in the capital market carried out on the Stock Exchange produce a positive picture of trading conditions. The result can be the achievement of positive performance of the country's economy, and vice versa. The elucidation of Article 9 paragraph (1) of the Capital Market Law states that the stock exchange is an institution authorized to regulate the implementation of its activities through Bapepam (Capital Market Supervisory Agency). Hence, the provisions issued by the Stock Exchange have binding force that must be obeyed by members of the Stock Exchange, issuers whose securities are listed on the Stock Exchange, clearing and guarantee institutions, depository and settlement institutions, custodians or other parties that have a contractual working relationship with the Stock Exchange.

Nevertheless, in terms of making regulations regarding clearing and settlement of stock exchange transactions, these regulations need to be made jointly with the clearing and guarantee institutions. What is meant by "other matters" in this paragraph are the authority of the Stock Exchange to stipulate rules regarding examination of members of the Stock Exchange, rules relating to the mechanism for coordinating the implementation of the functions of the Stock Exchange with clearing and guarantee institutions as well as depository and settlement institutions, and to anticipate developments in future. Equivalent securities are the characteristics of securities that can be exchanged with similar securities that have the same value and are issued by the same issuer (Putri, 2014).

According to Rule Number II: regarding the Delisting and Re-listing of Shares on the Exchange (hereinafter referred to as the Delisting and Listing Rules) Number I.14, delisting is the delisting of securities from the list of securities listed on the exchange, so that These securities cannot be traded on the stock exchange. Delisting is divided into 2 (two) types, namely: voluntary delisting and forced delisting. Voluntary delisting is the removal of securities at the will of the company concerned and has obtained shareholder approval, while forced delisting is the forced removal of securities by the stock exchange because they are unable to comply with existing exchange regulations.

Forced delisting carried out by the stock exchange not only has a significant influence on the company, but also on existing shareholders. The occurrence of forced delisting causes investors to experience a decrease in investment value or lose investment value because the shares owned have been removed from trading or become a closed company. This study aims to find out the juridical status of the stock exchange and the legal protection that shareholders get when forced delisting is enforced.

2. RESEARCH METHODS

The author applies the research method normative law, because the focus of the study departs from the blurring of norms, using approaches: statute approach, conceptual approach, and analytical approach. The data used to examine the issues under study include Law Number 8 of 1995 concerning Capital Markets, Law of the Republic of Indonesia Number 21 of 2011 concerning the Financial Services Authority, Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies, and legal materials primary in the form of scientific works and the results of research by legal experts, especially related to the capital market. Data was collected by means of literature study, then analyzed using qualitative normative methods.

2.1. Legal Certainty Theory

Mahmud (2016) state that legal certainty contains two meanings. First, there are general rules so that individuals know what actions may or may not be performed. Second, in the form of legal security for individuals from the arbitrariness of the government, because general rules make individuals aware of what the state may charge or do to individuals.

Justice and legal certainty, according to Radbruch (1932), are permanent parts of the law and must be considered and maintained for the security and order of a country. The value to be achieved from the theory of legal certainty is the value of justice and happiness (Ali, 2022). The presence of legal certainty will automatically provide legal protection to citizens.

Legal certainty requires the creation of a rule or rule that applies in general, as well as achieving legal certainty (for the sake of order and justice for all Indonesian people).

In connection with this research, if there are vague or unclear regulations, there will be loopholes that the law does not carry out its function to regulate as it should. This study applies the theory of legal certainty to examine the juridical status of stock exchanges in Indonesia, bearing in mind that stock exchanges are corporations, but have their own work rules.

2.2. Legal Protection Theory

The presence of law in social life is useful for integrating and coordinating interests that are usually in conflict between one another each other. The law, therefore, must be able to integrate them, so that conflicts of interest can be kept to a minimum.

Legal protection is a concept where law can provide justice, order, certainty, benefit and peace. Several opinions were cited from a number of experts regarding legal protection, as follows:

- 1) According to Satjito Rahardjo, legal protection is an effort to protect someone's interests by allocating a Human Right of power to him to act in the framework of his interests.
- 2) According to Setiono, legal protection is an action or effort to protect society from arbitrary actions by authorities that are not in accordance with the rule of law, to create order and tranquility so as to enable humans to enjoy their dignity as human beings.
- 3) According to Philipus M. Hadjon, it is always related to power. There are two governmental powers and economic powers. In relation to government power, the issue of legal protection for the people (those who are governed) against the government (those who govern). In relation to economic power, the issue of legal protection is protection for the weak (economy) against the strong (economy), for example protection for workers against employers (Wijayanti, 2009).

The theory of legal protection needs to be applied in this study to further examine the types of legal protection investors receive when forced delisting occurs on the stock exchange.

3. RESULT AND DISCUSSION

3.1. Juridical Status of Stock Exchanges in Indonesia

The Stock Exchange has unique characteristics that are not owned by companies in general, namely as a non-profit company by not distributing dividends to its shareholders (Hartarto, 2020). The statement shows that the Stock Exchange is a legal entity in the form of a company that does not work for the purpose of sharing profits, so the Stock Exchange is an example of a form of company that is different from companies in general that work with the aim of seeking and sharing profits in order to realize business expansion. financing operational activities, investment or investment of assets and so on. The Stock Exchange works for profit which is then intended for the development of securities trading activities in the capital market (Hartarto, 2020). This statement indirectly provides implied information, that the juridical position of the Stock Exchange itself seems to be between the

status of a company and a foundation. This is because the status as a company is addressed to the Stock Exchange, but the Stock Exchange is non-profit like a foundation that works not for profit. More specifically, the Stock Exchange is non-profit but works to seek and share profits, but not for commercial purposes, but for the benefit of securities trading activities in the capital market.

The next uniqueness of the Stock Exchange is that it is considered a corporation which contains a collection of brokerage dealers who are members of it (Club of Brokers), so that in the Stock Exchange there is the term "stock exchange member". This proves that the stock exchange has very different characteristics from the characteristics of companies in general, the definition of which is stated in Article 1 Number 1 of Law Number 40 of 2007 concerning Limited Liability Companies, namely legal entities which are capital partnerships, which are established based on agreements, carry out business activities with authorized capital which is entirely divided into shares and fulfills the requirements stipulated in this law and its implementing regulations. Article 1 point 2 of Law Number 8 of 1995 concerning the Capital Market states that members of the Stock Exchange are securities brokers who have obtained business licenses from the Financial Services Authority where previously this authority was with the Bapepam (Capital Market Supervisory Agency) and has the right to use the system and/or facilities of the Stock Exchange in accordance with the regulations in the Stock Exchange. Number 1 Regulation III. An Attachment to the Decree of the Directors of the Indonesia Stock Exchange Number Kep00184/BEI/12-2018 concerning Exchange Membership (hereinafter referred to as BEI Regulation III.A) jo. Number 1.1 Rule Number III.I Attachment to the Decree of the Board of Directors of the Indonesia Stock Exchange Number Kep-00022/IDX/02-2017 concerning Membership Margin and Short Selling states the same thing, namely members of the Stock Exchange are securities companies that have obtained business licenses from the Financial Services Authority Finance as a securities dealer intermediary as referred to in Article 1 point 2 of Law Number 8 of 1995 concerning Capital Markets and has obtained exchange membership approval to use the exchange system and/or facilities in order to carry out securities trading activities on the exchange in accordance with exchange regulations.

As can be seen, the Stock Exchange which is a legal entity in the form of a company is an example of a company that does not issue shares because the stock exchange itself has its own working system that is cooperative among exchange members, so that exchange members who are partners for the stock exchange have the right to and the same obligations in terms of ownership of the Stock Exchange itself. Stock exchanges are associations or associations that are mutual in nature, namely the ownership of shares is held by its members (mutual associations owned by their members) (Sitorus, 2019). This is what is referred to as "stock exchange mutualization", namely securities brokers who act as members and also as owners or shareholders in the Stock Exchange. In general, mutual stock exchanges carry out activities that are not solely profit oriented because the profits obtained by the stock exchange will be returned to each member of the stock exchange by means of securities trading transaction costs, as well as access fees provided as cheaply as possible.

The company is a form of business that carries out activities on a regular and ongoing basis with the aim of obtaining profit or profit, whether organized by individuals or business entities in the form of legal entities or those that are not in the form of legal entities. The company can also be interpreted as an entity that runs a business, both business activities carried out by individuals and business activities carried out by business entities. As can be seen, companies that are members of the Stock Exchange carry out their business by selling the company's securities. Regarding the securities company that is no longer a member of the stock exchange because it does not meet the requirements, the Company automatically has no longer owns of the Stock Exchange Shareholders and within 12 (twelve) months shall continue to sell their shares to other effects companies that are still eligible as a member of the exchange.

The Stock Exchange is a financial market for long-term funds and is a concrete market. Long-term funds are funds with maturities of more than one year (Indriani et al., 2020). A concrete market means that the market is carried out in an open and real way, with a transparent mechanism. The Stock Exchange is also an organized system that brings together sellers and buyers of securities, both directly and indirectly. The securities referred to here are all securities issued by the company, for example stocks, bonds, proof of debt, proof of rights (Right Issue), and warrants. It can be stated that the Stock Exchange is a company that is a vehicle for issuers and/or parties involved in securities trading activities in the capital market with investors who wish to buy and sell securities, either through an initial offering or through a secondary market. The Stock Exchange really does not show the characteristics of a general company, it is only set as a company with the basis of arrangements found in the law number 8 of 1995 on the capital market.

The Stock Exchange in this case is the Indonesia Stock Exchange which is headquartered in Jakarta and has several representatives in various regions, one of which is in Surabaya where the Surabaya Stock Exchange was once established which specifically handled bond securities transactions, also has a management structure that can be said the same as the management structure in the company in general. The management structure in the Indonesia Stock Exchange consists of division heads, board of directors, company secretary, inspectorate, and the Main Director as the head of leadership, and the form of accountability for the management structure is supervised by the board of commissioners. This implies, that the Indonesian Stock Exchange is subject to Law Number 8 of 1995 concerning Capital Markets and Law Number 40 of 2007 concerning Limited Liability Companies. Because the Indonesia Stock Exchange is a company formed based on the mandate of Article 6 of Law Number 8 of 1995 concerning the Capital Market, the Indonesia Stock Exchange is a form of company formed by the state.

The Persero (Companies) is a form of state business entity, but is subject to the legal provisions that apply to Limited Liability Companies (Suratman, 2017). During the validity period of the Commercial Code (KUHD) the provisions of Article 36 to Article 56 of the Criminal Code apply. The provisions of Law Number 1 of 1995 concerning Limited Liability Companies also apply, at the time this law comes into effect. The provisions in Law Number 40 of 2007 concerning Limited Liability Companies are also enforced, and for the first time we are familiar with this form since the publication of Presidential Instruction Number 17 of 1967 concerning Foreign Investment and Law Number 9 of 1969 regarding Domestic Investment.

The Indonesian Stock Exchange, however, is not a State-Owned Enterprise because the parties who hold shares in the stock exchange are the members of the exchange themselves. Article 1 of Law no. 19 of 2003 concerning BUMN (State Owned Enterprises) states that BUMN is a business entity whose capital is wholly or mostly owned by the state through direct participation originating from separated state assets. The statement regarding the definition of BUMN above concludes that there are several elements that make a company categorized as a BUMN, namely a business entity, capital that is wholly or mostly owned by the state, the state carries out direct equity participation and sourced from separated state assets.

The legal form of a Limited Liability Company (PT) is considered not the right organizational form for the Indonesia Stock Exchange (IDX). This statement was made by Sarmauli Yuris Christi Simangunsong while taking an open examination for the doctoral program at the Faculty of Law UGM. This partner at Nindyo & Associates explained that PT. IDX is a collection of exchange members, each of which has 1 share of PT. IDX. Ownership of 1 share indicates that the share ownership of PT. IDX is more a form of membership sign than as proper share ownership in a limited liability company in general. There is also a prohibition on the distribution of dividends to its shareholders, so that the notion of a limited liability company as a collection of capital is not properly applied to PT. IDX.

PT. IDX, even in the study of auction law, has its own provisions governing the mechanism of share auctions, so it appears that PT. The IDX needs to clearly define the status of a legal entity. Arrangements for the sale of stock auctions are regulated in PP No. 12 of 2004 concerning the Implementation of Activities in the Capital Market Sector. PT. IDX, is a legal entity in the form of a company that obtains a permit from the Financial Services Authority to carry out stock exchange activities. Seeing the transfer of rights over shares of PT. BEI is mentioned in Government Regulations, then in the provisions of the auction it is included in the type of obligatory non-execution auction. This is because it is required by government regulations but the object being auctioned is not a guarantee that is executed (Tista, 2013). Based on Government regulation (PP) No. 3 of 2018 on the Type and Tariff of the Non-the Needs of State Receivities applicable to the Ministry of Finance, the non-executive auction should be subject to a buyer's duty of 2% of the auction price formed and the required Auction of the MPNs through the KPKNL (Office of the State and Runner Management and the Auction) and was carried out before the Iku's Auction Officer.

3.2. Legal Protection for Investors in the Implementation of Forced Delisting

Legal protection for investors regarding forced delisting is regulated in Law Number 8 of 1995 concerning Capital Markets and Law Number 40 of 2007 concerning Limited Liability Companies concerning the negligence of company management which caused the company to be forced delisted by the Indonesian Stock Exchange (Saputra & Budiharto, 2016). In connection with this legal protection, when viewed from the characteristics of the effects, in general, there are 2 (two) characteristics of the effects. First, equity securities and secondly debt securities. Securities in the capital market, among others:

- 1) Shares, are securities offered through a public offering on the stock exchange. Stock as an investment instrument and also proof of ownership of a company based on the number of shares it owns.

- 2) Bonds are debentures issued by a company for a certain period of time and at maturity the debt and interest will be paid which has been agreed at the beginning.
- 3) Mutual funds are a type of investment that is made by raising public funds which will later be managed by an investment manager through an investment platform and profits will be shared as agreed at the outset (Senna, 2020).

Initial Public Offering (IPO) or more commonly known as going public is an alternative to obtain financing or access to capital for a company (Ibbotson & Ritter, 1995). Companies, through an IPO, obtain fresh funds by offering ownership of their shares or bonds issued to the public. This bidding mechanism is known as a public offer. Parties or companies that make a public offering are called issuers. Stock delisting is one of the phenomena that occur in the capital market, to protect the public interest and in the context of organizing orderly, fair and efficient securities trading (Thompson & Kim, 2020). The legal basis governing delisting is in the Decree of the Board of Directors of the Jakarta Stock Exchange Number Kep-308/BEJ/07-2004 concerning Rule Number II concerning the Delisting and Relisting of Shares on the Exchange. It is clearly regulated about delisting. Based on the type, delisting is divided into 2 (two) types, namely voluntary delisting and forced delisting. Voluntary delisting or delisting of securities is a write-off carried out at the request of the issuer or company (Saputra & Budiharto, 2016). Requests for delisting by the listed company must also meet the requirements listed on the stock exchange. In contrast to voluntary delisting which occurs because of the company's go private action. Forced delisting usually occurs against the will of the shareholders (Bakke et al., 2012).

Number III.3.1 Delisting and Relisting Rules, the exchange deletes the listing of listed company shares in accordance with the provisions of this rule, if the listed company experiences at least 1 (one) of the following conditions:

- 1) Experiencing conditions, or events, which significantly negatively affect the business continuity of the listed company, either financially or legally, or to the continuity of the listed company's status as a public company, and the listed company cannot show adequate indications of recovery.
- 2) Shares of listed companies which are suspended on the regular market and cash market, are only traded on the negotiating market for at least the last 24 (twenty four) months.

There is no form of legal protection for investors in the capital market that is specifically regulated in the law. Investors who conduct transactions in the capital market are generally considered to have extensive knowledge (smart investors). This knowledge indicates that there are no losses that will be experienced when there is a transaction. Every investor, however, has weaknesses and needs to be given protection from those who can harm or want to gain by exploiting the weaknesses of investors. The negotiating market is the protection provided by the exchange to investors before an issuer is officially delisted. The negotiating market is the market where trading effects are equity in the exchange are carried out based on individual direct bargain and not in a continuous basis of the sustainable (a non-continuous auction market) and its completion can be done based on the agreement of the Stock Exchange Member (Senna, 2020).

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he negotiating market is almost the same as the regular market; there is bargaining on the stock exchange, but the bargaining that occurs on the market negotiations occur privately between buyers and sellers and remains under the supervision of the stock exchange. The negotiating market also allows the sale and purchase of a number of shares that are less than the general stock exchange stipulation, namely 1 lot (100 shares), but approval must be given from the exchange. Negotiation market remains to be done through securities. The price of shares offered on the negotiated market is not affected by fluctuations in shares on the regular market.

If there is no agreement between the two parties or the investor who owns the shares does not want to sell their shares, then the investor as the shareholder can still become the shareholder of the company, which is regulated in the Company Law. Article 3 paragraph (1) of the UUPt states that the shareholders of a limited liability company are not personally responsible for engagements made on behalf of the company and are not responsible for the company's losses in excess of the shares they own. The provisions in this article emphasize the characteristics of a company, that the shareholder is only responsible for the deposit for the ownership of all shares and does not cover his personal assets. The existence of rights and obligations for shareholders regulated in the Company Law explains that investors have a clear legal protection basis. After the end of the negotiating market set by the Stock Exchange and the official Delisting Issuer, the company still has an obligation attached to the shares of the shares according to the Company Law.

4. CONCLUSION

4.1. Conclusion

The Indonesia Stock Exchange as an institution that was formed and regulated by its mandate in Law Number 8 of 1995 concerning the Capital Market is one of the legal subjects in the form of a company with a legal entity that is authorized by this Law. The Juridical Status of the Stock Exchange is a company that has its own work rules, so it has differences compared to companies in general because the Stock Exchange is a non-profit company in the sense that it does not seek and share profits for commercial purposes, but is aimed more at the interests of securities trading activities carried out on the Exchange. Securities in particular and the capital market in general.

There is no form of protection for stock investors who experience forced delisting of issuers on the stock exchange. Investors are only given the opportunity to make sales on the negotiating market at a time determined by the exchange. Issuers are also not given the obligation to buy investors' shares in the negotiated market. Transactions in the negotiating market are determined based on the agreement of both parties, namely the seller and the buyer. If the investor does not make a sale or does not get a price agreement on the negotiating market, the investor will become a shareholder as regulated in the Company Law after the issuer is effectively delisted.

4.2. Suggestion

Based on the results and conclusion above, some suggestion may be taken into account namely the Stock Exchange is regulated in a separate law because the Stock Exchange as a company has different rules compared to corporations in general, with legal considerations being regulated in a separate law. It is hoped that this will provide clarity on the legal status and regulatory provisions of the Stock Exchange itself. The Stock Exchange will also be better known for its publicity to the general public.

Preferably, the Indonesia Stock Exchange makes a policy of legal protection for investors against forced delisting before issuers are delisted to minimize losses in investments made. Furthermore, issuers will begin to have an obligation to buy shares in the negotiating market, so that there are no obstacles for investors who want to sell their shares and for stock prices to fall too deeply due to the issuer being delisted. It is also hoped that the opinions of minority investors will be heard more at the general meeting of shareholders (GMS), so that investors are able to find solutions when forced delisting occurs.

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