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PROTECTION OF FINANCIAL SERVICES AUTHORITY FOR ISSUER COMPANIES THAT WILL BE FORCED DELISTED BY THE STOCK EXCHANGE ACCORDING TO OJK REGULATION NO. 23/POJK.04/2021

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Abstract

The guidance and supervision actions carried out by the Financial Services Authority (OJK) if unable to prevent the occurrence of force delisting, then force delisting will not only affect the issuer but also affect investors so that this must also be the responsibility of the issuer where the responsibility must be ensured to run well and clearly. This means that the existence of the Financial Services Authority (OJK) in carrying out guidance and supervision of issuers that will be force delisted aims to provide legal protection, namely in the form of guaranteeing the rights of legal subjects (not only issuers whose rights are protected but also investors) and this protection is given to legal subjects so that they can enjoy all the rights granted by law.

Keywords: ***Force Delisting, Sharesand Issuers***

INTRODUCTION

Issuer shares that will be subject to force delisting by the stock exchange, so as not to be subject to force delisting cannot be separated from the role of the Financial Services Authority (OJK). This is because issuers and stock exchanges are subject to OJK. OJK has a role in coaching and supervising related parties, specifically issuers and stock exchanges. This means that the existence of OJK can provide supervision of the force delisting process that will be carried out by the stock exchange to issuers and vice versa, issuers can be given guidance by OJK which will be subject to force delisting by the stock exchange. It should be remembered that force delisting carried out by the stock exchange is a sign of unhealthy by the issuer. This unhealthy issuer should not be an absolute assessment of the stock exchange but also OJK where OJK has a fairly important role in supervising and fostering issuers. Thus, the existence of OJK can prevent force delisting by the stock exchange if the coaching and supervision of issuers is carried out as per the laws and regulations, specifically OJK Regulation No. 23/POJK.04/2021. This is as stated in Article 3 of OJK Regulation No. 23/POJK.04/2021, which reads:

Coaching actions are given to parties as referred to in Article 2 as a result of follow-up supervision including but not limited to:

1. off-site supervision
2. technical inspection
3. compliance checks and/or
4. other supervisory measures

in the context of direction, guidance, taking preventive measures, taking steps to resolve problems, taking corrective action, preventing further violations of compliance with regulations in the Capital Market sector, making improvements and/or adjustments in accordance with the provisions of laws and regulations, and/or increasing compliance in the Capital Market sector.

The guidance and supervision carried out by OJK can attempt or prevent the occurrence of force delisting. The guidance and supervision actions carried out by OJK if unable to prevent the occurrence of force delisting, then the force delisting will not only affect the issuer but also affect investors so that this must also be the responsibility of the issuer where this responsibility must be ensured to run well and clearly. This means that the existence of OJK in carrying out guidance and supervision of issuers that will be forced delisted aims to provide legal protection, namely in the form of guaranteeing the rights of legal subjects (not only issuers whose rights are

protected but also investors) and this protection is given to legal subjects so that they can enjoy all the rights granted by law.

FORMULATION OF THE PROBLEM

Based on the background above and to provide research limitations, several problems are formulated, as follows:

1. How is the delisting arrangement regulated by the stock exchange in Indonesia?
2. How does the Financial Services Authority protect issuer companies that will be forced to delist by the stock exchange according to OJK Regulation No. 23/POJK.04/2021?
3. What is the issuer's civil liability towards investors if a forced delisting occurs by the stock exchange?

RESEARCH METHODS

In my research, the type of legal research used is normative legal research that focuses on positive legal norms that regulate the Protection of Financial Services Authority Against Issuer Companies that will be forced delisted by the Stock Exchange. In normative legal research, the data used is in the form of secondary and primary data, namely OJK Regulation No. 3/PJOK.04/2021 Concerning Implementation in Capital Market Activities andLaw No. 40 of 2007 concerning Limited Liability Companies, Law No. 8 of 1995 concerning Capital Markets and Law No. 21 of 2011 concerning the Financial Services Authority do not yet have clear parameters related to delisting, while secondary data includes legal facts, legal principles, legal opinions and explanations of articles in national legal instruments related to the protection of financial services authorities.

RESULTS AND DISCUSSION

Delisting Regulations By Stock Exchange In Indonesia

*Delisting*if sorted one by one the law does not find the term in it. In the law, namely Law No. 8 of 1995 concerning the Capital Market (this law does not explicitly regulate the process or procedures for delisting) the term found is the cancellation of the listing of Securities on the Stock Exchange where the term is synonymous with delisting. Thus, the absence of regulations in the law then related to delisting must refer to other legal regulations. One of the rules issued by the stock exchange is related to delisting. The rules regarding delisting are regulated in the Decree of the Board of Directors of the Indonesia Stock Exchange No. Kep-00054/BEI/05-2024 Concerning Regulation Number IN concerning Cancellation of Listing (Delisting) and Relisting (Relisting) where the rules in their implementation cannot be separated from OJK Regulation No. 3/POJK.04/2021 Concerning the Implementation of Activities in the Capital Market. Delisting as is known is important and has a very big influence on shareholders.

Delisting is divided into two, namely voluntary delisting and involuntary/forced delisting. Voluntary delisting is the removal of securities listing that occurs at the request of the issuer itself, while involuntary/forced delisting is the removal of securities listing carried out by the Exchange. This last type of delisting is one of the signs of irregularities in company management. Delisting carried out by the Stock Exchange is a form of protection to protect public interests and in order to organize orderly, fair and efficient securities trading. The biggest impact of delisting is the loss of liquidity for the securities/shares, and this can affect the price of the securities. In Indonesia, force delisting can not only be carried out by the stock exchange but can also be carried out by the OJK.

The existence of delisting regulations, both voluntary delisting and involuntary/forced delisting as previously described, is to protect the public interest and in order to organize orderly, fair and efficient securities trading. However, the delisting regulation is in the form of Decree of the Board of Directors of the Indonesia Stock Exchange No. Kep-00054/BEI/05-2024 Concerning Regulation Number IN concerning Cancellation of Listing (Delisting) and Relisting (Relisting) with due observance of OJK Regulation No. 3/POJK.04/2021 Concerning the Implementation of Activities in the Capital Market.

Referring to the description above, delisting which refers to or is subject to the Decree of the Board of Directors of the Indonesia Stock Exchange No. Kep-00054/BEI/05-2024 Concerning Regulation Number IN concerning Cancellation of Listing (Delisting) and Relisting (Relisting) by paying attention to OJK Regulation No. 3/POJK.04/2021 Concerning the Implementation of Activities in the Capital Market, both regulations should have been born as special regulations so that they are subject to the principle of lex specialis derogat legi generalis. Furthermore, if these regulations are not born in the form of statutory regulations, then these regulations should be implementing regulations, not institutional regulations, so that from the legal side, they are less binding on legal subjects and only bind legal subjects in practice. The existence of these two regulations must be seen as

complementing each other. This is because Law No. 40 of 2007 concerning Limited Liability Companies, Law Number 8 of 1995 concerning Capital Markets and Law Number 21 of 2011 concerning the Financial Services Authority do not yet have clear parameters related to delisting. The existence of these two regulations clearly still has contradictions or ambiguity in the formulation of these norms. This means that the existence of these two regulations does not provide legal certainty. This is because these two regulations do not point to the implementation of clear, permanent, consistent and consequential laws whose implementation cannot be influenced by subjective circumstances. Certainty and justice are not merely moral demands, but factually characterize the law. A law that is uncertain and does not want to be fair is not just a bad law. However, these legal regulations are an effort to fill the legal vacuum.

OJK Protection for Issuer Companies That Will Be Forced Delisted by the Stock Exchange According to OJK Regulation No. 23/POJK.04/2021

Issuer/issuer companies that have been subject to force delisting, shareholders can request accountability to the board of commissioners and directors if the company's management is not carried out as described above, resulting in losses. The process of requesting accountability is certainly inseparable from OJK guidance because shareholders request accountability for issuers managed by directors and commissioners who have been forced delisted. Coaching actions by OJK to ensure the implementation of accountability requests to directors and commissioners where the issuer has been forced to delist as a result of follow-up supervision include but are not limited to:

1. Off-site supervision;
2. Technical inspection;
3. Compliance checks; and/or
4. Other supervisory measures,

in the context of direction, guidance, taking preventive measures, taking steps to resolve problems, taking corrective action, preventing further violations of compliance with regulations in the Capital Market sector, making improvements and/or adjustments.

In addition to the assessment using GCG principles, the OJK can also use other assessment instruments for issuers that have been forced to delist, where the issuer carries out its activities based on the following principles, for accountability requests from the board of directors and commissioners by shareholders:

1. Integrity where parties carrying out activities in the Capital Market carry out their business activities by:
   a. Good faith and full responsibility
   b. Uphold honesty and
   c. Commitment to comply with:
      1) Written agreement, if there is a written agreement; And
      2) Legislation.
2. Good faith where parties carrying out activities in the Capital Market in carrying out their business always prioritize good behavior.
3. Prudence through the implementation of good risk management and governance where parties carrying out activities in the Capital Market in running their businesses always have adequate risk management and governance implementation.
4. Professionalism where parties carrying out activities in the Capital Market carry out their business activities professionally.
5. Transparency of information where parties carrying out activities in the Capital Market in carrying out their business activities always provide and/or convey information that is correct, not misleading, and does not conflict with the provisions of laws and regulations.

Furthermore, if the force delisting of the issuer can still be restored, then the effects can be relisted. Relisting or re-registering shares can only be done if the issuer meets the following requirements:

1. Relisting applications can only be submitted to the stock exchange no sooner than 6 (six) months after the delisting becomes effective.
2. Companies submitting a relisting application must have:
   a. Correcting the conditions that caused the delisting due to certain conditions or having realized the things that underlie the previous share delisting application
   b. Settling payment obligations that have not been fulfilled when the Company is effectively delisted, if any.

Issuer's Civil Liability Towards Investors If Force Delisting Occurs By The Stock Exchange

Violation of the principles of GCG certainly brings each organ of the company to be responsible according to the losses caused, where such responsibility is regulated in accordance with Law No. 40 of 2007 concerning Limited Liability Companies, namely:

1. Shareholders (GMS) are responsible in accordance with Article 3 paragraph (2) letters b and d of Law No. 40 of 2007 concerning Limited Liability Companies.
2. The Board of Directors is responsible in accordance with Article 97 paragraph (3)Law No. 40 of 2007 concerning Limited Liability Companies;
3. The Board of Commissioners is responsible in accordance withArticle 114 paragraph (3)Law No. 40 of 2007 concerning Limited Liability Companies.

The responsibilities regulated above are in accordance with Fiduciary Duties which can be divided into 2 (two) components, namely:

1. Duty of Care, the company's organs are required to act with caution in making all decisions and company policies. In making each policy, the board of directors must continue to consider all available information properly and reasonably.
2. Duty of Loyalty, the company's organs are responsible for always siding with the interests of the company where the company's organs are located. The company's organs that are entrusted by the company must act in the interests of the PT, act in the interests and objectives of the PT, and act by prioritizing the interests of the PT above personal interests.

Both components can be seen that the company's organs are prohibited from using their position to prioritize personal interests over the interests of the company that has given them trust and all legal actions that benefit the directors personally and harm the company. Both prohibitions, if carried out, are contrary to the two components of fiduciary duties above. This means that in every action taken by commissioners, directors and shareholders, it must be in accordance with laws and regulations and the articles of association and bylaws.

Furthermore, in the implementation of actions carried out by PT organs, they must refer to the principles of GCG which are spread in Law No. 40 of 2007 concerning Limited Liability Companies as regulated in Article 4 in conjunction with the Explanation of Article 4 of Law No. 40 of 2007 concerning Limited Liability Companies. In the principles of GCG contained in Law No. 40 of 2007 concerning Limited Liability Companies, of course, there are rights and obligations of each PT organ which form the basis of their respective authorities. The authority held by each PT organ must not be violated if the authority given is implemented and causes losses to the PT, then the PT organ will be categorized as committing an unlawful act in the form of negligence, while the PT organ that does not exercise its authority will be categorized as an unlawful act in the form of intent as regulated by civil liability regulated in accordance with Articles 1365 of the Civil Code and 1366 of the Civil Code.

CONCLUSION

1. The regulation of delisting by the stock exchange in Indonesia refers to the Decree of the Board of Directors of the Indonesia Stock Exchange No. Kep-00054/BEI/05-2024 Concerning Regulation Number IN concerning Cancellation of Listing (Delisting) and Relisting (Relisting) where the regulation in its implementation cannot be separated from OJK Regulation No. 3/POJK.04/2021 Concerning the Implementation of Activities in the Capital Market where both regulations were born as special regulations so that they are subject to the principle of lex specialis derogat legi generalis where the regulation should be an implementing regulation or law, not an institutional regulation so that from the legal side it is less binding on legal subjects and only binds legal subjects in practice.
2. The Financial Services Authority's protection of issuer companies that will be forced delisted by the stock exchange according to OJK Regulation No. 23/POJK.04/2021, refers to the principles of Good Corporate Governance contained in Law No. 40 of 2007 concerning Limited Liability Companies so that shareholders, directors and commissioners can have their rights protected when the issuer is subject to force delisting. The issuer's operation on the stock exchange so that the principles of Good Corporate Governance can run well, OJK plays a role in providing guidance in the form of off-site supervision, technical inspections, compliance inspections and other supervisory actions as referred to in Article 3 of OJK Regulation No. 23/POJK.04/2021.
3. The issuer's civil liability towards investors in the event of a forced delisting by the stock exchange depends on the losses incurred as a result of the actions of the directors or commissioners in managing the issuer or issuing company.

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