

The Role of Capital Market Notary in Corporate Backdoor Listing Actions in Indonesia

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Abstract

West Lampung Regency is one of the Robusta coffee producing areas. Lampung Robusta Coffee is registered by obtaining a Geographical Indication Certificate Number: ID G 000000026 dated May 13, 2014. The problems in this study are a) How is the implementation of legal protection for Lampung Robusta coffee geographical indications in improving the economy of West Lampung coffee farmers and b) What are the factors What are the obstacles in implementing legal protection for Lampung Robusta coffee geographical indications in improving the economy of West Lampung coffee farmers? The research method used is juridical normative and juridical empirical. The conclusion of this study is the implementation of legal protection for Lampung Robusta coffee geographical indications in improving the economy of West Lampung coffee farmers is to provide preventive and repressive forms of protection with reference to the theory of Intellectual Property Rights Robert M. Sherwood. The constraining factors in the implementation of legal protection for Lampung Robusta coffee geographical indications in improving the economy of West Lampung coffee farmers are the low level of public education, the lack of awareness of coffee farmers in West Lampung Regency in including West Lampung Robusta Coffee Geographical Indications in product design, the absence of regulations at the level The Government of West Lampung Regency in implementing the inclusion of Geographical Indications for West Lampung Robusta Coffee and the weak legal awareness of the community towards the importance of Geographical Indications

I. Introduction

Economic developments that are growing rapidly, of course, affect the business world, as seen from the efforts of a company to expand its business in order to develop the business. The development of a business by expanding certainly requires a large amount of funding, one of the ways that can be done to obtain funding to fund this development is through activities in the capital market.¹ Through business facilities in the capital market, there is a convincing potential to obtain large amounts of funds which can also optimize the use of funds from the public. In this case it can be said that the community has an important role for transactions to be carried out in the capital market, the community can be categorized as an investor.² In the Capital Market activities, a Limited Liability Company ("**Company**") will trade a security in order to obtain additional capital for the Company, where the securities will be issued to the public. First, if a company wants to be part of the running of activities on the capital market and of course trades securities on the stock exchange, it must register the securities.³

Furthermore, the companies that want their companies to be listed in securities but have experience problems complying with the provisions in force, then these companies can first conduct an initial public offering or IPO through the primary market, which consists of stages that can be categorized as quite long, namely pre-emission, emission stage and after emission.⁴ Having listed securities by the Company, of course, will provide many advantages, but in carrying out the process of listing securities, it certainly has various challenges, the company must first fulfill the terms and conditions set by the Indonesia Stock Exchange ("**IDX**") as the regulator of the stock exchange and the rules determined by the Financial Services Authority or OJK as the capital market supervisor. The IDX explained that only companies that have gone public and companies that have gone through the IPO process can be listed on the stock exchange.⁵ Of course it is not that easy for a company to go through the securities listing process, because each of these companies must also comply with the provisions under Law Number 8 of 1995

¹ Asril Sitompul, 2001, *Pasar Modal: Penawaran Umum dan Permasalahannya*, Bandung: PT. Citra Adya Bakti, p. 2 dan p. 20

² Irsan Nasarudin et.all, 2004, *Aspek Hukum Pasar Modal*, Jakarta: Kencana Prenada Media Group, p.165.

³ Hamud M. Balfas, 2006, *Hukum Pasar Modal Indonesia*, Jakarta : PT Tatanusa, p. 19- 20

⁴ Irsan Nasarudin, *Op.Cit*, p. 216-219

⁵ *Ibid*, p. 10

concerning Capital Markets ("**Capital Markets Law**").

Capital market activities in Indonesia are certainly increasing and growing, based on Listing Activity on the IDX website, companies that have conducted an IPO from 2019 to 2022 have reached a total of 209 companies.⁶ Several companies that have carried out an IPO certainly feel a positive impact, namely improving the company's financial records, getting benefits, increasing the amount of profit and increasing the size of the business, and the company's position in society.⁷ In 2022, the overall economic recovery will increase and have a rapid impact on activities in the Indonesian capital market related to raising funds from investors. The number of companies that are ready to carry out activities on the public market in the coming quarter, illustrates that carrying out an IPO will certainly have a positive impact on the company, linked to the overall economic recovery and the increasing number of investors, influencing the development and activity of funds in the capital market.⁸

The IPO process, as the author has described above, in practice, of course, a company that wants to be listed will go through a difficult process for the company.⁹ Some of the difficulties that will be faced by the Company are as follows:

- a. There are several terms and conditions of the securities listing procedure that must be met by the Company, starting from submitting a registration statement, obtaining opinions from related institutions and other capital market supporting professions (as stipulated in Article 70 of the Capital Market Law);
- b. The implementation of the IPO takes quite a long time, in order to fulfill all the requirements and other stages that must be fulfilled by the Company's management, where the entire series is expected to be completed within 4 (four) to 9 (nine) months or may exceed the provisions time;
- c. The implementation of an IPO that requires large funding, the company must incur costs consisting of fees for paying legal support institutions and professionals to provide information or statements letter that will be used for the IPO and to fulfill the principle of

⁶Bursa Efek Indonesia, "*Aktivitas Pencatatan*", <https://www.idx.co.id/perusahaan-tercatat/aktivitas-pencatatan/> di akses pada 10 Oktober 2022

⁷ Irsan Nasarudin, *Op.Cit*, p. 214

⁸Ahmad Nabhani, 15 Juli, 2022, "*IPO di Indonesia Tertinggi di Asia Tenggara*" <https://www.neraca.co.id/article/165588/ipo-di-indonesia-tertinggi-di-asia-tenggara> di akses pada 10 Oktober 2022

⁹ David N. Feldman, 2006, *Reverse Megers: Taking a Company Public without IPO*, New York Bloomberg Press, p. 1

transparency.

Against the constraints as the authors described above, there is an alternative to conducting an IPO, namely by corporate action which is an attempt to gain access to the capital market and the stock exchange with all the facilities indirectly, but through other companies that have been listed on the stock exchange. This is known as a Backdoor Listing which will certainly be very profitable for companies on a small scale, as well as companies that do not meet the requirements to conduct an IPO, especially for companies operating in vulnerable and frequently changing markets (*volatile and frequently changing markets*).¹⁰ Backdoor Listing involves two parties, namely an unlisted company that will make itself listed on the stock exchange and a listed company that acts as a "vehicle" to turn the unlisted company into a listed company without going through an IPO.¹¹ Regarding the backdoor listing, there are several corporate action strategies that can be carried out, namely the mechanism of reverse merger, reverse takeover, and rights issue. The implementation of the Backdoor Listing which will be discussed in this study is carried out using the company takeover method through acquisition or reverse takeover. Backdoor Listing is of course the best choice for private companies compared to having to do an IPO, because by doing Backdoor Listing a company will get several benefits, namely: a. The implementation time for the Backdoor Listing is quite short compared to the implementation of an IPO, because the Backdoor Listing preparation process does not really require a long bureaucracy; b. There is no need for other costs to gain access to the stock exchange for a company; c. Acquisition (in the context of Backdoor Listing) of a company that was previously closed to become a public company that is listed and can enjoy profits on the stock exchange; d. The company does not need to disclose excessive data, because some things can weaken the company or certain information is not known to the opposing company.

This Backdoor Listing action certainly raises concerns because it is not balanced with a regulation regarding this corporate action, it is feared that in the implementation of the Backdoor Listing there will certainly be legal loopholes that

¹⁰ Erik P. M. Vermeulen "Rules on Backdoor Listing: A Global Survey", Indonesia - OECD Corporate Governance Policy Dialogue, Desember 2014, p. 8

¹¹ Philip Brown, Andrew Ferguson, dan Peter Lam, "Choice Between Alternative Routes to Go Public: Backdoor Listing versus IPO", Accounting and Finance Association of Australia-New Zealand, Juli 2010, p. 2.

have the potential to harm various parties. In carrying out Backdoor Listing activities, the role of a Notary as a supporter of the Capital Market is also very necessary. In this regard, the author wants to conduct research related to whether there is a regulation that has regulated corporate backdoor listing actions and guidelines for implementing backdoor listings for notaries as one of the supporting professions for the capital market in Indonesia. As for the topics of discussion that the author will describe and be thorough in writing this research, namely: 1) How are the arrangements related to Backdoor Listings in the capital market in Indonesia? 2) What are the arrangements for the role of a Notary as a capital market supporting profession in Backdoor Listing corporate actions?

In making this journal, found several journal articles that have similarities. Some of them are journals entitled "Implementation of The Good Corporate Governance at the Backdoor Listing Procedure as Means of Business Development in The Indonesia Stock Market"¹², "The Urgency of Establishing Backdoor Listing Regulations in Acquisitions Through the Indonesian Capital Market: Reflecting on Hong Kong"¹³ and "Backdoor Listing: Authority of Business Entities and MSMEs to Conduct Initial Public Offerings Without Going Through the IPO Process".¹⁴ There are differences between the three journals and this journal. Where the three journals above with this journal have in common, namely discussing related Backdoor Listings. However, this journal is more focused on the role of a notary in backdoor listing corporate actions. Thus, although there are related research areas, the focus of these journals and this journal is different.

2. Literature Review

1) Capital Market

The capital market is a facility provided for conducting meetings of financial instruments which are usually long-term (approximately one year), this meeting is carried out between requests and offers of these instruments.¹⁵

¹² Yudho Taruno Muryanto et. al., "Implementation of The Good Corporate Governance at the Backdoor Listing Prosedur as Means of Business Development in The Indonesia Stock Market", Yustisia, Vol. 5 No.3, September - Desember 2016

¹³ Achdan Wafi et.al., "Urgensi Pembentukan Regulasi Backdoor Listing dalam Akuisisi Melalui Pasar Modal Indonesia: Berkaca dari Hongkong", BLS Journal of Law and Business, Desember 2020.

¹⁴ Yoga Partamayasa, " Back Door Listing: Kewenangan Badan Usaha dan UMKM Untuk Melakukan Initial Public Offering Tanpa Melewati Proses IPO", Media Iuris, Vol. 3 No. 3, Oktober 2020.

¹⁵ Mohamad samsul, 2006, *Pasar Modal dan Manajemen Portofolio*, Erlangga, jakarta, p. 43

The capital market is the entire market composed of institutions that trade on credit notes, including long-term deposits, bonds and stocks.¹⁶ The Capital Market Law defines the capital market as activities related to public offerings and securities trading, public companies related to the securities they issue, as well as institutions and professions related to securities.¹⁷ The capital market has a function as a medium for obtaining funding or as an alternative for companies to obtain capital from the public or investors. Business development of a company, usually comes from funds that the company gets from activities in the capital market, or by expanding the business, adding working capital and so on. The capital market of course also has a useful function for the public to increase the desire and interest to invest in financial instruments.

Based on Rusdin's opinion in his book explaining the role of the capital market, namely: 1) Capital market as an alternative allocation of funds from several investors which is carried out efficiently; 2) is an alternative to invest; 3) Investors will be presented with companies with the best prospects and own companies with share ownership; 4) Implementation of company management that is guaranteed to be professional and transparent; 5) Helping to increase national economic activity.

2) *Backdoor Listing*

Indonesia has not regulated explicitly regarding Backdoor Listings, therefore there are also no laws and regulations that provide a definition of Backdoor Listings. There are some definitions of Backdoor Listing according to international doctrine below. Morris Viljoen explained what is meant by Backdoor Listing is a method of registering a business on the stock market without going through an IPO.¹⁸ If in Carlos' opinion he explains that regarding Backdoor Listing is where a company obtains listing indirectly by using an existing registered company for listing.¹⁹ As well as in Pengcheng's opinion the implementation of Backdoor Listing is where a company acquires a listed company and uses it as a 'shell', to give its own assets into a public

¹⁶ Ridwan S et.al., 2002, *Manajemen Keuangan*, edisi kedua, Jakarta, Prehalindo, p.374

¹⁷ Indah Yuliana, 2010, *Investasi Produk Keuangan Syariah*, UIN Maliki press, Malang, p. 92

¹⁸ Morris Viljeon, Sibiya, 2007, *Longman Dictionary of Financial Terms*, Pearson, South Africa, p. 10

¹⁹ Carlos Correia et.al, "Financial Management", United State: Juta and Company Ltd, 2007, p.10

company.²⁰ In this way, its shares can be listed on a public stock exchange without going through the regulatory and investor scrutiny required for an initial public offering.

Some companies that have implemented backdoor listing wish to benefit from companies that are already listed on the stock exchange without having to go through the IPO procedure first. Backdoor listing can be carried out by companies by means of reverse merger, reverse takeover or rights issue.²¹ Several descriptions of the implementation of the Backdoor Listing can be described in the procedure for carrying out the Backdoor Listing, namely: 1) A private company merges with a public company, where the main business activity is the company's activities from a public company (reverse merger);²² 2) A private company can acquire outstanding stock of a public company (reverse takeover);²³ 3) Acquisition of a public company, when the public company increases its capital by conducting a Rights Issue.²⁴ In fact, apart from the procedures described above, there are various ways to carry out Backdoor Listing, and with the passage of time there will be more and more other ways to carry out Backdoor Listing corporate actions, apart from acquisitions and mergers. And other ways of conducting backdoor listings besides conducting mergers and acquisitions can also be developed.

3) Notary

According to Article 1 number 1 of Law No. 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary ("UUJN"), a Notary is a public official who makes authentic deeds and has other authorities as referred to in this law or under other laws. Furthermore, the existence of a notary in the capital market is also regulated in Article 64 of the Capital Markets Law, where in the article states that a notary is one of the

²⁰ Chen Yang, 8 Agustus, 2011, "China tightens regulations on backdoor listings" <https://www.globaltimes.cn/content/669824.shtml> diakses 14 Desember 2011

²¹ Hukumonline, 23 Februari, 2013, "BEI: Backdoor Listing Merupakan Aksi Korporasi" <http://www.hukumonline.com/berita/baca/lt512df50453f29/bei--backdoor-listing-merupakan-aksikorporasi>, diakses pada tanggal 28 maret 2015.

²² Prof Morris Viljeon, Sibiya, *Op.Cit*, p. 10

²³ Charles Scharf et.al, 1985, "Acquisitions, Mergers, Sales, butouts, and Takeover", Third Edition, Pretince-Hall Inc, New Jersey, p 2-6

²⁴ Eduards Tandelilin, 2010, *Protofolito dan Investasi Teori dan Aplikasi*, Kanisius, Yogyakarta, p. 74

actors in the capital market and is one of the supporting professions for the capital market. As a profession, a notary in carrying out his duties must follow the provisions of the applicable laws and regulations and the Notary Code of Ethics.

In carrying out his duties as a Notary, of course, he must pay attention to the code of ethics, because the code of ethics is very important for the Notary profession and is a nature and the character of a Notary to carry out his work which is oriented towards legalization, and the legal relationship with the status of property and determines the rights and obligations of the client who have used the services of a Notary. The code of ethics is also useful for avoiding injustice from the consequences of granting status which is feared not to be the same as what has been prescribed and is a legal principle, so that it will result in chaos in public order or individual rights in society, therefore it is important for a Notary to pay attention to the professional code of ethics.²⁵

The existence of a code of ethics can provide limits to Notaries in carrying out their duties in accordance with applicable law, Notaries in carrying out their work must also be responsible for the documents (notary deeds) that will be made, both civil, administrative, and criminal liability. If the notary is sued by a related party due to experiencing a loss due to a decrease in the power of the notary deed to become a private deed, of course the notary can be subject to civil sanctions for this action. The notary may be subject to administrative sanctions in the form of a verbal or written warning, and a temporary dismissal or a respectful or disrespectful discharge, if proven to have violated the provisions stipulated by law. Furthermore, if in making a notary deed, a Notary is proven to have committed a crime, of course a Notary can be subject to criminal sanctions in accordance with the Judge's decision.²⁶

3. DISCUSSION

A. Backdoor Listing in the Capital Market in Indonesia

²⁵ Munir Fuady, 2005, *Profesi Mulia (Etika Profesi Hukum bagi Hakim, Jaksa, Advokad, Notaris, Kurator dan Pengurus)*, Bandung: Citra Aditya Bakti, p. 133.

²⁶ Williana Halim, "Peran Notaris Pasar Modal Dalam Proses Pelaksanaan Go Private Sebuah Perusahaan Terbatas", *Premise Law Journal*, 2016, p. 15-16

Backdoor Listing based on the translation of the meaning according to the IDX is a corporate action by acquiring a private company for a public company (companies that have gone public). The companies in carrying out Backdoor Listings aim to be able to expand their funds, especially in conducting rights issues or when issuing an ordering right when it will be issued by the issuer of new shares. It should be noted that a company in making an acquisition certainly has economic benefits for the company, namely the company has the right to be able to control and decide company policies according to the target. According to some parties, Backdoor Listing is considered to be able to increase a company's capital apart from having to first go through an IPO. The implementation of Backdoor Listing on the capital market in Indonesia several times and is often carried out by several companies. Some examples are PT AirAsia Indonesia Tbk, which entered the capital market through a public company, PT Rimau Multi Putra Pratama Tbk and PT Indoritel Makmur Internasional Tbk (DNET) through PT Dyviacom Intrabumi Tbk.²⁷

The implementation of Backdoor Listing is a strategy and effort made by the Company by acquiring other companies and public companies whose shares have been listed on the stock exchange, so that, the companies that have acquired have the opportunity to be involved in stock exchange activities.²⁸ Therefore, a private company that makes acquisitions of a public company will become a public company and is useful for adding capital from the company. When compared to an IPO, Backdoor Listing activities do not yet have regulations that are strictly regulated by law or other regulations in Indonesia's positive law. The technicalities of conducting an IPO are clearly regulated in the Capital Market Law and the Regulations of the Capital Market Supervisory Agency (Indonesian abbreviation is "BAPEPAM", now replaced by the Financial Services Authority or "OJK" in Indonesia abbreviation), specifically Number IX.A.12 (Kep-05/ PM/2004) concerning Public Offering by Shareholders and BAPEPAM Agency Regulation

²⁷ Ihya Ulum Aldin, 17 September, 2021, "*Daftar Emiten Backdoor Listing: Dari Peter Sondakh hingga Salim Group*" <https://katadata.co.id/lavinda/finansial/6144380b9084c/daftar-emiten-backdoor-listing-dari-peter-sondakh-hingga-salim-group> diakses 15 Oktober 2022

²⁸ Kamaludin, Karona Cahya Susena, Dan Berto Usman, 2015, *Restrukturisasi, Merger, & Akuisisi*, Mandar Maju Bandung, p. 29

Number IX.A.8 and other regulations governing IPO.²⁹

Implicitly, in fact, the regulation of Backdoor Listing can be seen from several laws and regulations. Regulations regarding Backdoor Listings can also be detected in the Capital Markets Law, referring to the provisions of Article 84 of the Capital Markets Law which states that an issuer that merges, consolidates, or takes over another company; must comply with the provisions regarding transparency, fairness and reporting stipulated by the Capital Market Supervisory Agency (BAPEPAM), as well as Law Number 40 of 2007 concerning Limited Liability Companies ("**Limited Company Law**") which can be said to be one of the Backdoor Listing regulations. through articles relating to the takeover of the Company. For example, Article 1 number 11 of the Limited Liability Company Law defines a takeover as a legal action carried out by a legal entity or individual to take over shares of a company which results in a change in control over the company.

And finally, the Backdoor Listing arrangements can also be seen in the Financial Services Authority Regulation Number 9/POJK.04/2018 concerning Company Takeover.³⁰ Directly Backdoor Listing actions follow the provisions as mentioned above and in practice Backdoor Listing actions have a pattern similar to making acquisitions, namely the acquisition of a Company (public company) by another company (private company) and the results of this the private company will become a public company, accompanied by a change in the name and activities of the company which is likely to be the same as the acquiring company.

The Backdoor Listing action does refer to the activity of taking over shares from a company, therefore in implementing the Backdoor Listing several parties will refer to regulations regarding share acquisitions or acquisitions based on the Limited Liability Company Law. As described above, in this case the author is of the opinion that the Backdoor Listing action is a legal action which has basically been supervised by Financial Services Authority as the regulator or public institution that has the authority to oversee financial service activities.³¹

Financial Services Authority in practice has to supervise the actions of Backdoor Listings in the capital market, starting from reporting or providing information to Financial Services Authority and appealing to Companies that will

²⁹ Irfan Nasarudin, Op.Cit

³⁰ Peraturan Otoritas Jasa Keuangan Nomor 9/POJK.04/2018 tentang Pengambilalihan Perusahaan

³¹ Prananingtyas, P. & Sitepu, B.T.P., "Kritisi Atas Proses Listing, Delisting dan Relisting di Bursa Efek Indonesia", Diponegoro Private Law Review, 4(3), 2019, p. 1 - 16.

and have conducted Backdoor Listings to provide information disclosure in the form of announcements to the public, so that by doing so it is hoped that Financial Services Authority can supervise the actions of Backdoor Listings and carry out checks and investigations if there are indications of violations within the Company.

The only problem related to Backdoor Listing is regarding regulations that still do not have a compelling legal protection. Actually, Financial Services Authority itself has a discourse to form a special policy and regulation to regulate Backdoor Listing actions in the Indonesian capital market, where Financial Services Authority has conducted a study to prepare regulations that refer to common law materials and standards that apply internationally, however, until 2022, there is no specific regulation for Backdoor Listing. In fact, the discourse on making arrangements for Backdoor Listing has been carried out since 2013-2015, however, there were several obstacles and other considerations regarding the implementation of this discussion by the Financial Services Authority, in which the Financial Services Authority thought that in fact there was no need for special regulations for Backdoor Listing activities because it was not yet a risk. However, according to a capital market observer, Reza Priyambada, the absence of clear regulations regarding backdoor listings in Indonesia raises uncertainty as to whether it is permissible under Indonesian law.³²

Even though in practice Backdoor Listing activities do not have separate legal provisions in capital market practices in Indonesia, Backdoor Listing activities are interpreted as permissible, because Backdoor Listings are basically the act of acquiring companies that do not meet the requirements to be able to go for an IPO or conduct an initial offering. So, it can be said that if you want to see the legal construction of Backdoor Listing actions on the capital market in Indonesia, some parties can refer to and follow the norms in the regulations for share acquisitions or acquisitions which explicitly regulate Backdoor Listings.

Backdoor listings are recognized by several parties as a legal act that can benefit the company, especially in capital market practices in Indonesia, so that the existence of a backdoor listing is not considered a legal conflict in conducting a public offering or IPO based on positive law in Indonesia. The Backdoor Listing

³² Rina Anggraeni, 16 Februari, 2021, "*Sobat Investor, Simak Yuk Penjelasan Mengenai Backdoor Listing*" <https://www.idxchannel.com/economics/sobat-investor-simak-yuk-penjelasan-mengenai-backdoor-listing> diakses pada 13 Desember 2022

action referring to the previous explanation is actually another way for companies that wish to conduct a public offering but without having to first conduct or enter an IPO process which is technically complicated and requires funds and a long time, and has the potential to fail during the IPO process.³³ However, it needs to be reiterated, even though the Backdoor Listing action has received a good response from several parties and has had a positive impact on the company, the absence of specific arrangements regarding Backdoor Listing certainly affects data collection or recording of data on how many companies have carried out these corporate actions and not there are regulations that will deal specifically if there is a loss for several parties due to Backdoor Listing actions. Meanwhile, the negative side of Backdoor Listing is that it looks unfair, not transparent and therefore the public tends to have a negative view of Backdoor Listing as a corporate action.³⁴

B. The Role of a Notary as a Capital Market Supporting Profession in Backdoor Listing Corporate Actions

A limited liability company in carrying out corporate actions certainly aims to obtain funding from the capital market mechanism, because corporate actions will definitely have a positive impact on the running of a company which has an impact on the company's own finances.³⁵ In carrying out activities related to the capital market in Indonesia, every company needs a party that will support these activities, including the importance of the presence of a Notary. Notaries must first obtain a Registration Certificate (Indonesian abbreviation is STTD) issued by the Financial Services Authority, if they have received the letter a Notary can carry out corporate actions in a series that will be given by the issuer. The obligation of Capital Market Supporting Professionals to carry out registration is strengthened again by the existence of the Financial Services Authority Regulation Number 67/POJK.04/2017 concerning Notaries who carrying Out Activities in the Capital

³³ Adityadarma Bagus Priasmoro et.al., "Multidicipinary Review on The Effects of Backdoor Listing Action Against Standby Purchaser (Acquisitor Company)", Jurnal Dinamika Hukum, Vol. 20 Issue 1, January 2020, p. 12

³⁴ *Ibid.*, p. 14

³⁵ Bella Ratna, "Peran Notaris Pasar Modal Dalam Pelaksanaan Aksi Korporasi Berupa Penawaran Umum Terbatas Dengan Hak Memesan Efek Terlebih Dahulu (HMETD) Pada PT. X Tbk." 2015, p. 3

Market.³⁶ The obligation to register a notary public is intended so that public institutions that will oversee the running of the capital market in Indonesia can oversee the services that will be provided by the capital market notary profession, seeing independence which of course will maximize protection for investors or other parties who take part in activities in the capital market.³⁷ After registering, the Notary is also supervised by the Financial Services Authority by carrying out inspections and investigations of Notaries who are suspected of committing violations in the capital market sector and imposing sanctions if the Notary is proven to have committed an offense.³⁸

II. Results and Discussion

a. Providing legal protection against misuse of personal data is a perfect form of crime to provide legal certainty to the public

The rapid advancement of technology in the millennial era, especially buying and selling online, is inevitable from problems, especially regarding the protection of personal data (Dewi, 2016). Misuse of personal data can be misused due to negligence of the recipient (company) in daily activities. For example, by buying a starter pack and then asking the meter to register, downloading an app, adding personal data to platforms or forms, the meter can be abused and tampered with. In addition, due to the rapid development of science and technology, the most popular technology today is related to big data. Big data is considered as an important data processing solution because it can process large and varied data and make simple applications such as the use of big data not only by the government but also by private companies. Large companies use this as an attempt to understand customer characteristics such as loyalty, visit factor, purchase history, etc. to help them buy a product or service. On the other hand, it cannot be denied that the misuse of big data threatens privacy. For example, confusion when having to register personal data

³⁶ Peraturan Otoritas Jasa Keuangan Nomor 67/POJK.04/2017 tentang Notaris yang Melakukan Kegiatan di Pasar Modal

³⁷ Hamud M. Balfas. *Op.Cit*, p. 235.

³⁸ Juli Asril, "Notaris sebagai Peejabat Umum dalam Pembuatan Akta Otentik dan Peranannya dalam Pasar Modal" LPPM STIE Muhammadiyah Bandung, Vol. 2 No 2 Mei - Agustus 2018, p.2 16

such as identity cards (KTP) or family cards (KK). Another example is the history of online motorcycle taxi applications which have the potential to leak and lose data. Based on the results of research conducted (Rosalinda, 2014) states that: The government and non-governmental organizations as well as law enforcement and the public must maintain high integrity in order to obtain benefits, justice and legal certainty from data protection. Each country has different personal data requirements such as the United States, Canada and Australia use the term personal information, while countries in the European Union and Indonesia use personal data. Furthermore, the need to protect personal data can be considered as part of human rights regulated in law in article 12 no. 39 of 1999 where everyone has the right to protection for personal development in educating and improving the quality of life, being responsible, happy and prosperous in accordance with human rights (Day, 2021). When a crime occurs or a crime is reported, the reporter immediately conducts an investigation to find out the extent of the incident. Notifications can be made in writing, signed by the complainant, or can be given orally (Purnomo, 2020). Therefore, in case of irregularities, the two Indonesian citizens will be tried according to Indonesian law and subject to courts of Indonesian law. Protection of personal data, particularly regarding the use of personal data information through electronic media is regulated through article 26 of amendments to the ITE Law, which regulates the use of personal data by other parties must be subject to the approval of the owner of the personal data (Ni ketut et al., 2019). Therefore the Personal Data Protection Bill must be passed immediately, bearing in mind that many other countries have regulated the protection of personal data. As a comparison, in the UK the protection of a person's identity was regulated in 2000 through the Data Protection Act 1998, the implementing body is called the data protection commissioner which has the duty to pay attention to all people who use data who manage personal data. Based on Article 14 of the Data Protection Act 1998, it is explained that if the court finds that the personal data processed by the data controller is inaccurate, the court can order the correction, obstruction, deletion or damage of the data. Those who are

directly affected by the processing of personal data can ask the Board of Commissioners to evaluate the process to determine if it complies with the provisions of the Data Protection Act 1998 (Sautunnida, 2018). There are internationally recognized privacy and personal data principles. These principles are the foundation for modern national data protection laws. One of the international instruments that protect privacy and personal data was issued by the Organization for Economic Co-operation and Development (OECD). In addition, the Council of Europe (CoE) adopted the European Convention for the Protection of Human Rights (ECHR) in 1950 (Dewi et al., 2018).

So far, there is no policy or regulation in Indonesia that specifically regulates the protection of personal data, where various laws and regulations have been regulated separately, so that a law is needed that regulates comprehensively regarding the misuse of personal data. Various laws and regulations now apply to the protection of personal data, including: Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning ITE; and Government Regulation Number 82 of 2012 concerning Electronic System and Transaction Operators; Given the regulation and protection of personal data in various countries, it is only natural that the Indonesian state compares and analyzes in detail the provisions for combating data misuse, which is the most appropriate form of crime from a cyber law perspective. This means that it is not enough just to examine the interaction of the parts in the legal system. Article 28 of the 1945 Constitution states: "Every person has the right to protection for himself, his family, honor, dignity and property, has the right to protection from fear and danger, to a sense of security". Meanwhile, Articles 26, 30 to 33, 35 of the ITE Law have been regulated. Where in article 26 of the ITE Law it is stated that the use of personal data in electronic form must be based on the consent of the data subject, and losses caused by misuse of personal data can be recovered unlawfully through negotiations, or settlement of cases with demands for compensation. As mentioned above where the provisions of Article 26 (2) of the ITE Law, criminal provisions have not been regulated, so it is necessary to formulate

norms by adding criminal sanctions, so as to provide a deterrent effect even though the criminal sanctions are as a last resort (ultimum remedium). Article 26 of the Electronic Information and Transaction Law states that one of the rights of individuals is the protection of their personal information. Collecting information in accordance with government systems and regulations no. 82 of 2012 concerning Electronic Services; The care remains real and human life is protected. The ITE Law has regulated data protection including wiretapping, where wiretapping is an act that may not be carried out, not belonging to groups that have the right to do so in the context of legal action. When viewed from the explanation of Article 26 of the ITE Law, there are weaknesses, namely the absence of legal protection for the owner of the data used by the organizers or service providers with the aim of making a profit. The Law on Information and Electronic Transactions only mentions the subject of personal data protection (general provisions) without following up on the implementation of said protection. These weaknesses are things that must be corrected for the realization of legal objectives, namely maintenance and assurance of order (certainty) and order, therefore it is necessary to reformulate existing legal norms. Through the provisions of Article 28J paragraph (2) of the 1945 Constitution and the Supreme Court Decision through decision No. 6/PUU-VIII/2010 and Number 006/PUU-I/2003 which stated their views regarding the protection of privacy that must be protected by the state. However, in terms of legal interests, these rights can be reduced as long as it is through a mechanism regulated in the law.

In Article 1 point 28 of Law no. 10 of 1998 concerning Banking explained that bank secrecy is everything with information about depositors and their deposits. Based on Article 40 of Law no. 10 of 1998 concerning Banking explains that information regarding depositors and their savings must be kept confidential by the Bank, except in the circumstances referred to in Article 41, Article 41A, Article 42, Article 43, Article 44, and Article 44 A. The exceptions referred to are tax purposes, settlement of bank receivables, trials in criminal cases, as well as based on request, approval or power of attorney from depositors, with certain procedures. In principle,

bank secrecy is an asset of trust in the community, so that the community has an assessment for the bank about the ability to maintain the confidentiality of its customers, so that the community will feel safe to keep their funds in the bank (Marnia, 2014). In Article 22 of Law no. 36 of 1999 concerning Telecommunications stated that everyone is prohibited from carrying out actions without rights, illegal or manipulating: (a) accessing telecommunications networks; and/or (b) provide access to telecommunication services; and/or (c) provide access to special telecommunication networks. Furthermore, in point III. E.9 Bank Indonesia Circular Letter No. 18/22/DKSP dated 27 September 2016 concerning the Implementation of Digital Financial Services regulates the implementation of digital financial services (LKD) for Banks and Non-Banks, a cooperation agreement between digital financial service providers and agents stating that all data obtained from digital financial institution agents must be kept confidential by the organizers of the digital financial institution. The word ownership in this provision results in an interpretation of the transfer of ownership from personal data holders to digital financial institution administrators. This becomes a legal issue because personal data should belong to the owner of the personal data, then point V.F.2 SEBI 18/22 regulates data confidentiality, so the registration form must have a statement regarding submission of personal data which may only be used for registration purposes by digital financial institution operators. only the agent of the digital financial institution and the approval of the prospective holder can disclose the identity to the organizer of the digital financial institution. These provisions can be used on the grounds that the notification has been fulfilled without requiring further action (Setyawati, 2018). Therefore, it is necessary to reformulate these regulations against legal norms, so that what is aspired to regarding legal objectives can be achieved. At present Indonesia also has a Personal Data Protection Bill, with the aim of combining privacy regulations on scattered personal data into a separate law with the aim of providing boundaries between rights and obligations regarding the acquisition and use of personal data. Article 29 of the Draft Law on Personal Data Protection states that (1)

every owner of personal data and the operation of an electronic system can submit a complaint to the Minister regarding the failure to protect the confidentiality of personal data. (2) the complaint referred to in paragraph (1) is intended as an effort to resolve disputes through deliberation or through other alternative settlement efforts. (3) The minister can coordinate with the head of the supervisory agency and sector regulator to follow up on the complaints as referred to in paragraph (1). Furthermore, Article 30 states that (1) The Minister delegates the authority to resolve personal data disputes as referred to in Article 29 to the Director General. (2) The Director General may form a personal data dispute resolution panel. Pursuant to Article 32 which states that (1) in an effort to resolve disputes through deliberation or through other alternative settlement efforts that have not been able to resolve disputes over failures to protect the confidentiality of personal data, each owner of personal data and the operation of an electronic system can file a lawsuit over a failure to protect confidential personal data . (2) the lawsuit referred to in paragraph (1) is only in the form of a civil lawsuit and is filed in accordance with the provisions of the laws and regulations. From the provisions contained in the Draft Law on Personal Data Protection, the researcher believes that it is necessary to reformulate the legal norms contained in the articles, because the provisions regulated in the Draft Law on Personal Data Protection are seen as too bureaucratic. and the process to obtain legal certainty will be very long, convoluted and uncertain. In Indonesia, legal protection for personal data is still considered not optimal, this can be seen from the fact that there is still a lot of misuse of personal data without the knowledge of the owner due to the lack of strict security and supervision from data users. Regarding legal protection, the use of personal data is inseparable from the obstacles that will be faced, for example, difficulties in tracking down the main perpetrators and proving them, difficulties in handling them, etc. Boelewoekli is of the view that the direct involvement of the government and laws in personal data issues is something that is needed, especially in resolving disputes that arise in the field of telematics (Mega and Endang, 2017). Until now, there is no comprehensive

specific law that regulates the protection of personal data, in the sense that these regulations are not scattered or regulated in several provisions or regulations as currently exist. Currently, if a case occurs, the legal arrangements will only refer to the law governing the misuse of personal data and several other laws and regulations, but generally what is always referred to is the ITE Law. The absence of a clear form of legal certainty regarding the misuse of personal data will result in financial security which impacts the welfare of the community (Rudi, 2019). Based on the description above, the protection of personal data is a shared responsibility, both the community, both individuals and legal entities and the government. Because it is impossible to rely only on the prudential attitude of the people, but there must be a role for the government in making legal policies with the aim of providing protection to the community. These efforts can be through preventive efforts and repressive efforts. Preventive efforts, for example, are careful in providing personal data and monitoring efforts. There are two parties that are able and have the opportunity to carry out mass surveillance, namely the private sector and the government. Private parties can come from online content and service providers, internet service providers or internet infrastructure owners (Muhammad, 2019). This is because currently regulations related to personal data in general are still partial and sectoral. Protection of privacy data as part of respecting the right to privacy must begin by providing legal certainty. Therefore, guarantees for the protection of privacy data must be placed in a legal instrument that has the highest power, namely the constitution, because the Constitution or the Constitution is the highest legal instrument in a country. Legal certainty (legality principle) is necessary and cannot be ruled out in the context of law enforcement by every country. The state's step in providing legal certainty is to stipulate and guarantee these rights in the constitution, then through this instrument the character of a country can be seen about what matters are put forward, what legal system is used and how the government is regulated (Natamiharja, 2019), thus, it is time for the Indonesian state to have clear regulations on the protection of personal data. Based on this definition, three stages

of criminal law enforcement are established: where the legislative power is to decide what can be punished, the judicial power is to apply criminal law and the executive power is to embody criminal law (Na'im, 2019).

III. Conclusion

Backdoor Listings have received a good response from several parties and have had a positive impact on the company, however, in practice, Backdoor Listing activities do not have separate legal provisions in the practice of capital markets in Indonesia. Backdoor Listing is interpreted as permissible, because Backdoor Listing in this case is an act of acquiring a Company which has not met the requirements to be able to IPO or conduct an Initial Public Offering, so that several parties can refer to and follow the norms in the regulations for share acquisition or acquisition activities which explicitly regulate regarding Backdoor Listings. However, in the absence of specific arrangements regarding Backdoor Listings, it certainly affects data collection or data recording, namely how many companies have carried out these corporate actions and there are no regulations that will deal specifically if there is a loss for several parties due to Backdoor Listing actions. Some of the powers exercised by a Notary in the capital market sector, are not much different from the duties and powers of a Notary in general, such as making and managing Articles of association of the Company, official report of GMS with an agenda for implementing Backdoor Listings and other agreements related to capital market. In the process of Backdoor Listing, a notary in the capital market is of course obliged to pay attention to whether the changes made in the Company's Articles of Association (AoA) comply with the provisions of laws and other regulations, both the provisions that apply to the Exchange and other provisions that apply to the Company. Broadly speaking, there are no provisions or guidelines for Notaries regarding the implementation of Backdoor Listings in Indonesia.

Suggestion

1. In order to launch and have a positive impact on the capital market in Indonesia, of course there must be contributions from the government and

other related institutions in making rules and/or regulations for the implementation of Backdoor Listings in Indonesia, in order to provide legal protection for Investors and Companies.

2. The government must also make regulations for Notaries as supporting capital market activities, especially in the implementation of Backdoor Listing corporate actions, in order to provide legal protection and provide guidelines for the validity of the deeds that will later be made by Notaries.

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