Legal Protection for Public Shareholders on Forced Delisting of Securities by the Indonesian Stock Exchange

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Abstract

This study discusses the legal protection for public shareholders in the event of a forced delisting. This legal protection includes sanctions for public companies that fail to fulfill their legal obligation to repurchase all public shares. The novelty of this research lies in the fact that it not only examines the legal protection for investors that is normatively regulated by law but also delves into the legal responsibility for the losses suffered by investors as public shareholders when a public company fails to repurchase public shares following a forced delisting. The research employs a normative juridical method using a literature review of primary and secondary legal materials. The legal responsibility of a public company for investor losses is based on an unlawful act (onrechtmatige daad) committed by the public company for not fulfilling its legal obligation to repurchase all public shares as stipulated in OJK Circular Letter Number 13/SE.OJK.04/2023. The results show that investors have the right to legal protection in the event of a de-listing. These protections include the company's obligation to buy back all public shares, which is regulated in OJK Regulations. If the company does not fulfill this obligation, investors may suffer losses that can be remedied through administrative sanctions from OJK, such as warnings, fines, or revocation of business licenses. Companies that fail to fulfill their buyback obligations are considered to have committed an unlawful act and are liable for any losses suffered by investors. Therefore, listed companies need to be more compliant with capital market regulations to maintain investor confidence and market stability, as well as protect the rights of public shareholders.

I. Introduction

Referring to the Indonesian Capital Market Statistics compiled by the Indonesian Central Securities Depository (KSEI), as of July 31, 2024, there were 13,346,470 investors who invested their funds in the Indonesian Capital Market, either investing in equity securities such as stocks or debt securities such as bonds or SUN.[1] This number is much greater than the number of Indonesian capital market investors as of January 31, 2021, which only amounted to 4,223,280. While the significant increase in capital market investors positively impacts the national economy, it also imposes a legal obligation on the state to safeguard the investor community's interests from detrimental practices, as stated in letter d of Law number 8 of 1995 concerning the capital market.

The capital market serves as an alternative financing source and a long-term funding source for companies that require additional capital, raising funds from the public to purchase financial instruments in the market.[2] Conversely, the capital market gives fund owners the chance to earn investment returns based on the chosen instrument's characteristics.[3] The capital market provides alternative investment instruments that enable investors to generate potential profits based on calculated risks, such as openness, liquidity, and investment diversification.[4] The capital market promotes income equality and wealth distribution by enabling the public to own a portion of the company through the ownership of securities in the form of shares.

Companies that sell some of their shares through an initial public offering in the capital market get other benefits in addition to obtaining an injection of funds in the form of public capital participation. Companies that have conducted IPOs also get benefits in the form of income tax reduction incentives from the state. According to Article 65(1) of Government Regulation Number 55 of 2022, which is about Making Changes to Income Tax Rules, Public Companies can get a rate that is 3% (three percent) lower than the income tax rate set by Law Number 7 of 2021, which is about Harmonization of Tax Regulations.[5] The Stock Exchange in Indonesia must trade at least 40% (forty percent) of the total paid-up shares. According to Article 65 paragraph (1), at least 300 (three hundred) parties must own the shares traded on the stock exchange. Public companies that comply with these provisions are required to pay an income tax rate of 19%, a reduction of 3% from the standard rate of 22%.

The POJK Number 3/POJK.04/2021, which pertains to the Implementation of Activities in

[1] KSEI, "Statistik Pasar Modal Indonesia" (Jakarta, 2024).
[2] Mas Rahmah, *Hukum Pasar Modal* (Jakarta: Prenada Media, 2019).
[3] Rahmah.
[4] Tjiptono Darmadji, *Pasar Modal Di Indonesia: Pendekatan Tanya Jawab* (Salemba Empat, 2001).
[5] Pemerintah Pusat, "Peraturan Pemerintah Republik Indonesia Nomor 55 Tahun 2022 Tentang Penyesuaian Di Bidang Pajak Penghasilan," Pub. L. No. 55, 66 37 (2022).

the Capital Market Sector, contains normative regulations regarding the capital market.[6] The Financial Services Authority (OJK) regulates capital market activities based on the attribution authority from Law Number 21 of 2011,[7] which gives the Financial Services Authority the task of regulating and supervising financial services activities in the capital market sector. The second part of Financial Services Authority Regulation Number 3/POJK.04/2021, specifically Chapter XII, governs the transition from a public company to a private company.[8] The legal consequence of changing the status of a public company to a private company is the cancellation of the Indonesia Stock Exchange securities listing (delisting). Article 64 paragraph (1) of the POJK aquo regulates the obligations of issuers that change their status to a closed company. Public companies are obliged to buy back all public shares so that the number of shareholders is less than 50 (fifty) parties or other amounts determined by the Financial Services Authority as Article 64 paragraph 1 letter b.

The course of a company's business after a public offering of shares does not always run as planned in the prospectus; these problems include financial problems, legal problems, and mistakes in business management. If a public company encounters certain problems, it may lose its eligibility to trade its shares on the Indonesian stock exchange. According to Article 68 POJK Number 3/POJK.04/2021, the Financial Services Authority authorizes the Indonesia Stock Exchange to cancel the listing of securities, also known as forced delisting, if a public company encounters a problem or condition that significantly impacts the sustainability of its business, or if it no longer meets the requirements for listing securities on the Indonesia Stock Exchange. Generally, the delisting of a company occurs when it fails to meet quantitative criteria like a lack of shareholders or company size, or qualitative criteria like bankruptcy petitions and poor governance within the company.[9]

The delisting of shares either due to the request of the public company (voluntary delisting) or due to the order of the OJK or the decision of the Stock Exchange (forced delisting) creates a legal obligation (*rechtsplicht*) for the public company to buy back all public shares. The ratio legis of the regulation is to protect the interests of shareholder investors from the risk of large losses that adversely affect the investment climate in Indonesia. The norm that regulates the obligation of public companies to buy back all public shares is a norm that is compelling (*dwingend*) so that public companies cannot deviate from this obligation in any way.

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[6] "Peraturan Otoritas Jasa Keuangan Nomor 3/POJK.04/2021 Tentang Penyelenggaraan Kegiatan Di Bidang Pasar Modal (Lembaran Negara Republik Indonesia Tahun 2021 Nomor 71, Tambahan Lembaran Negara Republik Indonesia Nomor 6663)" (2021).

[7] "Undang-Undang Nomor 21 Tahun 2011 Tentang Otoritas Jasa Keuangan (Lembaran Negara Republik Indonesia Tahun 2011 Nomor 111, Tambahan Lembaran Negara Republik Indonesia Nomor 5253)" (2011).

[8] Peraturan Otoritas Jasa keuangan Nomor 3/POJK.04/2021 tentang Penyelenggaraan Kegiatan di Bidang Pasar Modal (Lembaran Negara Republik Indonesia tahun 2021 Nomor 71, tambahan lembaran Negara Republik Indonesia Nomor 6663).

[9] Sri Agung Surya Saputra and Paramitha Prananingtyas Budiharto, "Perlindungan Hukum Terhadap Investor Atas Diberlakukannya Forced Delisting Oleh Bursa Efek Indonesia (Studi Kasus PT Davomas Abadi Tbk)," *Diponegoro Law Journal* 5, no. 3 (2016): 1–18, https://doi.org/10.14710/dlj.2016.12072.

The delisting of shares, whether by the public company's request (voluntary delisting) or by the OJK's order or the Stock Exchange's decision (forced delisting), imposes a legal obligation *(rechtsplicht)* on the public company to repurchase all public shares. The purpose of the regulation is to protect shareholder investors' interests from the risk of large losses that adversely affect the investment climate in Indonesia. The norm that regulates the obligation of public companies to buy back all public shares is a norm that is compelling *(dwingend)* so that public companies cannot avoid this obligation in any way.

The issue with the obligation to repurchase all public shares after forced delisting as stated in Article 66 paragraph (4) letter c juncto Article 69 paragraph (3) lies in the implementation of this obligation. Not all issuers whose shares are delisted fulfill their legal obligation *(rechtsplicht)* to repurchase public shares, which results in losses for investors. An example is PT First Indo American Leasing Tbk, whose shares were delisted by the Stock Exchange through decision number Peng-Del-00001/BEI.PP2/01-2021. For such legal incidents, it is necessary to study the legal protection provided by the state for investors, as well as to analyze whether a public company that does not repurchase public shares after delisting constitutes an unlawful act *(onrechtmatige daad).* A comprehensive study is needed on the legal liability of public companies if they fail to fulfill the obligation to repurchase all public shares as mandated by OJK Regulation 3/POJK.04/2021. This research focuses on the forced delisting of shares. The novelty of this study compared to similar research lies in the fact that it not only examines legal protection normatively as regulated by capital market laws but also demonstrates that public companies are responsible for investor losses due to unlawful acts *(onrechtmatige daad)* by failing to carry out the repurchase of public shares.

2. Research Method

In writing, the author uses normative juridical research. Normative juridical research explores the concept of problems within legal studies.[10] This type of research involves a literature review of legal materials, encompassing primary, secondary, and non-legal sources to address the issues under investigation.[11] Primary legal sources used in this writing include the Burberlijk Wetboek/Civil Code, Law Number 8 of 1995 concerning capital markets, Law Number 40 of 2007 concerning limited liability companies, Financial Services Authority Regulation Number 3/POJK.04/2021, Financial Services Authority Regulation Number 23/POJK.04/2021, and OJK Circular Letter Number 13/SE.OJK.4/2023. In the context of secondary legal materials, the author analyzes national and international journals that discuss the cancellation of securities listings and civil liability for losses arising from unlawful acts *(ontrechtmatige daad).* In order to enrich the substance of this writing, the authors analyze several similar cases to be

[10] Zainuddin Ali, *Metode Penelitian Hukum* (Sinar Grafika, 2021).
[11] Irwansyah, *Penelitian Hukum Pilihan Metode & Praktik Penulisan Artikel* (Yogyakarta: Mirra Buana Media, 2020).

able to answer legal issues in the phenomenon of cancellation of securities listing by the Indonesia Stock Exchange.

3. Results and Discussion

Legal Protection for Public Shareholders Against Forced Cancellation of Securities Listing by the Stock Exchange

Definition of Legal Protection

Philipus M. Hadjon argues that legal protection refers to the use of legal instruments to protect and assist the subject of the law.[12] Satjipto Rahardjo asserted that legal protection safeguards human rights from harm by others, enabling the community to exercise all the rights bestowed by the law.[13] Based on this definition, it can be interpreted that legal protection is an act of protection carried out by the ruler or government by making a norm or rule that applies generally within the scope of society.

There are two types of legal protection for public shareholders: preventive legal protection and repressive legal protection. The state provides preventive legal protection to prevent or avoid violations and/or losses, while repressive legal protection shields individuals from existing violations and strives to restore the original situation.[14] The state provides legal protection in the field of capital markets to investors who invest in the Indonesian capital market, fulfilling one of the objectives of capital market law, which is to ensure investor confidence in the integrity of the capital market, as explained by Mas Rahmah.

Preventive Legal Protection for Public Shareholders Against Cancellation of Securities Listing

Every public company that undergoes forced delisting is required by the state, through the Financial Services Authority, to buy back all of its public shares. Investors have rights over the funds they have invested, so a legal protection for public shareholders is very necessar.[15] The state provides preventive legal protection through the Circular Letter of the Financial Services Authority number 13/SE.OJK 4/2023, which addresses the Buyback of Shares of Public Companies following the Stock Exchange's Cancellation of Securities Listing due to Conditions or Events that Significantly Affect Business Sustainability. The Circular Letter is a derivative norm of POJK Number 3/POJK.04/2021, which

[12] Philipus M Hadjon, *Pengantar Ilmu Hukum Administrasi Indonesia* (Yogyakarta: Gajah Mada University Press, 2011).
[13] Satjipto Rahardjo, *Sisi-Sisi Lain Dari Hukum Di Indonesia*, 2nd ed. (Jakarta: Penerbit Buku Kompas, 2006), https://books.google.co.id/books?id=_14eBH9nfFsC.
[14] Satjipto Raharjo, *Ilmu Hukum*, vol. 106 (Bandung: PT Citra Aditya Bakti, 2000).
[15] Sendi Arrazak and Richard C Adam, "Perlindungan Hukum Terhadap Pemegang Saham Publik PT. First Indo American Leasing TBK Atas Penghapusan Pencatatan (Delisting) Saham Menurut Hukum Pasar Modal," *Syntax Literate; Jurnal Ilmiah Indonesia* 7, no. 11 (2022): 17844–56, https://doi.org/10.36418/syntax-literate.v7i11.12629.

comprehensively regulates the legal obligation for public companies to buy back all shares outstanding on the stock exchange after forced delisting. This undoubtedly boosts the public's trust in the capital market by enforcing a legal safeguard that requires issuers to repurchase shares the Exchange has forcibly delisted.[16]

Part II (second) number 1 of OJK Circular Letter Number 13/SE.OJK 4/2021 strictly requires public companies whose securities listing is canceled to buy back all public shares, preceded by providing information disclosure to the public a maximum of 30 (thirty) days after being declared delisted. The information disclosure must be published on the Stock Exchange website and must contain information at least including

1. Schedule for the implementation of share buybacks by listed companies
2. Share repurchase price
3. Period of time for share buyback
4. The method used by the listed company to repurchase public shares
5. Name and identity of the appointed securities company if the share buyback is conducted through the stock exchange
6. The purpose of the buyback of public shares so that the number of shareholders is less than 50 (fifty) parties

Public companies must also submit the information disclosure to the Financial Services Authority, as stipulated in part II (second) number 4 of OJK Circular Letter Number 13/SE.OJK 4/2023. The purpose of the information disclosure is to enhance the effectiveness of the OJK's supervision and to inform the public about the company's condition, enabling them to make informed investment decisions.[17] Delisted companies retain their legal obligations to the public, including the obligation to disclose public information, and do not necessarily become closed entities.[18]

As a form of protection and legal certainty for public shareholders, the Financial Services Authority requires public companies to complete share buybacks a maximum of 6 (six months) after the company provides information disclosure to the public and OJK regarding the implementation of share buybacks. Share buybacks, as referred to in Article 69 paragraph (3) in conjunction with Article 64 paragraph (1) letter b, can be carried out without seeking approval from the General Meeting of Shareholders (GMS). This provision

[16] Ahmad Wirayudha Nugraha, "Perlindungan Hukum Terhadap Investor Atas Tindakan Forced Delisting Perusahaan Tercatat Oleh Bursa Efek Indonesia," *Lex Librum : Jurnal Ilmu Hukum* 7, no. 2 (June 4, 2021): 99, https://doi.org/10.46839/lljih.v7i2.207.
[17] Garnita Amalia and Arman Nefi, "Perlindungan Hukum Pemegang Saham Minoritas Akibat Forced Delisting Di Indonesia Dan Amerika Serikat," *Jurnal Darma Agung* 31, no. 6 (2023): 327–44, https://doi.org/10.46930/ojsuda.v31i6.3808.
[18] Ida Bagus Rama Pratistha, I Nyoman Putu Budiartha, and Desak Gde Dwi Arini, "Akibat Hukum Terhadap Investor Karena Adanya Penghapusan Pencatatan (Forced Delisting) Perusahaan Terbuka Di Pasar Modal," *Jurnal Konstruksi Hukum* 3, no. 1 (January 24, 2022): 141–46, https://doi.org/10.22225/jkh.3.1.4409.141-146.

has been expressly regulated in Part II (second) number 5 letter b of OJK Circular Letter Number 13/SE.OJK 4/2023. Part II (second) number 5 letter c allows public companies to buy back shares even if the purchase is made more than a total of 10% (ten percent) of the paid-up capital so that the number of shareholders can be less than 50 (fifty) parties. This regulation intersects with the Limited Liability Company Law because Article 37, paragraph (1), letter B of Law Number 40 of 2007 stipulates that share buybacks can be carried out at a maximum of 10% (ten percent) of the total issued capital. The buyback of shares by a public company that has experienced forced delisting can be carried out both inside and outside the stock exchange mechanism.

According to Part II (second) number 8 of SE OJK Number 13/SE.OJK 4/2023, the Financial Services Authority mandates that publicly listed companies repurchase public shares within a maximum of 6 (six) months. However, if necessary, the Financial Services Authority may set a different timeframe for limited liability companies to fulfill their legal obligations. This allows public companies that need additional time to apply to the Financial Services Authority to provide additional time to complete the buyback of all public shares until the number of shareholders is less than 50 (fifty). Public companies must inform the Financial Services Authority about the share buyback process and results within a maximum of 5 (five) days from the end of the share buyback period, as reported in the public disclosure following the cancellation of the securities listing.

Article 73 paragraph (3) POJK Number 3/POJK.04/2021 stipulates that the obligation of a public company to buy back all public shares is exempted or deemed removed if there is another party that makes a tender offer for all public shares so that the number of shareholders becomes less than 50 (fifty) parties. This is also regulated in Part II (second) number 10 of Circular Letter of the Financial Services Authority Number 13/SE.OJK 4/2023, which expressly regulates that the obligation to repurchase shares by a public company whose securities listing is canceled is considered to have been completed if there is another party that makes a tender offer for all shares owned by public shareholders.

The public company or its officers cannot independently determine the share repurchase price. Because if the company independently determines the price of the implementation of share repurchases, there is a possibility for public companies to buy back shares at the lowest possible price. The Financial Services Authority has set the implementation price for the obligation to repurchase shares following the forced delisting of securities, in accordance with a decision made by the Indonesia Stock Exchange. Part II number 12 of OJK Circular Letter Number 13/SE.OJK/2023 requires the repurchase of shares after forced delisting to be carried out at a price with the following calculation:

a. The average price of the shares of the public company traded on the Stock Exchange in the last 30 (thirty) days calculated before the delisting or suspension.
b. Book value per share based on the company's latest financial statements.

If the two prices determined by the above calculation differ, we use the highest price. The

calculation is not empirically mandatory, but it serves as a practical minimum for public companies to determine the share repurchase price in the event of delisting. If a public company wants to buy at a higher price than the calculation stipulated in Part II (second) number 12 of SE OJK Number 13/SE. OJK 4/2023 with the aim of attracting public shareholders to sell their shares, this is permitted by OJK and is not a violation of the law. An example of this is PT Tunas Ridean, Tbk, which decided to delist by changing its status from a public company to a closed company. This was followed by a share buyback above the average trading price of shares and above the book value per share based on the latest financial statements, with the aim of attracting public shareholders to sell their shares.

Legal protection in the capital market sector involves investors, parties, especially issuers, and institutions supporting capital market activities, which are legal entities in the form of limited liability companies.[19] Therefore, it is impossible to separate law enforcement from corporate law aspects. Public companies are not the only ones subject to the obligation to repurchase shares following the cancellation of forced delisting. Company controllers who make mistakes can also be held responsible for repurchasing all public shares if it can be proven that their mistakes caused losses to the company, which resulted in the public company being delisted by the Indonesia Stock Exchange. The controller of a public company can be held responsible for buying back all public shares due to the following mistakes:

1. Controlling a publicly listed company either directly or indirectly by unlawfully utilizing a publicly listed company for personal interests.

2. The controller of a publicly listed company is involved in unlawful acts committed by the publicly listed company.

3. The controller of a publicly listed company unlawfully uses the assets of the publicly listed company 3.

This change has a significant negative impact on the business continuity of a public company, leading to its de-listing from the Indonesia Stock Exchange. For this event, the controller of the public company can be held responsible for repurchasing all public shares jointly with the company so that the number of shareholders is less than 50 (fifty) parties as regulated in Article 64 paragraph (1) letter b POJK Number 3/POJK.04/2021. This provision aligns with Article 3 paragraph (2) of Law Number 40 of 2007, which establishes the liability of shareholders for mistakes as specified in Article aquo.[20] Therefore, the controlling shareholder bears responsibility not only for the shares he owns, but also for using his personal assets to purchase all public shares in the event of a proven mistake that led to the delisting of the company.

[19] Hilda Hilmiah Dimyati, "Perlindungan Hukum Bagi Investor Dalam Pasar Modal," *Jurnal Cita Hukum* 1, no. 2 (2014): 341–56.
[20] "Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas (Lembaran Negara Republik Indonesia Tahun 2007 Nomor 106, Tambahan Lembaran Negara Republik Indonesia Nomor 4756)" (2007).

The Indonesia Stock Exchange cancels a public company's listing if it does not buy back public shares as instructed in Article 69 paragraph (3) and Article 64 paragraph (1) of POJK Number 3/POJK.04/2021, resulting in material losses for shareholder investors. The OJK Circular Letter regulates the price at which public shareholder investors can obtain sales money for their share ownership. If the stock exchange cancels their securities listing, public shareholder investors can no longer sell their share ownership in the regular market. Public shareholders whose securities listing has been canceled are no longer protected by OJK regulations that require the company to provide information disclosure and material facts, so this will make it difficult for public shareholders to obtain information on the company's activities. PT First Indo American Leasing Tbk serves as an example, as it underwent forceful delisting but failed to fulfill its repurchase obligations. Against such legal events, normatively, public shareholders should obtain legal protection from the state, which is repressive in nature.

Repressive Legal Protection for Public Shareholders Against Cancellation of Securities Listing

Repressive legal protection can only be provided through law enforcement to provide a sense of justice for victims and restore the situation to its original state. Law enforcement in the field of capital markets cannot be separated from the framework of justice, because otherwise law enforcement will be counterproductive so that it backfires on the development of the Indonesian capital market.[21] The Financial Services Authority authorizes the repressive legal protection provided by the state for public shareholders following the cancellation of securities listings. Previously, this authority was vested in the Capital Market Supervisory Agency (BAPEPAM) until it was replaced by OJK. [22] Article 9 of Law Number 21 of 2011 grants the Financial Services Authority the necessary authority to conduct supervision, protect consumers, and impose sanctions on those who violate the financial services sector, specifically the capital market sector.

The Financial Services Authority has implemented regulatory standards that mandate public companies to repurchase their shares after delisting, thereby providing preventive legal protection. If a public company does not carry out the obligation to buy back shares, this is a violation of the laws and regulations in the field of the capital market. Article 100, POJK Number 3/POJK.04/2021, stipulates that parties who violate Article 69 in conjunction with Article 64, namely the obligation to buy back shares after delisting, may be subject to administrative sanctions. The Financial Services Authority can impose administrative sanctions on public companies that fail to repurchase public shares after canceling their securities listing, as stipulated in Article 93 POJK Number 3/POJK.04/2021.

[21] Muhammad Ammar Havizh, "Perlindungan Hukum Investor Dalam Perdagangan Waran Terstruktur Di Indonesia Berdasarkan Perspektif Hukum Pasar Modal," *Jurist-Diction* 5, no. 2 (March 31, 2022): 643–62, https://doi.org/10.20473/jd.v5i2.34900.
[22] Ranti Oktavia and Rani Apriani, "Perlindungan Hukum Bagi Investor Terhadap Potensi Delisting Saham PT. Plaza Indonesia Dari Papan Utama Bursa Efek Indonesia," *Innovative: Journal Of Social Science Research* 3, no. 6 (2023): 4269–79.

Among others:

a. Written Warning
b. A fine in the form of an obligation to pay a certain amount of money
c. Restriction of business activities
d. Suspension of business activities
e. Revocation of business license
f. Cancellation of approval
g. Cancellation of registration
h. Revocation of the effectiveness of the registration statement
i. Revocation of individual business license

Public companies that fail to fulfill their legal obligations to repurchase public shares may face these sanctions. Furthermore, if a public company does not carry out its legal obligation to repurchase public shares, the Financial Services Authority can provide certain action orders based on Article 6 POJK 23/POJK.04/2021. The specific action order is an order for the issuer to change the status of a public company to a closed company by carrying out the obligation to buy back public shares. The Financial Services Authority must implement certain action orders, as stipulated in Article 7 paragraph (3) POJK 23/POJK.04/2021,[23] for each party receiving the order. Administrative sanctions and certain action orders are repressive protections provided by the state to public shareholders as a result of a public company not carrying out its obligation to buy back shares after its securities listing is forcibly canceled.

Part IV (fourth) number 7 of Circular Letter of the Financial Services Authority Number 13/SE.OJK 4/2023 stipulates that a public company that does not carry out the obligation to change its status from a public company to a closed company by buying back all public shares may file for bankruptcy and/or dissolution of the public company with the Attorney General of the Republic of Indonesia.[24] This norm serves as the final legal action taken by OJK if a public company fails to comply with its order to change its status to closed.

Legal Responsibility of a Public Listed Company for the Loss of Public Shareholders Due to the Failure of the Public Listed Company to Buy Back All Public Shares

1. Failure to Carry Out the Obligation to Buy Back Shares as an Unlawful Act

Article 1365 of the Burgerlijk Wetboek regulates unlawful acts *(onrechtmatige daad)*

[23] "Peraturan Otoritas Jasa Keuangan Nomor 23/POJK.04/2021 Tentang Tindak Lanjut Pengawasan Di Bidang Pasar Modal (Lembaran Negara Republik Indonesia Tahun 2021 Nomor 262, Tambahan Lembaran Negara Republik Indonesia Nomor 6741)" (2021).
[24] "Surat Edaran Otoritas Jasa Keuangan Nomor 13/SEOJK.4/2023 Tentang Pembelian Kembali Saham Perusahaan Terbuka Sebagai Akibat Dibatalkannya Pencatatan Efek Oleh Bursa Efek Karena Kondisi Atau Peristiwa Yang Signifikan Berpengaruh Negatif Terhadap Kelangsung" (2023).

normatively.[25] There are two definitions of *onrechmatige daad*: unlawful act and act against the law, but the lecturers at Universitas Airlangga agreed to use the phrase unlawful act (PMH) as the definition of *onrechmatige daad*. Peter Mahmud Marzuki translates *onrechmatige daad* as unlawful act, citing the Dutch term *wederrechlijk* for against the law.[26] Therefore, in the research, we will use the term unlawful act to refer to *onrechmatige daad*.

The definition of an unlawful act, according to MA Moegni Djojodihardjo, is an act or omission that violates the rights of others, the perpetrator's own legal obligations, or the decency or prudence that society expects from its interactions with other people or objects.[27] The obligation to buy back shares follows the de-listing of securities.

Mariam Darus Badrulzaman said that there are five elements so that an act can be qualified as an unlawful act. Among others:

1. There is an Act
2. The act is unlawful
3. There is Loss
4. There is a causal relationship between the loss incurred and the unlawful act committed
5. The existence of fault[28]

The five elements are cumulative, which means that all elements must be fulfilled in order for an act to be called an unlawful act and cause all legal consequences for the act as in Article 1365 Burgerlijk Wetboek.

1. There is an act.

Actions, also known as daad in the terminology of unlawful acts, encompass not only positive actions such as doing something, but also negative actions such as not doing anything, which is considered a subjective obligation.[29] Wirjono Prodjodikoro explained that unlawful acts as regulated in Article 1365 of the Burgerlijk Wetboek also include acts that are passive or silent.[30] In this case, the public company does not carry out its obligation to purchase all public shares as ordered in Article 69 paragraph (3) in conjunction with Article 64 paragraph (1) letter b POJK Number 3/POJK/4/2021 so that this can be interpreted as a public company action in a passive sense.

[25] Ani Santoso, "Burgerlik Wetboek Kitab Undang-Undang Hukum Perdata" (Permata Press, 2018).
[26] Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi* (Jakarta: Prenada Media, 2017).
[27] Djojodirjo M A Moegni, "Perbuatan Melawan Hukum," *Jakarta: Pradnya Paramita*, 1979.
[28] Mariam Darus Badrulzaman, *Hukum Perikatan Dalam KUH Perdata Buku Ketiga, Yurisprudensi, Doktrin, Serta Penjelasan* (Deepublish, 2023).
[29] Muhammad Khoidin, *Tanggung Gugat Dalam Hukum Perdata*, *LaksBang Justitia* (Yogyakarta: LaksBang Justitia, 2020).
[30] Wirjono Prodjodikoro, *Perbuatan Melanggar Hukum: Dipandang Dari Sudut Hukum Perdata* (Bandung: Mandar Maju, 2000).

2. The act is unlawful.

In the old understanding, an act can be categorized as unlawful if there is an Article that regulates it first but is violated by the perpetrator. This is an old understanding which is actually an act of violating the law *(onwetmatige daad)*. This concept is different from unlawful acts because in unlawful acts *(onrechmatige daad)* an act is not only considered unlawful if there has been a violation of an article of legislation. But more than that, the terminology of *onrechmatige daad* has been expanded to include.

a. Actions that are contrary to the laws and regulations. *(wettelijk plicht)*

b. Violating the subjective rights of others. *(inbreuk op eens anders recht)*

c. Contrary to the legal obligation *(rechtsplicht)* on the perpetrator

d. Contrary to decency *(Goede zeden)*

e. Contrary to the good attitude in society to look after the interests of others. *(zorgvuldigheid)*

In this case, the public company has clearly violated Article 69, paragraph 3 of POJK Number 3/POJK.04/2021 by not fulfilling its legal obligation to buy back public shares. These actions are contrary to the legal obligation of a public company that has been delisted to buy back all public shares until the number of shareholders is less than 50 (fifty) parties or other amounts determined by the OJK. These actions infringe upon the subjective rights of shareholders to receive payment for the sale of their shares following forced delisting.

3. There is Loss.

Losses caused by unlawful acts can be material *(vermogenschade)* and immaterial. The loss suffered by public shareholders can be calculated materially. Where public shareholders are entitled to receive money from the resale of shares at the average price of 30 days of securities trading before the listing of shares is canceled by the Exchange. The loss can be claimed by the shareholders to the public company through a lawsuit in accordance with the civil procedure law.

4. There is a causal relationship between the loss incurred and the unlawful act committed.

To be able to claim compensation for an unlawful act, it is necessary to prove the causal relationship between the unlawful act committed by the perpetrator and the loss incurred.

5. The existence of fault *(schuld).*

Fault is something that is despicable and as a result causes harm to someone. This behavior and mistake can be held accountable for the perpetrator of the action. An act can only be qualified as a mistake when there is no justification for the act or the absence of a situation where the perpetrator cannot avoid committing an unlawful act *(force majeure).* The existence of force majeure means that the perpetrator cannot be held liable because the

act cannot be qualified as a mistake.

A public company that does not buy back public shares after delisting is a mistake if it cannot be proven that the company experienced an event that prevented it from carrying out its legal obligations. An example is PT First Indo American Leasing Tbk, which did not repurchase public shares after its listing was canceled by Bursa. The issuer coded FINN was not in a state of force majeure so that normatively PT First Indo American Leasing Tbk made a mistake that can be held legally responsible.

Public Listed Companies are Responsible for Investor Losses Due to Not Carrying Out Share Buyback Obligations

In the *zchutznorm theorie* or theory of relativity, every act that is contrary to the rules of law and therefore constitutes an unlawful act causes the perpetrator to be held accountable for his actions. Victims of unlawful acts have the right to file a civil claim to obtain justice and hold the perpetrator legally responsible as stipulated in Article 1365 of the Burgerlijk Wetboek.

Public companies that do not carry out their share buyback obligations are responsible for investor losses. Not only in the form of material losses but also includes immaterial losses. The claims that can be requested to be held accountable by public companies are associated with Moegni Djojodiharjo's explanation that Article 1365 allows several types of claims that can be requested in the petitum. Among others:

1. Compensation for investor losses in the form of money
2. Compensation for losses in the form of restoring the original situation
3. A statement that the public company has committed an unlawful act *(onrechmatige daad)*
4. Prohibition for the publicly listed company to perform an action
5. Request for the publicly listed company to announce the rectification of the responsibility to carry out the legal obligation to buy back public shares.

Moegni Djojodiharjo argues that the restoration of the original situation is the most appropriate demand for unlawful acts regulated in Article 1364 of the Civil Code.

4. Conclusion

Public shareholders have the right to legal protection in the event of a forced delisting by the Indonesia Stock Exchange, which includes both preventive and repressive protections. Preventive protection is provided through the obligation for delisted public companies to repurchase all public shares, as stipulated in Article 69 paragraph (3) in conjunction with Article 64 paragraph (1) letter b of OJK Regulation Number 3/POJK.04/2021. This regulation aims to safeguard the rights of investors from

significant losses. However, when public companies fail to fulfill this obligation, it can result in material losses for investors. In such cases, investors can rely on repressive legal protections, such as administrative sanctions from the Financial Services Authority (OJK), which may include written warnings, fines, and license revocation. Additionally, OJK can order the buyback or request the dissolution and bankruptcy declaration of non-compliant companies. Public companies that do not fulfill this obligation are considered to have committed unlawful acts *(onrechtmatige daad)* according to Article 1365 of the Civil Code and are therefore responsible for investor losses.

Publicly listed companies on the Indonesia Stock Exchange should adhere more strictly to capital market regulations, including the obligation to repurchase public shares in the event of a forced delisting. Compliance with capital market regulations is a fundamental responsibility of public companies, as a consequence of their status as issuers whose shares are traded openly. This compliance is essential to maintaining investor trust and the stability of the Indonesian capital market. Therefore, companies need to fulfill their responsibilities transparently and in a timely manner to protect the rights of public shareholders and support the creation of a healthy investment climate in the capital market.

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