Corporate Responsibility in Protecting Public Shareholders When the Company is Removed from Capital Market (Case Example: Company Code INVS)

Alfen Dwi Putra[1*] Ariawan Ariawan[1]

[1]*Faculty of Law, Universitas Tarumanagara, Jakarta 11440, Indonesia*
[*]*Corresponding author. Email: alfendwiputra@gmail.com*

ABSTRACT
The capital market aims as a means of financing that brings together investors as parties who want to invest their funds or as parties who have more funds with issuers as parties who need funds to expand their business sector. Objects traded in the capital market are securities or commonly called securities. Legal protection for investors still has many weaknesses, so legal protection for investors creates uncertainty. Given the failure of the regulator to observe developments that occur or the lack of speed in adapting to rapid developments, it may result in the abandonment of the capital market in Indonesia by both foreign and domestic investors. To be able to achieve the goal of the capital market, namely to meet the funding needs of business actors, a legal protection mechanism is needed that can make potential investors feel safe investing in the capital market. Both the Capital Market Law, the Company Law, and the OJK Law have provided an opportunity for capital market players, especially investors, to save their assets when a delisting occurs.

Keywords: *Capital Market Laws; Disclosure; Delisting; Legal Protection*

1. INTRODUCTION

Every company has a desire to expand and develop its company, this can be achieved if a company has funds, one way to get additional funds is by introducing the company to the public, namely by offering shares to the public which is commonly called an Initial public offering (IPO). a situation where the company will market or sell some of its shares to the public and this makes the company's status from private to Go Public or Open. As issuers, they must comply with existing capital market regulations, the Financial Services Authority (hereinafter referred to as OJK) and the Indonesia Stock Exchange (hereinafter referred to as BEI) have regulations that have been made for companies whose shares have been listed on the stock exchange.

In the capital market, it is also known that there is an act of going private, an act of going private in which a public company changes its status to a closed company Delisting is an action from the Indonesia Stock Exchange which brings legal consequences that the securities of the issuer concerned are not allowed to be traded again on the stock exchange. In the Delisting action there are two kinds of ways, namely Voluntary Delisting in which the company voluntarily conducts delisting, the second is Force Delisting, in which a company delists its listing by force by the stock exchange as the authority that can do it or is authorized. As a result of this delisting, it has an impact on investors in the capital market [1].The delisting penalty carried out by the stock exchange authority is imposed on issuers, only after considering and paying attention to the inability of a particular issuer, Force Delisting is an important event that has a major impact on shareholders because it is an irregularity or unhealthy in managing the issuer company, the company is not healthy This is usually because the company does not implement the principles of Good Corporate Governance or commonly known as GCG.[2]

The legal umbrella for public shareholders in the event of a securities being written off refers to the Capital Market Law and the Decree of the Directors of the Jakarta Stock Exchange KEP-308/BEJ/07-2004 Regulation number II concerning the delisting and Relisting of Shares on the Exchange (Kepdir). JSX 308/2004) and legal protection for shareholders are regulated in Law Number 40 of 2007 concerning Limited Liability Companies ("UUPT"). Up to now, these rules only regulate the principle of information disclosure for issuers, but the legal umbrella for public shareholders of companies whose listings are deleted has not been specifically or specifically regulated and there are still differences of opinion from legal experts.

One example of a case that resulted in investors losing money because the issuer they held was deleted. Its name on the stock exchange was the case of PT. Inovisi Infracom Tbk. On October 23, 2017, the stock exchange took action to forcibly remove the shares of issuers coded INVS from

the stock exchange, the deletion of INVS shares was due to problems related to financial statements that did not comply with the principle of transparency.

The case began when INVS had problems since 2015 due to errors in financial reporting, it caused the authorities to suspend the issuer coded INVS in February 2015, the financial report error in question is the financial report in the third quarter of 2014, which is indicated as its financial report. suspicious.

At that time it happened on February 13, 2017 the issuer code of INVS was subject to suspension sanctions by the exchange, but since then there was no good faith from INVS to make a revised financial report, then the exchange extended the suspension because INVS did not pay the annual delisting fee, two years passed then the Indonesia Stock Exchange finally gave a trading deadline in the negotiating market for 20 days from September 25 to October 20 2017. To carry out a stock buyback before INVS, force delisting was carried out on October 23, 2017. PT Inovisi Infracom was effectively delisted by the IDX based on a letter No. Peng-Del 00002/BEI.PP2/09-2017 regarding force delisting of INVS shares.

2. METHOD

The approach method in this study uses a legal approach that refers to laws and regulations relating to matters of civil law concepts, especially regarding the legal protection of investors for shareholders in issuers, the case approach is by conducting a study of the case examples of PT Inovisi Infracom Tbk. (INVS) in 2017, as well as a conceptual approach by studying views and doctrines in legal science. In this study, the collection of literature study materials was used, namely collecting and studying data by reading and conducting interviews. This type of research uses normative legal research, namely legal research that examines written law from various aspects, namely aspects of theory, history, philosophy, comparison, structure and composition, scope and material, consistency, general explanation, and Article by Article. Primary Data is data that is authoritative, meaning that it has the authority, namely Law Number 8 of 1995 concerning the Capital Market, Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as UUPT), Law 21 of 2011 concerning Service Authority Finance (hereinafter referred to as POJK). Secondary legal materials are: Books related to civil law policies that discuss companies and the capital market, legal journals related to civil law policies that discuss companies and legal protection of public or minority shareholders, and internet articles related to legal issues. faced. Non-legal materials, namely: Big Indonesian Language Dictionary (KBBI), encyclopedias,

3. DISCUSSION

3.1. Case Position

The case began when INVS had problems since 2015 due to errors in financial reporting, it caused the authorities to suspend the issuer coded INVS in February 2015, the financial statement error in question is the financial report in the third quarter of 2014, which is indicated as the financial report. suspicious. The following are financial statement errors made by INVS issuers [3]:

a. In information containing other debts to related parties in the context of third parties. In its report, the stock exchange sees that this content section is not in accordance with the report reported to CALK. According to the issuer, the amount of other debt is presented in CALK number 20 page 52 which is 58 billion Rupiah
b. In the information containing fixed assets. In its report, the stock exchange measured that the initial fixed asset funds had no accordance with the fixed asset fund in the 2013 audited Annual Financial Report.
c. In the statement containing earnings per share. In its report here, the stock exchange also finds and identifies that issuers using current period profits should only use current period profits attributable to owners of the parent entity only, so that exaggerated.
d. In the statement that explains the cash payment of employees. In its report, the stock exchange explained that it identified a misjudgment, because based on the mid-year financial statements, employee cash payments reached 1.91 trillion Rupiah, but in the third quarter of 2014 it fell to only 59 billion Rupiah. There is no clarification whether there are employee refunds. The company explained that it should have written 1.9 billion Rupiah instead of trillion Rupiah.
e. In the statement that explains the net receipts (payments) of related party debts (cash flow statements). In its report, the stock exchange also found irregularities and identified a misjudgment, according to the statement of financial position, the payment of related debts was 124 billion Rupiah, but in the cash flow statement it was only recognized that the payment was 108 billion Rupiah.
f. In the information containing the business segment report. In its report, the stock exchange explained that issuers were not allowed to transfer 45.5 percent of their assets to each of several business divisions.
g. In the statement containing the amount of the obligation. In its report, the stock exchange explains that in this part of the statement, there has been noin accordance with the statement of financial position.
h. In the description containing the level of financial instruments. In its report, the stock exchange said that it found that this section was not in accordance with the audited annual financial statements.

On February 13, 2015 the issuer code INVS was given a suspension sanction by the IDX causing the price per share

to drop to the level of Rp. 171 per share which previously was the highest price for INVS ever to touch the level of Rp. 8,650 per share on 29 July 2011, but due to the absence of information disclosure in the fourth quarter of 2013, INVS's shares fell drastically to Rp. 200 per share. IDX has notified INVS but there is no good faith from the company to improve the company's performance in the capital market which resulted in huge losses to investors, and in the end the IDX deleted the listing of INVS issuers because they had been negligent by not reporting financial statements many times. and also does not show progress in the company's health, INVS Securities have been suspended for more than 2 years since then,

IDX has repeatedly or frequently suspended securities for INVS, the first suspension was on December 30, 2009 due to unnatural stock price movements. Three years later, INVS's warrants were suspended on July 1, 2013. Many INVS were suspended for a total of 13 suspension due to INVS not fulfilling its obligations as a public company. Then IDX enforces delisting-kan INVS on October 23, 2017. By sending letter No. Peng-Del 00002/BEI.PP2/09-2017 regarding the force delisting of INVS shares from the IDX development board which took effect on October 23, 2017.

3.2. Regulations Related to Protection of Public Shareholders

The company PT Inovisi Infracom was forcibly delisted or forcibly removed from listing its securities by the IDX authorities from the stock exchange trading board on October 23, 2017. This must be done by the IDX because there is no good faith from the issuer to carry out its obligations as a public company such as not paying fees. annual listing and does not revise the issuer's financial statements which causes huge losses to investors.

Public shareholders are often referred to as minority shareholders. The protection of shareholders in the event of a delisting has not been specifically regulated either in Law Number 8 of 1995 concerning the Capital Market or the Decree of the Board of Directors of the Jakarta Stock Exchange KEP-308/BEJ/07-2004 Rule number II concerning Delisting and Relisting (relisting) of Shares on the Stock Exchange (“Kepdir BEJ 308/2004”). However, legal protection for minority shareholders is regulated in the KUHD, namely the principle of super majority, which means that in the GMS new decisions can be made if the votes that approve it exceed a certain number, for example more than 2/3 or 3/4 of the valid votes [4], because the majority shareholder may make decisions that can harm the company.

Protection of public shareholders is also regulated in the Company Law which explains or regulates rights as stakeholders, which include:

a. Personal rights, namely minority shareholders have or have the right to sue through a district court if the company is deemed unfair and unfair which can harm shareholders.
b. Appraisal rights, which are also often called appraisal rights, are rights in which shareholders have rights whose share ownership is purchased at a reasonable price in the form of defending interests where the parties concerned do not agree with the actions of the company that result in losses to shareholders or the company.
c. Enquete Recht, which is often referred to as the right of inquiry or the right of inspection, is a right whereby the public shareholder has the right to apply for an examination of the company through a district court, in the event of an allegation of the company, members of the board of directors or the board of commissioners conducting unprofitable PMH.
d. Derivative rights, namely rights where the aggrieved shareholder has the right to file a lawsuit against the commissioners or directors by representing the company to the district court. The minority shareholder then proves the negligence or fault of the directors or commissioners. This lawsuit is intended to involve the competent authorities of the court in the company.

In reality, the majority shareholder has no more rights than the minority shareholder, in fact all shareholders have the same rights as other shareholders, because no matter how small the shares owned, they are still members of the general meeting of shareholders. GMS is the right of minority shareholders in relation to obtaining all information relating to the interests of the company from the directors and committees of the company.

The Limited Liability Company Law has not specifically regulated or which can be used as a basis for shareholders who feel aggrieved, to file a lawsuit directly to the board of directors as the party who has committed an omission or mistake that resulted in the company experiencing a loss. However, public or minority shareholders who feel aggrieved can still take other legal remedies, namely by suing on the basis of PMH as described in article 1365 Burgerlijk Wetboek (hereinafter referred to as BW).

According to Article 1365 BW explains that "Every act that violates the law and brings harm to others, obliges the person who caused the loss because of his fault to replace the loss." Based on article 1365, there are several factors that can be used as the basis for identifying an unlawful act, namely there must be an act, the act must be against the law, there is a loss, there is a causal correlation between the unlawful act and the loss, and there is an error. So, based on these five factors, a member of the board of directors can be held legally responsible under Article 1365 BW.

In the capital market, there are still many concerns for public shareholders or public investors, when the issuers they hold are removed from the stock exchange. Actually, how is the legal protection and how is the company's responsibility for shareholders when the issuer it holds is delisted?by the stock exchange. In this study, the author will describe the related analysis of the problem formulation that the author has raised by looking at the PT INVS case example in order to see how the legal protection for the public shareholders of PT Inovisi Infracom Tbk whose shares or securities are removed from the stock exchange.

The issuer's securities were removed from the exchange, because the issuer did not carry out its obligations as an issuer, so the exchange took force delisting action against the INVS company. The force delisting that occurred at PT Inovisi Infracom Tbk, was decided by letter No. Peng-Del 00002/BEI.PP2/09-2017 regarding the force delisting of INVS shares from the IDX development board which took effect on October 23, 2017. The case of delisting INVS from a public company has become a closed company, however, public shareholders have not received certainty .

In the case of delisted INVS, INVS's securities were deleted because they did not disclose information, which is an important element that must be implemented by the company. This element is also known as good corporate governance [3], Although PT Inovisi Infracom Tbk has made financial reports in the third quarter of 2014, the issuer coded INVS made an error in its financial statements. Based on the letter KEP/306/BEJ/07/2004 concerning IE Regulation concerning Information and OJK Regulation No: 31/POJK.04/2015 concerning Disclosure of Information or Material Facts by Issuers or Public Companies, it is stated that the issuer coded INVS has made a mistake in presenting correct material facts, there was an error made by INVS in the financial statements of the third quarter of 2014, then the contents of the statement of the directors of INVS which are as set forth in the statement letter poured together with the financial statements are not appropriate [3].

The statement of the board of directors is regulated in the Decree of the Chairman of the Capital Market Supervisory Agency No: KEP-40/PM/2003 concerning the Responsibilities of the Board of Directors for Financial Statements contained in Item 3 letters a and b Attachment Form No: VIII.G.11-1 which explains that the financial statements have been prepared completely and correctly in accordance with the absence of material facts that are not true, thus INVS has correctly violated the principle of information disclosure due to misrepresenting the financial statements, which should be properly reviewed according to the elements of the principle of information disclosure

Based on the analysis of legal facts that the author did. According to Article 1 number 25 UUPM, PT Inovisi Infracom Tbk does not implement the principle of proper disclosure of information, thus INVS has correctly violated its responsibilities as an issuer who should be responsible for providing factual information to public shareholders or public investors regarding company information. , then this makes the identification of the non-execution of good corporate governance by INVS. Information disclosure should be a basic thing that must be carried out by issuers as a public company.

The Indonesia Stock Exchange not only deleted the listing of PT Inovisi Infracom Tbk. However, PT Inovisi Infracom also provides protection to public shareholders or public investors with the rules it makes, namely in KEP/308/BEJ/07-2004 concerning Regulation No. I-1 concerning Delisting and Relisting of Shares. in the Exchange, this is a form of responsibility of the exchange as the authorized party and broker of securities trading between the funder and the recipient of funds, in this case the exchange has the right or authority to impose sanctions on the issuer concerned if an issuer can harm public shareholders or public investors.

The Exchange also provides protection to public shareholders or investors by announcing letter No. Peng-Del-0002/BEI.PP2/09-2017, dated 22 September 2017 regarding the Elimination of the Listing of INVS Securities on the development board, then in KEP/308/BEJ/07/-2004 concerning Regulation No. I-1 concerning Listing Off (Delisting) and Relisting of Shares on the Exchange [5]. The regulation stipulates that issuers that are forcibly delisted by the exchange or known as force delisting will provide the opportunity for public shareholders to trade INVS shares in the negotiating market before the INVS is effectively delisted, the negotiation market is held for 20 days and is held on September 25, 2017 until 20 October 2017 this is based on a letter issued by the stock exchange [6].

The negotiation market lasts 20 days, during which 20 days the public shareholders have two choices, namely selling their securities or if the shareholders

the public does not want to sell the securities they hold, then public shareholders or public investors can continue to own the company's shares, changing their share ownership status from public to private company shareholders. So that public investors or public shareholders in terms of ownership of securities do not just disappear, but ownership only changes status from public shares to private company shares [7].

Then based on the description above, it can also be identified regarding the form of legal protection for public shareholders or public investors, in fact it has not been specifically regulated in the Law. However, according to Sandro Hakim Limbong (interviewee). He said that legal protection for shareholders is actually regulated in the Company Law, which among others are [8]:

a. Article 61 paragraph (1) of the Limited Liability Company Law stipulates that public or minority shareholders have the right to sue the company through the PN if what the company does is considered unfair or without a reasonable reason to the detriment of its shareholders, this is called personal rights.
b. Article 62 paragraph (1) of the Limited Liability Company Law regulates that public or minority shareholders can ask the company to buy the shares they hold at a fair price. This is called an appraisal right, but at a fair price, it should not be bought at a low price because there is a way of calculating it using how to Earn Per Share times (X) Price Earnings Ratio
c. Article 138 paragraph (3) of the Company Law stipulates that public and minority shareholders may submit an application to the PN to examine a company which, in the event of an alleged connection with the company, whether a member of the board of directors or commissioner commits an unlawful act that results in the company losing money, this is called the right examination or Enquete Recht.
d. Public or minority shareholders can sue the directors or commissioners by representing the company to the PN. However, the shareholder concerned must be able to prove an error or omission by a member of the board of directors or commissioner, this is called a derivative

right which is regulated under the Company Law Article 97 paragraph (6) to file a lawsuit against the board of directors, Article 114 paragraph (6 of the Company Law). to file a lawsuit against the commissioner.

Derivative lawsuits are the most basic way of settling for public or minority shareholders who feel a loss and have the right to file directors' liability against shareholders. Controlling shareholders or employees in the case of management of the company's negligence, actions such as the transfer of company assets and manipulation that harm or can harm the company [9]. As long as it is not too detrimental to the company, the company will not take action. However, if a board of directors benefits from the actions of employees and controlling shareholders, the member of the board of directors will be required to return the profits he received to the company [9].

Based on the description above, it can be analyzed that public shareholders can protect their rights by taking direct action against the company and moreover regarding the case that PT Infovisi Infracom did not disclose information which was very detrimental to public shareholders. However, there are some cases where shareholders cannot take direct action against the company, namely by accusing senior executives of violating their fiduciary obligations to the company, because this involves all shareholders, so that precisely the public shareholders can take derivative action. On the other hand, if the shareholder is not allowed or prohibited from having voting rights, this can be done immediately against the company.

Based on the analysis that has been done, legal protection for public shareholders or public investors does not stop there. The Financial Services Authority (hereinafter referred to as OJK) provides legal protection to public shareholders, which in this case requires the Company Tbk which will be processed into a closed company to buy back or so-called buyback shares that have been circulating in the public. This rule is regulated in the Financial Services Authority Regulation (POJK) No. 3/POJK.04/2021 concerning the Implementation of Activities in the Capital Market OJK Regulation in lieu of PP 45/1995 [10].

The enforcement of the issuer's obligation to buy back public shares does not only apply to voluntary delisting where the delisting is done voluntarily, but also to forced delisting by the IDX, which is also known as force delisting. Then the IDX stated that one of the conditions for voluntary delisting was to buy back the outstanding shares, this obligation has been regulated by the IDX in IDX Regulation Number II [10].

Based on article 108/POJK 3/2021, this provision has been in effect since its promulgation and has been in effect since February 22, 2021. Based on the regulation described in article 100, it is regulated that parties or issuers who violate these regulations will be subject to administrative sanctions as described in article 93 or in certain actions described in article 94 [10].

Regarding the legal protection in which the issuer is unable to purchase shares that are circulating in the public. This inability is due to the issuer being declared bankrupt. Bankruptcy cases that occur against issuers are a source of grief for public investors, because they cause huge losses for public investors [11].

A public company that is declared bankrupt or declared bankrupt by the Panel of Judges of the Commercial Court, will immediately carry out the management and settlement of assets carried out by the curator, the curator is the party appointed by the court to manage and settle the bankrupt assets [11].

According to the rules of listing shares on the stock exchange, claim rights for investors or shareholders usually get the last order after all the company's obligations have been paid to creditors [11]. Issuers who cannot fulfill or inevitably fail to fulfill their obligations to creditors, the issuer concerned is obliged to provide a report to the OJK and the stock exchange regarding the relevance of the problem. The time for a public company is no later than the end of the second work after the issuer concerned realizes that the issuer cannot avoid failure. Then the report reported by the issuer to the OJK must contain the amount of principal and interest, the term of the loan, the name of the lender, the purpose of the loan, and the reason for default or inability to pay [12].

Reporting obligations by issuers are regulated in the provisions of Regulation No. II.A.2 concerning Procedures for Providing Documents to the Public at the Capital Market Reference Center. The regulation aims to implement information disclosure, the principle of information disclosure is very important in the economy because it involves various parties, including investors who are public or minority shareholders [12]. The principle of disclosure of information is also considered as the company's fundamentals in the capital market world, because it involves trust in potential investors towards issuers, both good and bad things that have happened or are happening to the company must be immediately reported and notified to public investors. [12].

Public investors are asked to regularly follow the developments of companies whose shares are owned by public investors. The form of a legal umbrella that can provide protection to public investors is through the process of trading securities on the stock exchange itself and the existence of legal action, namely in the form of a civil lawsuit. Then the Capital Market Law provides a legal umbrella for investors to get compensation, if in the issuer's bankruptcy process there is suspicion or fraud [11].

The compensation rules that have been provided by the Capital Market Law, are regulated in Article 111 of the Capital Market Law which explains that if a party suffers a loss as a result of a violation of the Capital Market Law or its implementing regulations, it can ask for compensation, either jointly or individually with other parties who experience a loss. similar claims, against the party responsible for the violation [11].

Claims for compensation due to this fraud can be requested or submitted through the OJK. Then Investors can also file a lawsuit on the basis of the Company Law. Every shareholder has the right to file a lawsuit against the company to the District Court in the context of losses, due to the actions of the company which are identified as unfair

and without clear reasons as a result of the decisions of the GMS, Directors, Commissioners [11].
The bankruptcy of the issuer is also considered a risk that must be borne by public investors. Because public investors are part of the debtor in the bankruptcy process. Public investors cannot become creditors in submitting claims to the curator when a public company is declared bankrupt by the PN. One of the indicators is also that public investors are held accountable for the bankruptcy of the company. Therefore, public investors are expected to act carefully and safely in solving the problems they face [11].

4. CONCLUSION

Based on the results of the studies conducted and based on several expert opinions, theories and legal basis put forward, it can be concluded as follows:
Legal protection for public shareholders or public investors has not been specifically regulated, the many regulations and legal systems involved in legal protection in the context of delisting protection for public investors create slack or vacuum for investor protection. So we can see that the legal umbrella for public shareholders has not been specifically regulated. Thus, the Government has failed to keep up with rapid developments, or even been slow in making decisions and adapting in making regulations.
Legal protection that can be given to investors from the IDX is a negotiation market and sanctions to issuers, from the OJK which provides protection to require delisted public companies to buy back shares circulating in the public, this obligation is regulated in the new OJK regulations.Regulation of the Financial Services Authority (POJK) No. 3/POJK.04/2021 concerning Implementation of activities in the Capital Market Sector OJK Regulation in lieu of PP 45/1995. Then the investor protection that can be given is the disclosure of information which is very important in the world of capital markets. The principle of information disclosure is a principle that must be applied by all issuers on the stock exchange. With the provisions of Article 1 number 25 of the Capital Market Law which regulates the implementation of the principle of information disclosure, this principle becomes one of the obligations of issuers. The obligation that must be carried out by issuers is to convey factual information to the public which includes annual, financial and interim reports. So that with the disclosure of information, public investors or public shareholders can take steps that do not harm themselves.
Another form of legal umbrella for public shareholders is a civil lawsuit. According to Article 97 of the Company Law, shareholders can take derivative actions, if the relevant shareholder feels aggrieved, Article 97 paragraph (6) explains that on behalf of the Company, shareholders who replace at least one tenth of the total shares with voting rights can file a lawsuit through the District Court against the members of the board of directors who commit negligence or mistakes that harm the company. then the member of the board of directors may be held personally liable for the losses or debts incurred.

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