

Analysis of Regulations Regarding Delisting and Going Private Viewed Before and After Pojk No.3/Pojk.04/2021 concerning the Implementation of Capital Market Activities and Legal Consequences for Companies

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Abstract

A company in the capital market that wants to trade its company's securities in the capital market must register (list) the company's name on the stock exchange through a public offering in the primary market. In the event that a company that originally went public no longer participates in capital market activities because it is bankrupt or wants to go private due to various reasons such as no longer needing funding from other parties or indeed wanting to dissolve the company, then the company will be delisted, which means there was an action to remove shares from the list of shares listed on the stock exchange, so that they could not be traded on the stock exchange. There are two forms of delisting, namely forced delisting and voluntary delisting. Provisions regarding delisting are regulated in the Decree of the Directors of the Jakarta Stock Exchange Number: Kep-308/BEJ/07-2004 concerning Regulation Number II concerning Delisting and Relisting of Shares on the Exchange and then the latest provisions are regulated in POJK No. 3/POJK.04/2021 concerning the Implementation of Capital Market Activities. With the latest provisions regarding delisting, this has an impact on legal certainty for shareholders of an issuer and the existence of a buyback obligation by the company.

Abstrak

Suatu perusahaan di pasar modal yang hendak memperjualbelikan efek perusahaannya di pasar modal harus mencatatkan (listing) nama perusahaan di bursa efek melalui penawaran umum dalam pasar perdana. Dalam hal suatu perusahaan yang semula go public sudah tidak lagi ikut dalam kegiatan pasar modal karena bangkrut atau ingin melakukan go private dikarenakan berbagai alasan seperti tidak lagi membutuhkan pendanaan dari pihak lain atau memang ingin membubarkan perusahaan tersebut, maka perusahaan tersebut akan terkena delisting, yang artinya terjadi tindakan penghapusan saham dari daftar saham yang tercatat di bursa efek, sehingga tidak dapat diperdagangkan di bursa. Terdapat dua bentuk delisting yaitu delisting yang dilakukan secara paksa (forced delisting) dan delisting yang dilakukan secara sukarela (voluntary delisting). Ketentuan mengenai delisting diatur dalam Keputusan Direksi PT Bursa Efek Jakarta Nomor: Kep-308/BEJ/07-2004 tentang Peraturan Nomor 1-1 tentang Penghapusan Pencatatan (delisting) dan Pencatatan Kembali (relisting) Saham di Bursa dan kemudian ketentuan terbaru diatur dalam POJK No.3/POJK.04/2021 tentang Penyelenggaraan Kegiatan Pasar Modal. Dengan adanya ketentuan terbaru mengenai delisting maka hal ini berdampak kepada kepastian hukum terhadap para shareholder pada suatu emiten dan adanya kewajiban buyback oleh perusahaan.

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1. INTRODUCTION

The main goal of a company is to make a profit. The income statement is prepared with the aim of describing the company's operating results in a certain time period. The income statement describes the success or failure of the company's operations in achieving its goals. The company's operating results are measured by comparing the company's income with costs. If income is greater than costs, it is said that the company makes a profit and if the opposite happens then the company experiences a loss.

financial distress can be experienced by various large and small companies from various sectors. In a company's life cycle, a decline in financial performance can occur due to internal and external factors. Financial distress itself is a situation where a company fails or is no longer able to fulfill its obligations to debtors because the company experiences a shortage and insufficient funds where the total liabilities are greater than the total assets, and cannot achieve the company's economic goals, namely profit.

financial distress occurs because the company is unable to manage and maintain stable financial performance, causing the company to experience operational losses and net losses for the current year. Financial distress could be a stage of decline in financial condition experienced by a company, which occurs before bankruptcy or liquidation occurs. Financial difficulties occur due to a series of mistakes, inappropriate decision making and interconnected weaknesses which can contribute directly or indirectly to management as well as a lack of efforts to monitor the company's financial condition so that its use is not in accordance with what is needed.

One of the phenomena that occurred in Indonesia was the delisting of several companies. Deregistration is if shares listed on the Exchange experience a decline in criteria so that they do not meet the listing requirements, then the shares can be removed from listing on the Exchange.

The delisting conditions themselves can be divided into two, namely voluntary delisting and forced delisting. Voluntary delisting occurs where the delisting is carried out voluntarily by the listed company to go private or no longer go public. Some of the reasons listed companies choose voluntary delisting are because the shares listed on the stock exchange are illiquid due to insignificant share ownership by the public or because the listed company no longer needs funding sourced from the capital market.

The reason a company does it *Go Private* partly because they feel burdened by the costs they have to incur and their obligations as a public company. One of the reasons a company goes private is because the company's main goals and objectives were not fulfilled when it became a public company. A public company will change its status to a private company if there is an action taken by either the public company or its shareholders to change the status and amount of their share ownership in the company. Going Private can occur if the number of shareholders decreases naturally or due to share buybacks so that the number does not meet the requirements for a public company.

2. RESEARCH METHODOLOGY

The research methodology used to discuss the issues raised in this article is a normative legal research methodology, with the data studied (analysed) coming from secondary data obtained through literature searches.

In general, in carrying out the analysis, researchers focused on 2 (two) main things, namely: first, objects in the form of regulations, both national and international, relating to arbitration institutions; and second, the concept of arbitration and the concept of an effective legal system. Therefore, if you want to categorize the approach method that researchers use, then it is included in the category of statutory approach and conceptual approach. *Conceptual approach*).

3. DISCUSSION

1. Understanding Deregistration and Going Private

a. Deregistration

After a company's Registration Statement is declared effective by Bapepam, the company can list its shares on the Indonesia Stock Exchange. Listing shares on the stock exchange is known as listing. The regulations for listing shares on the Indonesia Stock Exchange are regulated in the Decree of the Directors of PT Stock Exchange Jakarta Number Kep-305/BEJ/07-2004 concerning Regulation Number IA concerning the Listing of Share Securities. Listing is the inclusion of a Securities in the list of Securities listed on the Exchange so that it can be traded on the Exchange.

Delisting is the opposite of listing. Delisting is the removal of Securities from the list of Securities listed on the Exchange so that the Securities cannot be traded on the Exchange.

In the Financial Dictionary from the Free Dictionary, it is stated that delisting is to remove from a list, especially from a list of securities that may be traded on a stock exchange. This means that delisting is removing from a list, especially the list of securities that may be traded on a stock exchange.

The Wikipedia.htm source states that ***Delisting*** refers to the practice of removing the stock of a company from a stock exchange so that investors can no longer trade shares of the stock on that exchange. This means that delisting refers to the act of removing a company's shares from a stock exchange so that investors can no longer trade these shares on the relevant stock exchange. In financial terms, delisting is defined as *removal of a company's security from listing on an exchange because the firm has not abided by specific regulations*. This means that delisting is the removal of a company's securities from being listed on an exchange because of the related company.

So, based on the definitions above, it can be concluded that delisting is the act of removing securities from the securities list of a stock exchange so that the securities in question can no longer be traded on that exchange. Share delisting is a phenomenon that often occurs in the Indonesian capital market. Regulations regarding share delisting in Indonesia are contained in the Decree of the Directors of the Jakarta Stock Exchange Number Kep308/BEJ/07-2004, namely Regulation Number II concerning Delisting and Relisting of Shares on the Exchange. One of the provisions in the regulation is as follows.

1. To protect the public interest and in order to carry out orderly, fair and efficient Securities trading, the Exchange is authorized to:
 - a. delete the listing of certain Securities on the Exchange;
 - b. approve or reject the request for re-listing including its placement on the registration board by considering the factors that caused the Delisting.
2. In making decisions related to Delisting and Relisting, The Exchange asked the Listing Committee to provide an opinion.
3. If the shares of a Listed Company are delisted, then all types of Securities of the Listed Company are also removed from the list of Securities listed on the Exchange.

In order to make decisions regarding the de-listing of Securities, approval or rejection of requests for re-listing of Securities and their placement on the Main Board or Development Board as intended in this Regulation, the Exchange reviews the information and documents submitted by the Listed Company or Prospective Listed Company or other information obtained by the Exchange by not only considering formal aspects, but also considering the substance of the requirements and opinions of the Securities Listing Committee.

b. Go Private

The act of going private is a corporate action which is the opposite of the act of going public. In the act of going public, a company sells its shares to the public so that it becomes a public company. On the other hand, when going private, a public company changes its status to a closed company.

According to Black's Law Dictionary, Going Private is "the process of changing a public corporation by terminating the corporation's status with Security Exchange Commission as a publicly held corporation and by having its outstanding publicly held shares acquired by a single shareholder or a small group". Meanwhile, according to Young Moo Shin, what is meant by going private is:

"... Any Transaction or series of transactions engaged by an issuer or its affiliate, which would if successful, permit or its affiliate, which would if successful, permit

the issuer to cease filing reports under the securities law and return privately held status... ”

The previous understanding concludes that going private is a change in status from a public company to a closed company. Going private means that a company whose shares were originally owned by the public (closed company), changes back to being a closed company that is only owned by a handful of shareholders.

Nationally, the interest in developing a culture of openness is very fundamental. This openness does not only concern political issues, it is also related to other aspects, including openness in the economic sector. Openness in the economic sector, especially those related to financial issues (financial disclosures) is a fundamental problem and like it or not, it will be mandatory to implement this openness. Without realizing it, the development of the capital market has brought many changes both for business players themselves and regulators. These changes include success in implementing financial technology, developing human resources in the financial sector, and so on. Behind this progress, there are indications that the idea of going private is starting to emerge for several companies that have gone public.

Based on logic, every company has the right to go public, after complying with the rules of the game and, also has the right to buy back shares owned by the public. This is the basic principle of the market economic system adopted and the practice that commonly applies in developed capital markets.

In the UUPT, it is confirmed in article 37 paragraph (1), it is stated that the Company can buy back shares that have been issued with the following conditions:

- a The share buyback does not cause the company's net assets to be smaller than the amount of issued capital plus the required reserves that have been set aside; And
- b The total nominal value of all shares repurchased by the company and share pledges or fiduciary guarantees for shares held by the company itself and/or other companies whose shares are directly or indirectly owned by the company, does not exceed 10% (ten percent) of the amount placed in the company, unless otherwise regulated in capital market laws and regulations.

The regulations that have been used as a reference in implementing going private are the regulations regarding Conflict of Interest and the regulations regarding Tender Offers. These two rules include Bapepam regulations and also regulations issued by the Jakarta Stock Exchange. Apart from that, the process of going private must also refer to Law No. 40 of 2007 concerning Limited Liability Companies (UUPT), and Law No. 8 of 1995 concerning Capital Markets (UUPM).

The change in status from a public company to a closed company can be caused by the following things:

- 1) In public companies

This happened naturally and was caused by the company no longer meeting the requirements as a public company, so it had to change its status to a private company. The definition of a public company can be seen in Law Number 8 of 1995 concerning Capital Markets, namely a company that has a minimum capital of three billion and has a minimum of 300 shareholders.

Closed companies that meet the requirements mentioned above are required to change their status to public companies and make adjustments to their articles of association in accordance with the articles of association of public companies even though the company does not make a public offering or is listed on the Stock Exchange. On the other hand, if the public company in its development no longer meets the requirements as referred to above, namely it does not have 300 or more shareholders, then the company must change its status

back to a closed company. In this case, because there is no listing of shares on the Exchange, there is no need to go through a delisting procedure.

2) Company conducting a public offering

1. On purpose

In this case, there is one or several parties who purchase shares of a listed company, and take the initiative to delist from the Stock Exchange and go private.

2. Force Delisting

In this case, the Company delisted on the Exchange not because of its own initiative, but because the Exchange required it. If after the delisting is carried out, it turns out that the company is not.

2. Delisting actions through Voluntary Delisting and Forced Delisting

A company in the capital market that wants to trade its company's securities in the capital market must register (*listings*) company name on the stock exchange through a public offering in the primary market. Every company that offers securities through the capital market is obliged to disclose all information transparently (full disclosure) regarding the condition of its business, including financial conditions, legal aspects, management and company assets to the public. If a company has been listed on the capital market, the company must comply with the provisions of the Capital Markets Law.

Issuers who have traded their securities on the Indonesia Stock Exchange (BEI) will continue to be monitored and monitored by their company's performance. In the event that a company experiences conditions that have a significant negative impact on the continuity of the company's business or does not fulfill the requirements for listing securities on the IDX, firm action will be taken against the company in accordance with the provisions stipulated in the relevant regulations.

Delisting is the act of removing shares from the list of shares listed on the stock exchange, so that they cannot be traded on the stock exchange. This makes investors and creditors unable to see the performance of the company's financial reports. The Indonesian Stock Exchange (BEI) imposes strict regulations on listed companies (*listings*). If the company does not meet the requirements, it will be threatened with delisting. BEI as the authority administering the stock exchange in Indonesia has the authority to remove registered companies from trading on the stock exchange, when the company does not comply with the regulations set by BEI. One of the factors underlying the IDX imposing sanctions on issuers is that share prices have risen drastically, so that the BEI can temporarily stop selling shares by the issuer.

In the case of an original company *go public* is no longer involved in capital market activities due to bankruptcy or wants to go private due to various reasons such as no longer needing funding from other parties or really wanting to dissolve the company, then the company will be delisted, which means the company's shares are removed from listing on the stock exchange. Conditions of share transactions in companies that provide additional income for the company result in the company maintaining its listed status on the stock exchange. However, if the capital market industry no longer provides benefits and even becomes a burden for the company, then instinctively to survive, the company will choose to leave the stock exchange or capital market or in other words become closed again (go private).

There are two forms of delisting, namely forced delisting (*forced delisting*) and delisting carried out voluntarily (voluntary delisting). Forced delisting occurs when a company cannot fulfil the criteria and listing requirements set by the stock exchange. Meanwhile, voluntary delisting occurs because the issuer submits a request to leave the stock exchange according to the company's internal reasons. In general, the indicators include:

- 1) Within a certain period of time the shares were never traded;
- 2) Experienced several years of losses;
- 3) Not distributing dividends consecutively for several years;

4) Various other conditions in accordance with stock exchange listing regulations;

Apart from that, issuers also voluntarily submit delisting requests because the issuer wants to be acquired, merged or consolidated. In the end, before the company takes actions that have a significant impact on the company, such as acquisitions, mergers and consolidations, it needs to change the form of the company which was previously a public company (*go public*) becomes a closed company (*go private*).

Then when referring to the decision of the Directors of PT. Jakarta Stock Exchange Number: Kep- 308/Bej/07-2004 where, the Exchange Regulations were created in order to increase protection for investors through provisions governing delisting from the stock exchange (*delisting*) and relisting. The factors causing an issuer to be delisted by the Exchange (forced delisting) can be caused by two things, namely:

- 1) Experiencing conditions, or events, which have a significant negative impact on the Listed Company's business continuity, either financially or legally, or on the continuity of the Listed Company's status as a Public Company, and the Listed Company cannot show adequate indications of recovery;
- 2) Shares of Listed Companies which are due to suspension on the Regular Market and Cash Market, have only been traded on the Negotiation Market for at least the last 24 (twenty four) months.

In the case of a company *involuntary* If you have to be delisted from the capital market, in general the parties who own shares in the issuer will be at a greater disadvantage compared to companies that carry out voluntary delisting. This is because, predominantly issuers are delisted involuntarily due to violations of statutory regulations, being declared bankrupt by the court, or not fulfilling the requirements for listing securities on the Stock Exchange. This is different from issuers whose voluntary delisting is generally not always a result of a decline in company performance but rather because of the interests of the company itself, such as: acquisitions, mergers and consolidation.

If you look at the process *delisting* in the United States it is carried out in two stages. The first stage, the issuing company must be delisted from the stock exchange where they are listed. The second stage, when a company's shares have been declared no longer registered, there is no obligation for the company to announce them to the public. In contrast to the UK (United Kingdom), companies that wish to delist must notify or report to the London Stock Exchange to cancel their share trading at least 20 days before implementation, and have obtained approval from 75% of shareholders through the GMS. The United States and several European countries do not regulate details regarding forced delisting and relisting, because they prioritize the voluntary delisting process as an option for issuing companies to go private. The capital markets of Asian countries are firmer in terms of delisting.

Delisting is an important event and has a huge influence on shareholders. This is because delisting is also a sign of irregularities in the management of the issuer concerned. As explained above, delisting is divided into two, namely voluntary delisting and forced delisting. This last type of delisting is a sign of irregularities in company management. The biggest possible impact of delisting is the loss of liquidity for the securities/shares, and this can affect the price of the securities. This is different from voluntary delisting, which is the company's desire, so this action must be approved by shareholders.

If the Issuer has ever been *forced delisting* by the stock exchange, it will usually have a more negative impact compared to voluntary delisting. This is because usually the issuers who are forced to delist have poor company performance which affects share prices and the stock exchange is illiquid. Delisting is the exchange's last option, so before delisting is carried out, the exchange gives an early warning so that

the issuer can improve the condition of the company or comply with the provisions that it has violated. Therefore, the purpose of delisting is not to kill the company, but to provide an opportunity for the company to make improvements, so that it can be relisted, or re-enter the official exchange rate list, for the happiness of shareholders.

Based on the latest provisions in POJK Number 3/POJK.04 of 2021 concerning the Implementation of Activities in the Capital Market Sector, the company's obligation to buy back shares owned by investors does not only apply in the case of requests for voluntary delisting. However, for forced delisting, investors are currently also obliged to buy back shares. This has very positive implications for the *shareholders* an issuer that wants to delist because, this latest provision ultimately provides legal certainty and legal protection to shareholders.

In this case too, the effort to remove shares from the Securities List on the Exchange which is being attempted by the IDX and OJK for a company is a means of creating orderly, fair and efficient trading while also aiming to protect investors. In this way, investors who own shares in issuer companies are always monitored by the IDX and OJK so that investors receive protection and still achieve justice if an issuer wishes to delist, either voluntarily or by force.

3. Delisting & Going Private Before POJK No. 3/Pojk.04/2021 Effective

A. General Delisting Provisions

Delisting is the removal of Securities from the list of Securities listed on the Exchange so that the Securities cannot be traded on the Exchange.

Delisting regulated based on Exchange Regulation No. II. There, there are two things that can be the basis for delisting shares on the Exchange, namely:

1. Delisting Application submitted by a listed company; or
2. *Delisting* by Bursa.

A.1. Delisting at the Company's Request

In the event that a listed company submits a Delisting application, there are several requirements that must be fulfilled by the listed company, namely:

1. Listed companies have been listed on the Stock Exchange for at least 5 (five) years;
2. GMS approval has been obtained for the Delisting plan and changes to the articles of association of the listed company;
3. Listed companies or other appointed parties are obliged to purchase shares from shareholders who do not approve the GMS decision with a price formulation determined based on Exchange Regulation No. II.

A.2. Delisting Price

The Delisting Price is at least the highest of one of the prices below:

1. Nominal price;
2. The highest price in the regular market for the last two years before the announcement of the GMS notification (taking into account the adjustment factor due to changes in nominal value since the last two years until the GMS approved the Delisting), plus a premium in the form of the investment return rate for 2 years (initial share price times the average three-month Bank Indonesia Certificate interest rate or other equivalent government bond interest rate in effect at the time the GMS decision regarding Delisting is adopted); or
3. The fair value of listed company shares is based on an independent appraiser registered with the OJK approved by the GMS.

A.3. Share Delisting Procedure at the Request of a Listed Company (Exchange Regulation No. II)

Listed companies are required to submit plans *Delisting* to the Exchange before submitting initial information disclosure to the public, which contains information regarding, among other things:

- 1) Reasons and objectives of *Delisting*,
- 2) The party who will purchase shares in a listed company from shareholders who wish to sell their shares in a listed company, and
- 3) Estimated share purchase price.

Listed companies are required to disclose initial information to the public through at least 1 newspaper with national circulation which contains the same information as the information that has been submitted to the Stock Exchange. This disclosure of information is carried out at the same time as the announcement of the invitation to the GMS, and must be submitted to the Exchange as soon as possible after the information disclosure is made.

If the GMS approves the plan *Delisting*, listed companies are required to announce information disclosure in at least 1 newspaper with national circulation regarding the procedures for buying back shares, which includes, among other things, the share purchase price, the name of the party who will purchase the shares, the share purchase period is a minimum of 5 Exchange Days after the advertisement date GMS results, appointment of Stock Exchange Members who act as buyer intermediaries. This disclosure of information must be conveyed to the Exchange as soon as possible after it is announced.

The registered company submitted the application *Delisting* to the Exchange accompanied by a share purchase implementation report and an opinion from a legal consultant stating that the share purchase process has been completed and is in accordance with applicable regulations.

The stock exchange will suspend the shares of listed companies that plan to do *sodelistings* shares upon request from the listed company. *Delisting* will become effective after the listed company fulfills all its obligations to the Exchange (including paying securities delisting fees) and the Exchange gives approval for the delisting and announces it on the Exchange.

A.4. Delisting Procedure by the Exchange

Besides *Delisting* requested by a listed company, the Exchange can delist shares of a listed company if the listed company:

- a) experiencing conditions or events that have a significant negative impact on the continuity of the listed company's business, either financially or legally, or on the continuity of the listed company's status as a public company, and the listed company cannot show adequate indications of recovery or
- b) Listed company shares have only been traded on the negotiated market for at least the last 24 months.

If there is an indication that the Listed Company is experiencing one or more of the conditions referred to previously, the Exchange will conduct a Hearing with the Listed Company. In the event that the Exchange decides to do so *Delisting*, then the Exchange shall notify the decision to delist shares of the Listed Company including the implementation schedule to the relevant Listed Company on the same Exchange Day on which the decision is made to Delist the shares in question with a copy to Bapepam.

The Exchange announces on the Exchange the decision to delist shares of the listed company including the schedule for implementing the delisting of shares of the listed company concerned. The announcement will be made no later than the beginning of the first session of the following Exchange Day after the decision to delist the shares in question. If deemed necessary, the Exchange can carry out a Suspension for 5 (five)

Exchange Days and then trade only on the Negotiation Market for 20 (twenty) Exchange Days before the effective date of Delisting. Delisting is effective on the date determined by the Exchange in the Delisting decision, and announced on the Exchange.

B. Going Private

Going-private is a change in the status of a company, from a public company to a closed company through certain procedures. In Indonesia, there are several precedents regarding companies that have taken going-private actions where in general, the OJK requires the following things to be fulfilled by the company:

1. The company's GMS has approved the going-private plan, including plans to amend the company's articles of association. Amendments to the articles of association must be approved and received notification from the Minister of Law and Human Rights, where the approval of the GMS along with the approval and receipt of the notification must be notified to the OJK; And
2. The company's shareholders are no more than 50 parties.

Apart from the things mentioned above, OJK can provide other requirements related to the implementation of going-private. There are no regulations governing the procedures for holding a GMS to specifically approve Going-private. Thus, the procedures for holding a GMS, especially the attendance quorum and voting quorum for the GMS, refer to the OJK's discretion as stated in a written letter to the relevant listed company.

Provisions in Law no. 40 of 2007 concerning Limited Liability Companies (UUPT) which became the initial basis for the implementation of going private is:

- 1) Article 21 paragraph (1), (2) regarding changes to the articles of association of a public company to a closed company must obtain approval from the Minister.
- 2) article 19 changes to the articles of association must be determined by the GMS.
- 3) Article 37 The company can buy back shares that have been issued under certain conditions.

B.1. Voluntary Tender Offers in Relation to Going Private

If after Delisting a company still has more than 300 shareholders, the company's shareholders or their appointed parties can carry out a voluntary tender offer ("Voluntary Tender Offer") with the aim of reducing the number of shareholders of the company so that it is owned by less than 300 shareholders. . Voluntary Tender Offers are regulated based on Financial Services Authority Regulation no. 54/POJK.04/2015 concerning Voluntary Tender Offers, with the following procedures:

- 1) The party making a Voluntary Tender Offer is obliged to submit a Voluntary Tender Offer statement to the OJK and publish the Voluntary Tender Offer Statement in 2 daily newspapers, one of which has national circulation on the same day.
- 2) The party making the Voluntary Tender Offer is obliged to submit additional information or changes as requested by the OJK, until the OJK declares the Voluntary Tender Offer statement effective.
- 3) The party making the Voluntary Tender Offer is obliged to announce changes or additions to the Mandatory Tender Offer statement in at least 2 newspapers no later than 1 working day after the OJK declares the Voluntary Tender Offer statement to be effective.

- 4) Implementation of the Voluntary Tender Offer must begin at least 2 working days after the effective statement date from the OJK, for at least 30 days. The Voluntary Tender Offer Period can be extended up to 90 days.
- 5) Voluntary Tender Offer transactions must be completed no later than 12 days after the completion of the Voluntary Tender Offer period.

C. Relisting

Relisting is the re-inclusion of a Securities in the list of Securities listed on the Exchange, after the Securities have been delisted on the Exchange (Delisting).

C.1. Relisting Conditions

Listed Companies whose shares are delisted from the Securities list listed on the Exchange, can submit an application for Relisting of their shares to the Exchange no later than 6 (six) months after the Delisting is carried out by the Exchange. The Registration Statement submitted to Bapepam remains effective. Has corrected the conditions that led to the Delisting by the Exchange or has realized the matters underlying the request for Delisting of shares when it was previously a Listed Company. There is a statement from the Directors and Commissioners stating that the Prospective Listed Company is not currently in a legal dispute or facing a problem that is expected to materially affect the continuity of the company's business.

Prospective Listed Companies may be subsidiaries or holding companies of Listed Companies, provided that:

- 1) if the affiliation relationship between the Prospective Listed Company and the Listed Company breaks down, each company is able to carry out its operational activities adequately based on the assessment of an independent party; And
- 2) based on the Listed Company's pro forma Financial Report without consolidating it with the Prospective Listed Company's Financial Report, the Listed Company is still able to fulfill the listing requirements; or
- 3) Based on the Proforma Financial Report of the Prospective Listed Company without being consolidated into the Financial Report of the Listed Company, the Prospective Listed Company is still able to fulfill the recording requirements.

C.2. RELISTING PROCEDURE

Decree of the Board of Directors of the Jakarta Stock Exchange Number: Kep-308/Bej/07-2004 concerning Regulation Number II concerning Delisting and Relisting of Shares on the Exchange regulates procedures for Relisting or Relisting, including:

- 1) Prospective Listed Companies who intend to re-list their shares on the Exchange, are required to submit a Relisting application to the Exchange and pay a registration application registration payment of IDR 15,000,000, - (fifteen million rupiah) for the Main Board or IDR 10,000,000, - (ten million rupiah) for Development Board, provided that the registration fee for the Relisting application will be calculated as a deduction from the initial listing fee as intended in provision VIII.2. Regulation Number IA concerning the Listing of Shares and Equity Securities Other than Shares Issued by Listed Companies, if the Relisting application is accepted.
- 2) Relisting Application submitted by a Prospective Listed Company which is a Public Company or a company which is also listed on another Stock Exchange using a form whose form and contents are in accordance with Attachment II.1 to this Regulation.
- 3) Application for recording as intended in provision V.1. above must be accompanied by at least the following documents and information: proof that the

Registration Statement from Bapepam is still effective; deed of establishment/Articles of Association of the Prospective Listed Company which has been approved by the competent authority along with all amendments thereto and Company Registration Certificate; Organizational structure of Prospective Listed Companies up to officials one level below the Board of Directors, and so on as stated in these Stock Exchange regulations

- 4) The Listing Application is deemed to have been accepted if the application and all attachments as intended in provisions 1 and 3 above have been completely received by the Exchange.
- 5) Companies that apply for Relisting are required to make a presentation about their company to the Exchange.
- 6) If deemed necessary, the Exchange may request additional documents or information or ask for additional explanations directly from company management, or ask for information from other parties and/or ask for opinions from independent parties.
- 7) Approval or rejection of the Relisting application will be given by the Exchange no later than 10 (ten) Exchange Days after the Exchange obtains complete documents and/or information.
- 8) Prospective Listed Companies are required to pay initial listing fees and annual listing fees as intended in provision VIII of Regulation Number IA concerning the Listing of Shares and Equity Securities Other Than Shares Issued by Listed Companies no later than 2 (two) Exchange Days before the Relisting date and send proof of deposit. to Bursa. Delays in payment of the listing fees mentioned above may result in delays in the listing and trading of shares of the Prospective Listed Company.
- 9) The Exchange announces the listing and trading of shares of the Prospective Listed Company no later than 1 (one) Exchange Day before share trading begins.

4. Regulations regarding Going Private and Delisting in OJK Regulation no. 3/POJK.04/2021

In this POJK, there are three types of Going Private and Delisting mechanisms based on the party who proposes or orders the company to Go Private and Delisting, unlike previous regulations which only regulate two types. The types of mechanisms regulated in this POJK include: 1) Based on the application of a Public Company; 2) Based on OJK orders; and 3) Based on the application from the Stock Exchange. This division is due to differences in authority and reasons that each party may use.

A. Going Private and Delisting Mechanism based on Public Company Application

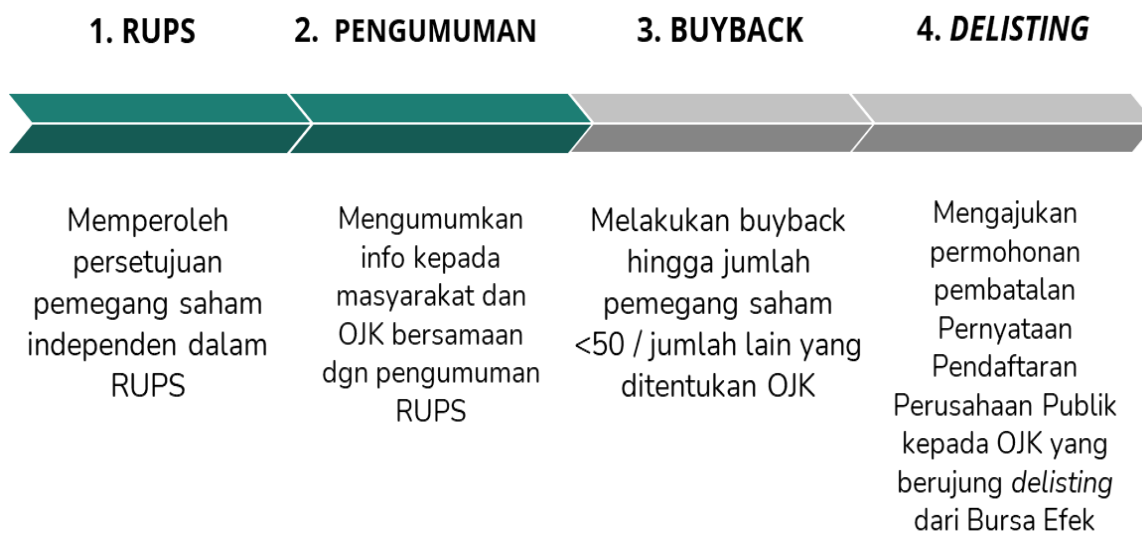
According to this POJK, a Public Company that wishes to transform itself into a private company must first obtain approval from Independent Shareholders (hereinafter referred to as PSI) at the GMS. Independent Shareholders are shareholders who do not have personal economic interests in connection with a particular transaction and are not part of the Board of Directors, Board of Commissioners, and Major or Controlling Shareholders or their affiliates. Simultaneously with the announcement of the GMS results, the Public Company must also announce to the public its intention to go private. This is done to fulfill information disclosure requirements.

Then, Public Companies are required to buy back shares owned by public shareholders, so that the number of shareholders in the company is less than 50 parties or another number determined by the OJK. After that, the Public Company must submit a request for the effective revocation of the Registration Statement in the context of a Public Offering of equity Securities or Public Company Registration Statement to the OJK.

The Application Letter itself must be accompanied by several other documents, which include:

- 1) Two different statements from PT Indonesian Central Securities Depository (KSEI) as the party that carries out the functions of the depository and settlement institution on the Indonesian Stock Exchange. The first statement must state that the number of shareholders of the Public Company has met the requirements to go private (i.e. less than 50 parties or another number determined by the OJK) and be accompanied by the latest composition of shareholders; or, the statement can also be replaced with a document resulting from a tender offer by another Party. Meanwhile, the second statement must state that the Public Company has fulfilled its obligations to KSEI;
- 2) Statement from the Securities Administration Bureau (BAE) or Public Company which carries out its own Securities administration, which contains the same statement as the Statement from KSEI above;
- 3) Statement from the Stock Exchange that this Public Company has fulfilled all its obligations to the Stock Exchange;
- 4) Copy of the Minister of Law and Human Rights' approval for changes to the articles of association for Going Private; And
- 5) If there is an obligation for administrative sanctions in the form of fines and/or interest and other obligations to the OJK, then proof of completion of the obligation to pay sanctions must also be attached.

Once the Application to the OJK is received completely, the OJK will continue the Going Private process by revoking the effectiveness of the Registration Statement for the Public Offering of Equity Securities and/or Public Company Registration Statement as requested within a maximum period of 14 working days from the Application. accepted. OJK will also complete the Delisting process for Going Private by issuing a letter ordering the Stock Exchange to cancel the listing of Securities belonging to the Public Company on the Stock Exchange; and order KSEI to also cancel the registration of Securities belonging to the Public Company in collective custody at KSEI. After the letter is submitted by the OJK, the Stock Exchange has 14 days to cancel the listing of the company's securities. KSEI also has the same time period to cancel the company's Securities registration in collective custody at KSEI.



(Graph 1. Mechanism of Going Private based on Public Company Application)



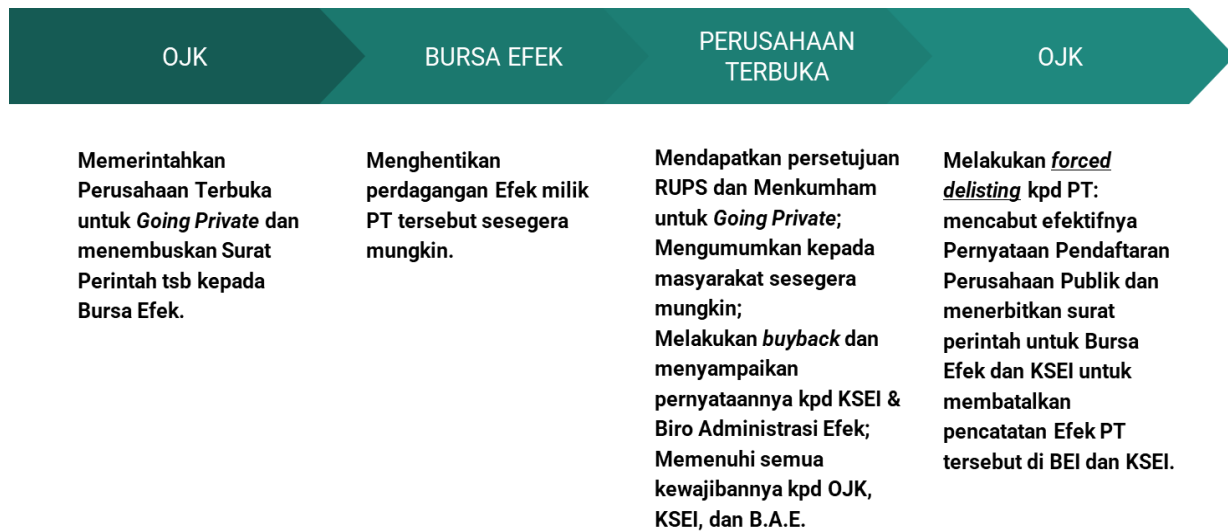
(Graph 2. Delisting Mechanism based on Public Company Application)

B. Going Private and Delisting Mechanism based on Financial Services Authority (OJK) Orders

Under certain conditions, such as financial problems in a Public Company, the OJK has the right to order the Public Company to carry out Going Private procedures. The Order Letter shall also be copied to the Stock Exchange as the Party carrying out the Securities listing. After receiving a copy of the Order, the Stock Exchange is obliged to stop trading in Securities belonging to the Public Company as soon as possible, with a very short deadline, namely on the next trading day.

Meanwhile, the Public Company is then required to carry out the Going Private procedure. The Going Private mechanism based on the OJK Order is described as follows:

- 1) Obtain GMS approval to go private with the procedures and time period determined by the OJK;
- 2) Announce to the public the requirement for the Public Company to Go Private, with the earliest possible deadline, namely no later than 2 (two) working days after receiving the status change order from the OJK;
- 3) Carry out a buyback of all shares owned by public shareholders so that the number of shareholders is less than 50 parties or another number determined by the OJK;
- 4) Submit a statement from KSEI and the BAE/public company which carries out its own Securities administration, that the number of shareholders of the Public Company is less than 50 parties/other number determined by the OJK, accompanied by the latest composition of shareholders;
- 5) Complete all obligations to OJK, Stock Exchange and KSEI if any;
- 6) Request approval for changes to the articles of association regarding the status of a Public Company to a Closed Company from the Minister of Law and Human Rights.



(Graph 3. Mechanism of Going Private based on OJK Orders)

After obtaining approval from the Minister of Law and Human Rights, Public Companies are given a deadline of no later than 14 working days to submit to the OJK evidence of fulfillment of obligations to the OJK, Stock Exchange and KSEI if any, and proof of approval from the Minister of Law and Human Rights. Then, the OJK will begin the Delisting process by revoking the effectiveness of the Registration Statement for the Public Offering of Equity Securities and/or the Public Company Registration Statement of the Public Company no later than 14 days after the aforementioned evidence is received. To complete the Delisting process, the OJK will issue an Order to the Stock Exchange and KSEI which contains an order for the Stock Exchange to cancel the listing of the company's Securities on the Stock Exchange, and for KSEI to cancel the registration of the company's Securities in KSEI's collective custody.

C. Going Private and Delisting Mechanism based on Stock Exchange Application

The Stock Exchange also has the right to make a Public Company a Closed Company by requesting this to the OJK. The reasons that can be used by the Stock Exchange to request this include:

- 1) The Public Company experiences a condition or event that has a significant negative impact on the business continuity of the Public Company; and/or
- 2) Public Companies do not meet the requirements for listing Securities on the Stock Exchange.

For this reason, the Stock Exchange is obliged to provide notification to the OJK no later than 2 working days after the Public Company experiences the conditions or events referred to by the Stock Exchange, and before the Stock Exchange cancels the listing of the Public Company's Securities. Based on the request from the Stock Exchange, OJK also ordered the company in question to go private.

Public Companies whose Securities listings are cancelled by the Stock Exchange and ordered by the OJK to Go Private are then required to carry out Going Private procedures. The stages of the Going Private procedure that must be carried out by the Public Company in the Going Private mechanism are more or less the same as the Going Private mechanism based on the Public Company Application, with the exception that there is no obligation to obtain Independent Shareholder approval at the GMS, although the company is still obliged to obtain GMS approval to carry out this Going Private procedure. The Going Private and Delisting procedures in this mechanism will be completed after the OJK revokes the effectiveness of the Public Company Registration Statement and the Stock Exchange cancels the listing of the company's Securities.



(Graph 4. Mechanism of Going Private based on Stock Exchange Application)

D. Implementation of Share Buybacks for Going Private

Articles 73, 74, 75, 76, 77, 78

1) Buyback Implementation

Buyback implementation for Going Private must be carried out according to OJK Regulation No. 3/POJK.04/2021 and other related OJK regulations, including OJK Regulation no. 3/POJK.04/2021, OJK Regulation no. 30/POJK.04/2017, OJK Regulation no. 2/POJK.04/2013, and OJK Circular Letter Number 3/SEOJK.04/2020. The implementation itself must be completed no later than 18 months after the announcement to the public regarding the Company's plans to go private. However, the obligation to carry out a buyback is lost if a Party makes a tender offer to purchase all public shares, which results in the number of shareholders becoming <50 Parties or another number determined by the OJK.

2) Buyback Price

The share price for carrying out this buyback varies, depending on what type of mechanism is used by a Public Company in carrying out its Going Private procedures. The provisions regarding the buyback price can be summarized as follows:

a. For Going Private based on PT Application:

- The buyback price for shares listed & traded on the Stock Exchange must be higher than the average price of the highest daily trading price on the Stock Exchange within a period of 90 days before the announcement of the GMS for Going Private (or 12 months if in the last 90 days PT Securities were not traded on the Stock Exchange);
- The buyback price for shares that are not listed and traded on the Stock Exchange must be higher than the fair price determined by an appraiser registered with the Financial Services Authority.

b. For Going Private based on OJK Orders:

- The buyback price for shares listed & traded on the Stock Exchange must be the lowest of the average price of daily trading closing prices on the Stock Exchange within a period of 90 days before the OJK order to Go Private (or 12 months if in the last 90 days PT Securities not traded on the Stock Exchange);

- The buyback price for shares that are not listed and traded on the Stock Exchange must not be lower than the fair price determined by an appraiser registered with the OJK.
- c. For Going Private based on Stock Exchange Application:
 - The buyback price must be in accordance with the average trading price of Public Company shares on the Stock Exchange within the last 30 days / book value per share based on the latest financial report (whichever is higher).

5. Legal Consequences of Delisting and Going Private

Same as other legal acts, then *Delisting* and Going Private also has legal consequences. The legal consequences that occur are for companies that carry out Delisting and Going Private. The following are the legal consequences of Delisting and Going Private on:

- 1) **Company Status:** If the company delists and goes private, the company's status will change. The change in question is that the company's status, which was previously a public company, will change to a closed company. A public company is a public company or company that carries out a public offering of shares in accordance with the provisions of laws and regulations in the capital markets sector. Meanwhile, a public company is a company whose shares are owned by at least three hundred shareholders and has paid-up capital of at least IDR 3,000,000,000.00 (three billion rupiah) or a number of shareholders and paid-up capital determined by Government Regulation. In contrast to public companies or open companies, closed companies are the opposite of open companies, namely companies whose shareholders are limited to certain people (for example family and friends) so that the shares are shares in the name and are small in number as determined in the Company's Articles of Association. According to Yahya Harahap, in his book entitled Limited Liability Company Law, companies which are Closed Companies are divided into two types, namely purely closed companies (which do not give room for outsiders to become shareholders) and companies which are not purely closed (partially open and partially closed where there are two groups of shareholders in the company, namely special shareholders which consist of only certain people and ordinary shareholders whose shares can be owned by anyone). Based on the definitions regarding open companies and closed companies, a closed company is a company whose shares are not offered to the general public, while a public company is a company that has made a public offering of shares so that its shares (which have been offered to many people in the public) have reached certain amount and the number of shareholders is greater. One of the characteristics of a Public Company is that behind the company name there is the phrase "Tbk" which is an abbreviation of the word Open and indicates that the company is a public company whose shares have been offered to the public or in other words has carried out a public offering of shares in accordance with the provisions of the laws and regulations. invitation in the capital markets sector. Therefore, if a public company delists and goes private, the company can no longer use the phrase "Tbk" behind the company name because the phrase "Tbk" is an abbreviation of the word Open which is the characteristic of the company referred to as a public company. which has gone public and listed so that it can buy and sell its securities on the stock exchange. Automatically, the public company's registration statement will be revoked by the OJK, which will also order the Stock Exchange and KSEI (Indonesian Central Securities Depository or Depository and Settlement Institution which carries out KSEI functions) to write off or cancel the delisting of the company's securities. This is as regulated in the provisions of Article 64 number 5 and Article 66 number 8 of the Republic of Indonesia Financial Services Authority (OJK) Regulation Number. 3/POJK.04/2021 concerning the Implementation of Activities in the Capital Market Sector.
- 2) **Number of Company Shareholders:** If the company delists and goes private, the number of shareholders in the company will decrease. This is because when delisting and going

private, the company has an obligation to purchase shares that have been sold (offered) to the public or what is known as a buyback until the number of shareholders is less than fifty people or a number determined by the Financial Services Authority. This obligation is regulated in the provisions of Article 64 number 1 letter (b) and Article 66 number 4 letter (c) of the Republic of Indonesia Financial Services Authority (OJK) Regulation Number. 3/POJK.04/2021. When the shares are repurchased, the number of shareholders which was originally at least three hundred (300) people will be reduced to fifty (50) people or a number determined by the OJK or in other words the number of shareholders will be reduced compared to the number of shareholders before the company. carry out Delisting and Going Private.

- 3) **Obligations that the Company Must Perform:** If the company is going to Delisting and Going Private, then the company has a number of obligations that must be carried out apart from the obligation to buy back its shares (buyback) as regulated in the provisions of Article 64 number 1 letter (b) and Article 66 number 4 letter (c) of the Regulations Financial Services Authority (OJK) of the Republic of Indonesia Number. 3/POJK.04/2021, namely the obligation to:
- a. Obtain approval from Independent Shareholders at the General Meeting of Shareholders, as regulated in the provisions of Article 64 number 1 letter (a) and Article 66 number 4 letter (a) of the Republic of Indonesia Financial Services Authority (OJK) Regulation Number. 3/POJK.04/2021. This is because the change in company status from a public company to a closed company and vice versa is a change to the Articles of Association which must be determined by the General Meeting of Shareholders. Apart from that, based on the provisions of Article 66 number 4 letter (f) of the Republic of Indonesia Financial Services Authority (OJK) Regulation Number. 3/POJK.04/2021 and Article 21 numbers 1 and 2 letters (f) of Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies, changes to the Articles of Association regarding this matter must also obtain approval from the Minister of Law and Human Rights of the Republic of Indonesia.
 - b. Inform the public regarding changes in the company's status from previously being a public company to a closed company, the reasons for the change, company data, addresses where shareholders can be contacted and other information. This obligation is regulated in the provisions of Article 64 number 1 letter (c) and Article 66 number 4 letter (b) of the Republic of Indonesia Financial Services Authority (OJK) Regulation Number. 3/POJK.04/2021, and is intended as a form of information disclosure to the public.
 - c. Submit a request for effective revocation of the Registration Statement in the context of a Public Offering of Equity Securities or Public Company Registration Statement to the Financial Services Authority as regulated in the provisions of Article 64 number 1 letter (d) of the Republic of Indonesia Financial Services Authority (OJK) Regulation Number. 3/POJK.04/2021. This is because a Public Company Registration Statement is one of the things that is required for a company to become a public company so that if the company's status is changed to closed company status then this statement (which can make a company a public company or open company) should be revoked. The application must be accompanied by a number of documents as regulated in the provisions of Article 64 number 2 of the Republic of Indonesia Financial Services Authority (OJK) Regulation Number. 3/POJK.04/2021 and can also be supplemented and/or replaced with tender offer documents by other parties.
 - d. Submit a statement that the shareholders of the Public Company have carried out their obligations to buy back their shares (buyback) as regulated in the provisions of Article 64 number 1 letter (b) and Article 66 number 4 letter (c) of the Republic of Indonesia Financial Services Authority (OJK) Regulation Number. 3/POJK.04/2021,

accompanied by the latest composition of shareholders from the Depository and Settlement Institution as well as the Securities Administration Bureau or Public Company which carries out its own Securities administration. This must be done as proof that the obligation to carry out the buyback has been carried out by the shareholders of the Public Company who wish to change the status of their company to a closed company.

- e. Fulfill all Public Company obligations to the Financial Services Authority, Stock Exchange and Depository and Settlement Institutions as regulated in the provisions of Article 66 number 4 letter (e) of the Republic of Indonesia Financial Services Authority (OJK) Regulation Number. 3/POJK.04/2021. This is intended so that all obligations that must be carried out can be fulfilled before the company delists and goes private so that the requirements for changing the company's status from a public company to a closed company can be fulfilled.
- 4) **A number of obligations that do not need to be carried out:** If the company is going to delist and go private, then there are a number of obligations that the company does not need to carry out in the future. This is because a number of obligations are obligations of public companies and closed companies, which have different characteristics from public companies, no longer need to carry out these obligations. For example, companies are no longer required to submit company financial reports to public accountants for audit, companies are no longer required to announce that the company will call for a General Meeting of Shareholders before calling for a General Meeting of Shareholders (GMS), and companies are not required to have more from one member of the Board of Directors and/or Board of Commissioners. A number of obligations in Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies are obligations for public companies so that when a public company has changed its status to a closed company (which has different characteristics from a public company) then these obligations no longer have to be carried out by the company. because the status or form of the company is different from before.
 - 5) **Securities Trading:** If the company is going to Delist and Go Private, then as a result of the change in the company's status from a public company to a closed company, the company in question can no longer trade its securities on the Stock Exchange until the company re-lists or re-registers. This is because Delisting is an action that will remove Securities from the list of Securities listed on the Exchange so that the Securities cannot be traded on the Exchange. The purpose of listing is for a security to be listed on the Stock Exchange so that it can be traded on the Stock Exchange and if the security is delisted then it is natural that it can no longer be bought or traded on the Stock Exchange until the company records or re-registers the security on the Stock Exchange (relisting) so that even The listing of these securities has been delisted on the Exchange after the delisting. These securities can be traded at a later date because they have been listed again after the relisting or re-listing has been carried out.

Based on this explanation, we can conclude that there are a number of legal consequences that will be experienced by public companies that do *sodelisting* and going private. This consequence or impact will not only affect the status of the company changing from a public company to a closed company (which has different characteristics from a public company) and the name of the company (which no longer has the right to use the phrase "Tbk" as a characteristic of a public company behind its name). but also when the number of company shareholders will be reduced from three hundred people to fifty due to the company's obligation to carry out share buybacks), the company will no longer be able to trade securities on the Stock Exchange (because the company's securities in question have been removed by delisting) , the company is no longer obliged to carry out a number of obligations that must be carried out by a public company (because the company's status has changed to a closed

company which is different from a public company), and there are also a number of obligations that must be fulfilled by a public company as a condition for delisting and going private to be carried out and the status of the company concerned can change from a public company to a closed company.

4. CLOSING

Conclusion

Before OJK Regulation no. 3/POJK.04/2021 was issued, the Delisting procedure refers to the Decree of the Directors of the Indonesian Stock Exchange No. Kep-308/BEJ/07-2004 concerning Delisting (*Delisting*) and Relisting of Shares on the Stock Exchange, while the Going Private procedure itself is unclear or confusing. The decision of the Board of Directors of the Indonesian Stock Exchange only regulates two types of Delisting mechanisms based on which Party submits: 1) Delisting Application submitted by the Listed Company concerned (voluntary delisting), and 2) Delisting of shares by the Stock Exchange (forced delisting). Then if you refer to the provisions after POJK No. 3/POJK.04/2021 was issued, there are 3 types of Going Private and Delisting mechanisms based on which party requests or orders the company to go private: namely 1) based on a public company request, 2) based on an OJK order, and 3) based on a Stock Exchange request. Going Private and Delisting Mechanism in POJK No. 3/POJK.04/2021 essentially has the following flow: 1) GMS → 2) Implementation of Buyback/Tender Offer → 3) Announcement to the Public → 4) Completion of responsibilities to the Stock Exchange, KSEI, and Securities Administration Bureau → 5) OJK's effective revocation of the Public Company Registration Statement → 6) Delisting of the company's securities on the Stock Exchange and KSEI.

The legal consequences that arise as a result of the implementation of Going Private are the obligation to hold a GMS to change the company's status, the obligation to carry out a buyback to reduce the number of shareholders, the obligation to announce to the public, the change in company status from a public company to a closed company, the loss of corporate securities from Stock Exchange listing, companies cannot trade their securities on the Stock Exchange again before going Public and Relisting again, and companies no longer have obligations that must be fulfilled by public companies based on Law no. 40/2007 concerning Limited Liability Companies and other statutory regulations.

Suggestion

In our opinion, it would be best for the Government of the Republic of Indonesia (especially the parties who have the authority to make and enforce laws and regulations regarding *delisting* and going private) also need to consider the economic impact apart from the legal impact of delisting and going private, such as the company can no longer make a profit through selling securities on the stock exchange while the company is still a public company. This is because it cannot be denied that this is one of the impacts that occurs on companies that delist and go private and it needs to be acknowledged that apart from the legal impact that this has on companies, there are also economic impacts that occur when companies delist and go private.

provisions of POJK Number 3/POJK.04 of 2021 concerning the Implementation of Activities in the Field The Capital Market which requires companies to buy back shares owned by investors is not only applied in the case of requests for voluntary delisting. However, for forced delisting, investors are currently also obliged to buy back shares. This has very positive implications for shareholders, however, on the other hand, the OJK and IDX must continue to monitor so that the implementation of the provisions requiring delisting companies to buy back shares can be implemented firmly and regularly so that legal certainty for shareholders can be achieved and encourage the creation of fair trade. orderly, reasonable and efficient while aiming to protect investors.

POJK 3/2021 does not regulate re-listing (*Relisting*) so that we still use the old 2004 Exchange regulations, it is best to avoid confusion, whether the OJK or the Indonesian Stock Exchange must issue the latest policy regarding Relisting following POJK 3/2021

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