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Multidiciplinary Review on The Effects of Backdoor Listing Action Against Standby Purchaser (Acquisitor Company)

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Abstract
Backdoor Listing is a "Corporate Action" taken often by companies in Indonesia today. Backdoor Listing is an act in which a closed limited liability company acquires an open limited liability company in order to conduct a right issue without going through the Initial Public Offering (IPO) process. In this paper, the writers attempt to discuss the legal consequences of Backdoor Listing action against Standby Purchasers. The research method was normative juridical using statutory approach and concept approach. In the discussion section, first the writers described the IPO and its inhibition in terms of legal and economic point of view. The review then led to the use of Backdoor Listing as an alternative to capital expansion in addition to the IPO path. The writers inventoried the requirements that must be met before backdoor listing as a conditional legal action.

Keywords: initial public offering; backdoor listing; backdoor listing requirement; standby purchaser.

Abstrak
Backdoor Listing merupakan "Aksi Korporasi" yang mulai sering dilakukan oleh perusahaan di Indonesia dewasa ini. Backdoor Listing merupakan perbuatan dimana suatu perseroan terbatas yang bersifat tertutup melakukan akuisis terhadap perseroan terbatas yang bersifat terbuka dengan tujuan dapat melakukan right issue tanpa melalui proses Penawaran Umum Perdana (Initial Public Offering/IPO). Dalam paper ini, penulis mencoba untuk membahas tentang akibat hukum aksi Backdoor Listing terhadap Standby Purchaser. Metode penelitian yang digunakan adalah yuridis normatif dengan menggunakan pendekatan perundang-undangan dan pendekatan konsep. Pada bagian pembahasan, penulis terlebih dahulu menguraikan mengenai Penawaran Umum Perdana (Initial Public Offering/ IPO) dan penghambatnya dari segi hukum maupun sudut pandang ekonomi. Kajian itu lalu mengantarkan pada latar belakang digunakannya Backdoor Listing sebagai alternatif ekspansi permodalan selain melalui jalur Penawaran Umum Perdana (Initial Public Offering/IPO). Penulis menginventarisasi syarat yang harus dipenuhi sebelum melakukan Backdoor Listing sebagai bentuk kebolehan (permittere) yang bersyarat.

Kata kunci: *initial public offering; backdoor listing; persyaratan backdoor listing; perusahaan pengakuisisi.*

Introduction

The term company is derived from the transliteration of several foreign languages such as Dutch (*Corporatie*), English (Corporation), and Latin (*Corporare*) which is the plural form of Corpus meaning entity. Literally, company can mean to give an entity or embodiment. In a broader sense, the entity is obtained from human action as any other

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categorization of the human body as a natural construction. By definition, referring to the definition of Company according to the Dutch Government, which is quoted in *Memorie van Toelichting,* the draft of the Law of the Republic of Indonesia *Wetboek van Koophandel*, stated that company is any human action carried out continuously and openly in a certain position and has the main objective of seeking profit for itself. According to Moleengraaf, company is any action that is carried out continuously, the actions of which are naturally done to earn income by trading goods and or services or by entering into trade agreements (Asikin, 2016)

The meaning of company can also be found in the positive law of Indonesia which is contained in Article 6 of the Indonesian Code of Trade Law where a person who runs a company in which both the state of wealth and those related is required and tailored to the needs of the company and is supported by making records through which all the rights and obligations of the company can be determined. The formulation regarding the company is made in general without any explanation so that the understanding of the company can develop. Within the framework of legal theory, the nature of the company based on the separation of assets, which can be divided into corporate entity and non-corporate entity, can also be found here.

In terms of form, some models of company are known. Limited liability companies are one of the pillars in the development of the national economy which is regulated through positive law as a form of legal updates and adjustments to the needs of society. Limited Liability Company in corporate law theory is an entity in the form of a legal entity. In Dutch, the Limited Liability Company is called "*Naamlooze Vennootschap*". As a legal entity, a Limited Liability Company is understood as an entity that has separate assets and is separated from the assets of the companies. As assets or partial assets, the assets of the Limited Liability Company can also be used to pay the debts of the Limited Liability Company apart from carrying out company activities.

In essence, the inherent separation characteristic is the main characteristic of legal entities, including foundations and cooperatives. These assets are separated as an effort to carry out the company's needs in "legal association". With the separation of the company assets, the change in management, the owner or members of the company does not have significant implications because legal entities are deemed to be responsible for themselves, including before the law and before the court.

According to Steven H. Gifis, a Limited Liability Company can also be referred to as an "Association of Shareholders" which is created and recognized by law as an artificial person. The separation of assets between company assets and the owner's personal assets is reflected in the distribution of shares in a Limited Liability Company. The assets between the Limited Liability Company and its owners have been separated since the company received the Decree of the Minister of Law and Human Rights as a form of legalization for the establishment of the Limited Liability Company. These rules can be found in the Law of the Republic of Indonesia Number 40 of 2007.

To meet the capital needs of a company, there are times when shares in a company are also traded. The traded shares then become instruments in the capital market. The stocks circulating in the capital market are often referred to as securities (Fadilla, 2018). According to the Law of the Republic of Indonesia Number 8 of 1995 about Capital Market, securities are debt instruments, commercial securities, shares, bonds, evidence of debt, collective investment participation units, futures contracts on securities, and any derivatives of shares. Stocks are Capital Market securities as a form of financial market (Tandelilin, 2010)

The capital market itself in the perspective of the company, is a source of financing that is needed by business actors to fulfill the additional capital, which also acts as an alternative financing for capital providers (Suradiyanto, 2018). This is where the Capital Market functions as a meeting place for parties who have excess capital capacity (or also known as investors) with companies as parties who need additional capital. This capital is optional, both for the short and long term (Suherman, 2010). So in a narrow sense, the Capital Market is a securities market where stocks and bonds are traded (Rahmah, 2019). More specifically, the Capital Market is often referred to as the stock exchange. In Indonesia, in the historiography of the Capital Market, initially there were two stock exchanges, which were Jakarta Stock Exchange (JSX) and Surabaya Stock Exchange (SSX). The two stock exchanges are then merged into Indonesia Stock Exchange (IDX), which means more issuers and diversification of traded securities products (Nugraha, 2008)

Companies wishing to be listed on the Indonesia Stock Exchange (IDX) need to follow the Initial Public Offering mechanism or IPO as a form of initial public offering or the first sale of company shares to the public (Hidayat, 2018) There is an interesting study in investors because of the IPO is a source of corporate funding. In the stigma of investors, IPO attracts the attention because there is an assumed share price at the time of IPO that tends to be overpriced. Therefore, they buy shares during the IPO and this is considered a profitable investment that can be sold at a high price as the company grows.

Investors as parties who have excess capital, especially international investors, assess the appropriateness of shares traded in the Capital Market for further purchase (Fauzan, 2018). On a global scale, there are several factors or parameters that influence the prchase of shares by investors. According to Samsul (2006), several factors or parameters to consider when buying company shares in a country include political stability, consistency in law enforcement, economic systems and prospects, and social justice. The consistency of parameter of law enforcement is correlative with the research topic raised in this paper relating to Backdoor Listing as a corporate action that enters companies through a back channel and has not been regulated in laws and regulations. Backdoor Listing is considered a relatively new alternative for companies looking to engage on the stock exchange without having to make an IPO.

The legal vacuum condition regarding the Backdoor Listing regulation as a corporate action certainly requires an in-depth study, especially with regard to the legal consequences for all parties involved in the Backdoor Listing decision. The urgency arises

mainly due to the absence of laws and regulations that explicitly and technically regulate Backdoor Listing activities as corporate action in Indonesia. In fact, if studied more comprehensively, Backdoor Listing activities can have broad dimensions and even touch public interests such as business competition. However, apart from that, it is also necessary to consider what factors affecting the implementation of Backdoor Listing in Indonesia. This includes the legal consequences for the Standby Purchaser (the acquiring company) which will be discussed in this article.

The focus of the study in this paper is to discuss the factors that support the implementation of Backdoor Listing as a corporate action in Indonesia by borrowing the data from several disciplines such as economics combined with law. Then, it will be studied in a comparative manner with other countries including the United States, Canada, England and Australia. We try to find what factors are the reasons or motivation for the acquirer to conduct an open Backdoor Listing of a Limited Liability Company (Wang, 2019) Then the laws and regulations that have an association with Backdoor Listing in the context of capital market law will be described and the urgency of setting up Backdoor Listing as a corporate action in Indonesia will also be raised.

Research Problems

The formulation of the problems in this paper is as follows: *first,* what are the factors that affect Backdoor Listing in Indonesia? and *second,* what is the legal effect of Backdoor Listing for the acquirer?

Research Method

This type of research is juridical normative or also known as doctrinal legal research, where researchers examine secondary legal materials then continue with research on primary data in the field to answer problems that are the focus of research conceptualizing law as a rule, which acts as a benchmark for human behavior that is considered appropriate and inappropriate. The approach used in this research was Statute-Approach and Conceptual-Approach. The concepts studied are general corporate law, capital market law, and IPO and studies on Backdoor Listing as a corporate action. The type of legal material used in this study was secondary data as the main data in the form of statutory regulations and supported by data from literature and expert opinion and dictionaries. The laws and regulations used in this study were as follows:

1. Law of the Republic of Indonesia, the Constitution of the Republic of Indonesia of 1945 (UUD NRI 1945).
2. The Book of the Law of the Republic of Indonesia Trade Law/KUHD (*Wetboek van Kophandel voor Indonesie*/WvK).
3. Law of the Republic of Indonesia Number 5 of 1995 on Business Competition.
4. Law of the Republic of Indonesia Number 8 of 1995 on Capital Market.
5. Law of the Republic of Indonesia Number 40 of 2007 on Limited Liability Companies.

6. Regulation of the Capital Market Supervisory Agency (BAPEPAM) No. IX.A.8.
7. Regulation of the Capital Market Supervisory Agency (BAPEPAM) No. IX.A.12 (Kep-05/PM/2004) on Public Offering by Shareholders.
8. Regulation of the Capital Market Supervisory Agency and Financial Institution (BAPEPAM-LK) No. IX.H.1 on Takeover of Public Companies.

The technique of searching for legal materials in this study was carried out through documentation studies and literature studies, as well as from the internet. All legal materials that had been collected were then inventoried, classified, and analyzed using descriptive analysis which aimed to describe various legal issues that existed, so that a study of Backdoor Listing as a corporate action in Indonesia is obtained. This also included the implicitly underlying legal arrangements and the urgency of regulating action Backdoor Listing in the future as a form of recommendation for *ius constituendum*. In this paper, the method used was descriptive method. Descriptive method is a method to study problems that exist in society, as well as the procedures that apply in everyday society and certain situations. The purpose of descriptive writing is to create a systematic, factual and accurate description or illustration of facts, characteristics, and close relationships between phenomena to find a solution. After the analysis process, a synthesis process was carried out by drawing and connecting the problem formulation, the purpose of writing and the discussion. Next, a general conclusion was drawn and then the writers gave some suggestions as an effort to transfer ideas.

Discussion

Factors Affecting the Backdoor Listing Phenomenon

It is known that the IPO is an initial offering of securities in the form of shares and bonds to public investors or the wider community. The process of trading in securities for the first time is known as an IPO (Stella, 2018). In accordance with the type of securities offered, it can be divided into an IPO share and IPO bond. In the next period after the IPO, the issuer can conduct another public offering and offer new shares that increase the number of existing shares by using right issue mechanism (Handini, 2020).

The public is more familiar with the IPO as "Go Public" which actually refers to the activity of a company selling common stock or preferred stock, or bonds as company capital (equity and long-term debt) for the first time to the wider public (Sugianto, 2016). This common term is not totally incorrect when associated with an Initial Public Offering which, if transliterated literally means an Initial Public Offering. However, there are differences between the terms IPO and Go Public. For things or objects that are traded, it is still in the form of securities such as stocks and bonds. However timeframe is the basic parameter that differentiates the two terms. Go Public can be done many times. For example, one year after Go Public through an IPO, the issuer can resell shares in the form of a right issue. Then after running for two years, the issuer returns Go Public by issuing

bonds. Meanwhile, the IPO only happens once in the company's history (Widioatmodjo, 2015).

After the stages of IPO, the company has the opportunity to change the form or nature of its capital from a closed company to a public company. IPO itself must be done by offering and selling part of its shares to the public and must list its shares on the Indonesia Stock Exchange (IDX). Before conducting IPO, the company first takes into account the various benefits and consequences such as whether or not it is necessary and when the time is right (Indonesia Stock Exchange, year unavailable).

The management of the company must examine the condition of the company comprehensively and holistically before making a stock offering. One thing that needs to be done is to issue a company prospectus that contains a comprehensive information about the company such as a public offering, company activities and prospects, a legal point of view about the company, a complete company's financial report to dissemination of the prospectus and share order forms (Isfaatun, 2010). The prospectus itself is a mandatory document that must be completed by the conducting company before Initial Public Offering in accordance with the provisions of the Capital Market Supervisory Agency (BAPEPAM). The issuance of a prospectus is one of the steps a company must undertake when conducting an IPO and it can be traded on the Indonesia Stock Exchange (IDX). In General, IPO begins with the General Meeting of Shareholders (RUPS), registration in securities companies, preparation of corporate prospectuses, stock offerings, investor refunds, and listing of shares on the stock exchange.

The implementation of an Initial Public Offering itself can be categorized into four stages as follows (Harahap, 2011):

a. Initial Preparation

   It is a stage which aims to prepare terms related to an IPO. The earliest thing to do is to conduct a General Meeting of Shareholders (RUPS) to get the approval of the shareholders beforehand, which is then stated in the Articles of Association. After obtaining the approval, the issuer will appoint important parties for the implementation of IPO, including, among others, Underwriters, Public Accountant, Appraiser, Legal Consultant (Mamuntu, 2019), Notary, Trustee, Securities Administration Bureau, and Custodian Institution. Prospective issuer makes preparations for the required documents and agreements for an IPO. The company then makes a preliminary contract with the stock exchange and conducts a Public Expose.

b. Registration Statement Submission

   At this stage, the prospective issuer submits the requirements and supporting documents to the Capital Market Supervisory Agency (BAPEPAM). Forty five days is the effective time for the Capital Market Supervisory Agency (BAPEPAM) to state a Registration Statement, after examining the completeness of documents, coverage and clarity of information, and transparency according to legal, accounting, financial and management aspects (Zaenah, 2017).

c. Share Offering

This is the main stage of IPO, where the issuer will offer the company's shares to the public investors or the public in general. Investors can buy shares through appointed agents. The public offering period is carried out for a minimum of three days. Not all investors' wishes are fulfilled in this stage because there are times when the number of shares that the investor wants to buy exceeds the number of shares released during the IPO. However, if investors do not get the opportunity to buy shares in the first offering, they can buy through the secondary market after the company's shares are listed on the Indonesia Stock Exchange (IDX).

d. Share Listing on Stock Exchange

After the sale of shares in the primary market is completed, the shares are then listed on the Indonesia Stock Exchange (IDX). Issuers are obliged to submit information such as annual periodic reports, semi-annual reports, and reports of important and relevant events (such as acquisitions and changes of directors).

This is related with matters affecting the operation of the capital market, which includes the supply of securities, demand for securities, political and economic conditions (Permata, 2019), legal and regulatory issues, and the role of capital market supporting institutions. It can be seen that there are many factors in order for a company to succeed in going through the IPO. Moreover, even legal factors, supporting regulations and legal, social, political and economic matters are the important determinants here. Several problems arise in the application of the IPO to trade company shares to public investors or the general public.

Implementation of the IPO process itself is sometimes more difficult than what is written on paper. There are several problems that will certainly waste of mind and energy, cost a lot of money and waste of time. For example, there are facts that are not disclosed by the Capital Market Legal Consultant (KHPM) which even bring share ownership disputes to the court. An example of this case is during an IPO of one of the broadcasting companies in Indonesia, which is PT. Media Nusantara Citra (MNC) which leads to the termination of a civil case Number 29/PDT.G/2011/PN.JKT.PST. This occurs because KHPM does not disclose any share ownership dispute in the MNC prospectus during the IPO, thus harming the plaintiff (Agusta, 2020).

Another problem surrounding the implementation of IPO by companies is underpricing as a form of anomaly in an IPO. (Ronni, 2003) Underpricing is a condition where the value of the shares being traded does not reflect the actual situation (Hendratni, 2017). Legal protection is one of the factors that influences the emergence of the Underpricing situation during the IPO (Kuncoro, 2019), apart from other economic factors such as information asymmetry, marketing function, liquidity, spinning and flipping, as well as behavioral theory-based premises (Utamaningsih, 2013).

From a legal perspective related to the economy, there is one direct parameter that determines the occurrence of Underpricing phenomenon, namely Corporate Governance (Gunawan, 2015). If the Corporate Governance does not reflect the principles of Good Corporate Governance, it will stimulate the occurrence of asymmetric information that

can trigger the underpricing when the company conducts its IPO. One of the parameters that can reflect whether the principles of Good Corporate Governance are applied or not is through the ownership structure.

Failure of IPO also can occur due to several factors (Hartanto, 2014):

a. Company Age
   Investors consider the age of the company before investing. The age of the company indicates how long the company can survive and it is a proof that the company is able to compete and take business opportunities in the economy. The age of the company can affect the success or failure of the IPO implementation by the company (Akbar, 2019).
b. Company Size
   The main key word for this effect is the company's popularity in the eyes of the community. Large companies are generally better known than small companies. The larger the size of the company, the less asymmetric information, which usually has the potential to negatively affect the implementation of an IPO (Fardila, 2019).
c. Initial Return
   In general, IPO gives a positive initial return to investors after the shares are traded on the secondary market. There is a tendency for share price to increase when they are sold to the secondary market compared to when they are released during the IPO (Abid, 2013).
d. Corporate Risk
   The absence of a complete explanation of the risks in the prospectus, especially if it is accompanied by the obligation to disclose information, also affects the IPO (Suardana, 2020).
e. Share Offering Percentage
   The uncertainty factor of the proportion of shares being offered and accepted by investors certainly has a negative effect on the implementation of IPO, especially if there is information that the percentage of shares owned by the old shareholders is greater.

Some of the explanations above certainly show the fact that the implementation of IPO is not easy. There is a flow that requires a lot of time and problems that arise to the potential for failure of an IPO. The factors above, according to the writers, stimulate the emergence of Backdoor Listing phenomenon which is considered an easy form of IPO.

Juridical Analysis of the Legal Consequences of Backdoor Listing of the Company that makes the Acquisition

According to the Indonesia Stock Exchange (IDX), Backdoor Listing is a process of corporate action by acquiring companies that are not open to public companies. Backdoor Listing is carried out with the main motive of obtaining funding expansion, especially by conducting a right issue or issuing rights to order new shares to be issued by the issuer. Economic benefits for companies that make acquisitions are they certainly entitled to

control and decide the policies of the target companies. The Backdoor Listing action itself is considered to be able to increase the company's capitalization apart from using it through an IPO.

According to I Gede Nyoman Yetna, Backdoor Listing practice that occurs in the Capital Market corridor is not a taboo. On the other hand, as a representative from the Indonesia Stock Exchange (IDX), he also states that there is nothing wrong with it and it is a good thing to improve the sustainability of the organization in the future. The only problem is related to the regulation of Backdoor Listing which still does not have a legal force. However, if examined through the explanation from the Indonesia Stock Exchange (IDX), it can be seen that the initial hypothesis that can be drawn is the Backdoor Listing action which seems to have a negative connotation, in fact, it is actually a legal issue in the practice of implementing the Capital Market.

The Backdoor Listing Strategy is an attempt by a private company to acquire another public company that has listed its shares on the stock exchange. The logical consequence is that the acquiring company has the opportunity to engage to the stock exchange. (Indonesia Stock Exchange Team (IDX), 2017) Thus, the closed nature of the company changes to be open and it can increase the capital.

Unlike IPO, the Backdoor Listing action does not yet have a firm legal regulation in Indonesian positive law. If it is related to the material and technical regulations of an IPO, it can be found in Law of the Republic of Indonesia Number 8 of 1995 on Capital Market and Regulation of the Capital Market Supervisory Agency (BAPEPAM), particularly Number IX.A.12 (Kep-05/PM/2004) on Public Offering by Shareholders and Regulation of the Capital Market Supervisory Agency (BAPEPAM) Number IX.A.8 as well as other organic regulations governing IPO (Nasarudin, 2014). The implicit backdoor listing can be seen from the collage of several laws and regulations.

Regulations regarding Backdoor Listing can also be detected in the Law of the Republic of Indonesia Number 8 of 1995 on Capital Market. For example, Article 84 states that issuers that carry out a merger, consolidation, or taking over of another company must comply with the provisions regarding transparency, fairness, and reporting stipulated by the Capital Market Supervisory Agency (BAPEPAM) and the prevailing laws and regulations. Likewise, the Law of the Republic of Indonesia Number 40 of 2007 on Limited Liability Companies can be associated as one of the Backdoor Listing regulation through articles relating to company takeover. For example, Article 1 point 11 defines takeover as a legal act carried out by a legal entity or an individual to take over the shares of a company which results in the transfer of control over the company. And finally, the mosaic of Backdoor Listing regulation can also be found in the Capital Market Supervisory Agency and Financial Institution (BAPEPAM-LK) Regulation Number IX.H.1 on Open Company Takeover which is an attachment to the Decree of the Head of Capital Market Supervisory Agency and Financial Institution (BAPEPAM) -LK) Number KEP-259/BL/2008 dated July 30, 2008 (Andini, 2012). The above norm is considered to be a fraction of the Backdoor Listing practice regulation that has a similar pattern, which is the acquisition of

a company, especially a public company by another company, that is a private company, with the outcome of making the acquirer company from being closed to open.

The Backdoor Listing action itself is actually full of the concept of company takeover or acquisition. So the Backdoor Listing regulation can indeed be associated with regulations regarding company takeover or acquisition. According to Weinberg, acquisition is defined as "a transaction or a series of transaction whereby a person (individual, group of individuals, or company) acquires control over the assets of a company, either directly by becoming the owner of those assets, or indirectly by obtaining control of the management of the company".

Judging from the description above, according to the writers, the Backdoor Listing action itself should be a legal act in the context of economic law that is overseen by the Financial Services Authority (OJK) as a regulator that gets a transfer of authority from a public institution overseeing financial service activities (Prananingtyas, 2019). The OJK should supervise Backdoor Listing transactions in the capital market, for example by implementing a reporting mechanism or submitting information to the OJK and requesting companies that carry out Backdoor Listing to conduct information disclosure in the form of announcement to the community. By doing these actions, the OJK can optimally supervise Backdoor Listing transactions, carry out examinations and investigations if there are indications of violations.

The OJK itself has actually carried out a discourse on the formation of policies, laws, and regulations, especially those regulating Backdoor Listings and Affiliated Transactions since 2013. The OJK has conducted internal studies and coordination with external parties, for example with the Indonesian Competition Commission (ICC) and Organization for Economic Co-operation and Development (OECD) to compile general legal material and international standards, including by penetrating the principles of Good Corporate Governance (OJK, 2013). However, until 2020, there is no specific regulation for Backdoor Listing (Riyanto, 2020).

The discourse on Backdoor Listing regulation by the OJK has always had its ups and downs until 2014 and 2015. However, there have also been setbacks in the discourse such as the OJK who asserts that they have not planned to make the regulation regarding Backdoor Listing and it is considered that the regulation is not yet needed especially because the Backdoor Listing phenomenon is not yet a risk. The question arises in issuing a regulation is whether we should wait for the risks to arise first or not. In fact, Backdoor Listing has its own characteristics in the transaction, such as an attempt to turn a Limited Liability Company that has not been registered into a registered Limited Liability Company without going through an IPO process, carried out through certain legal actions, aimed at making a closed Limited Company as the majority and controlling shareholder of a registered Limited Liability Company, and accompanied by restructuring steps in the listed Limited Liability Company, such as changing the name and activities of the company to become the same as the acquirer company.

Sociologically, there have also been several Target Companies as public companies in Indonesia that are the stakeholders of Backdoor Listings such as PT Arnoa Bima Sejati Tbk (Acquisition by PT Ratu Prabu), PT Indo Citra Finance Tbk (Acquisition by Amstelco Plc Ltd), PT Myoh Technology Tbk (Acquisiton by SAMTAN Co., Ltd), PT Pelita Sejahtera Abadi Tbk (Acquisition by J&Partners Indonesia Tbk), and PT BW Plantation Tbk (Acquisition by PT Rajawali Capital Internasional) (Muryanto, 2016).

There is no specific legal arrangement regarding Backdoor Listing but its practice is allowed in Indonesia, so there are legal consequences that need to be interpreted, especially for companies that make acquisitions of publicly traded limited liability companies that have been listed on the stock exchange. Even though there is an explicit regulation by associating with several norms regarding takeover or acquisition, it will show the legal construction of Backdoor Listing in Indonesia. Then the indirect construction of norms is justified by the statements of the OJK, the Indonesia Stock Exchange (IDX) and the Capital Market Supervisory Agency (BAPEPAM) that the Backdoor Listing action is actually a legal act and is actually profitable. The backdoor listing then is not considered as a legal collision against the public offering mechanism, which under positive law in Indonesia uses the IPO mechanism. Backdoor Listing is actually stigmatized as an alternative for companies that want to make public offering without having to go through the IPO process considering the technical mechanisms are more complicated, long and require a lot of money and there is a potential for failure of the IPO.

Based on the explanation above, it can be seen that a closed company as a Standby Purchaser can make an acquisition of a Target Company, which in fact has become a public company and is listed on the stock exchange. Therefore, according to the writers, the Backdoor Listing action itself is actually a permittee, not an obligatory or prohibition. So, the legal consequence is that a closed company is allowed to acquire a public company as a form of Backdoor Listing, with the following conditions:

a. Does not violate the provisions of laws and regulations, in this case particularly are Law of the Republic of Indonesia Number 8 of 1995 on Capital Market, Law of the Republic of Indonesia Number 40 of 2007 on Limited Liability Companies, and Regulation of the Capital Market Supervisory Agency (BAPEPAM).
b. Using legal action mechanisms such as Reverse Merger, Reverse Takeover and Limited Public Offering.
c. Although it is not prohibited by the OJK, the Indonesia Stock Exchange (IDX) and the Capital Market Supervisory Agency (BAPEPAM), the Backdoor Listing action needs to be reported to the OJK for supervision and investigation to minimize violations.
d. Consider several things from legal and economic point of view to prevent harm to the stakeholders involved.

As for the last point of the Backdoor Listing requirement, according to the writers, it is necessary to consider the following matters:

a. Backdoor listing action must be accompanied by a disclosure of information because it will influence the investor's decision to buy or not buy a company's equity. So that

based on the law, companies conducting Backdoor Listing must announce it to the public and as described above, the action must be reported to the OJK.

b. Pay attention to legal protection for Minority Shareholders which is legally regulated in the Law of the Republic of Indonesia Number 40 of 2007 on Limited Liability Companies. Remember that the company that will make an acquisition of the Target Company acts as the majority shareholder who can control the policies of the public company, while in the Target Company there are also the interests of the Minority Shareholders that must be protected so as not to feel the impact of the losses of policy.
c. In conducting the business, the companies must apply the principles of good corporate governance in all matters, for example in a Leveraged Buyout transaction.
d. Pay attention to legal protection for supporting stakeholders, especially legal personnel, such as capital market notaries (Rambe, 2019). Capital market notaries themselves can have legal protection in the form of a right of refusal in court, protection by the Indonesian Notary Association (INI) and the Notary Honorary Council.
e. Shall pay attention to legal provisions to minimize the potential for unfair business competition, protect the company, employees, investors, creditors, business partners and the public.

Regulations regarding Backdoor Listing practices in Indonesia need special attention because they may intersect with public interests. This also happens in other countries, such as in Australia. The practice of Backdoor Listing has been widely chosen, especially for Limited Liability Companies which are open in Australia by choosing sectors with seasonal business such as the mining sector, where time greatly affects the commodity prices. So that when there is a decline in commodity prices, it will cause a number of open Limited Liability Companies experiencing financial crisis. Companies engaged in the seasonal sector need an injection of additional funds and capital to keep the company's operations alive. Losing their funding can cause potential bankruptcy for some of these companies.

Therefore, Backdoor Listing, as a corporate action, is the right alternative to address this momentum. By taking advantage of the financial condition of the listing company which is currently in minus, it will certainly facilitate the acquisition of private Limited Liability Companies. Backdoor Listing represents a form of company restructuring in terms of changing company management and management personnel, company business activities, or at least the name and line of business where a company is operating (Suhayati, 2011). Backdoor Listing is an alternative for private companies that want to become a public company but without undergoing IPO regulation. Often, the motivation of the acquiring company in conducting a Backdoor Listing is due to the complexity of managing an IPO and because it does not pass the requirements to conduct an IPO, and does not want the shares released to the public to be too large or the stock price does not want to be too liquid (Saputra, 2018).

The following are some case studies of companies practiced in other countries as a consideration for the formation of regulations governing Backdoor Listing practice in Indonesia:

1. A case study by Arellano-Ostoa and Brusco of an American company, where a reverse merger was carried out by a private limited liability company that wanted to go public. Between the 1900s and the 2000s, there were around 52 cases of Reverse Merger on the American Stock Exchange aimed at conducting Backdoor Listings, but this resulted in the delisting of companies that had been listed on the stock exchange and difficulties in maintaining Limited Liability Companies to remain open (Senna, 2020). This shows that Backdoor Listing as a corporate action is not necessarily more costly than the IPO (Sitorus, 2019).
2. Case study by Gleasson Roshenthal and Wiggins, which had a similar study to Arellano-Ostoa and Brusco but with the addition of a longer study. It had been proven that the Backdoor Listing corporate action only provided a fairly good return on investment at the beginning of the year. However, when it began to enter the long term, companies generally had difficulty in providing good returns and negative sentiments began to emerge towards the open Limited Liability Company (Octaviani, 2016).
3. A case study by Gleasson Jain and Rossenthal which continued the previous case study, where the results of research showed that small-scale open Limited Liability Companies tended to be less profitable and dominated the use of Backdoor Listing through Reverse Merger and Self-Underwritten IPO.
4. A case study by Adje Cyree and Walker, where the conclusion was that the motivation of a private company that would carry out a Backdoor Listing corporate action was because the company was not getting enough profit or because the Limited Liability Company was relatively young and lacked the opportunity to expand, and lacked of investors who wanted to invest in these private companies.
5. The Canadian case study showed the similarity of factors that influenced the occurrence of Backdoor Listing with companies in America, which was private Limited Liability Companies that were small or young and lacked the prospect and inability to meet the prospectus requirements required by the Toronto or Canadian Stock Exchanges to conduct IPO.
6. A case study in the UK by Carpentier Cummeng and Suret (2012), showed the results of the Backdoor Listing case carried out on companies that were considered newcomers in conducting IPO or companies that were about to conduct an IPO. They could meet the requirements but had different motive, where the assets of the prospective IPO Limited Liability Company were presented to make it looked large so that it would boost the company's share price during the IPO. However, before selling shares to the public, an insider had purchased shares which would then be sold after the IPO process. So that they would get even bigger funds.

7. A case study conducted in Australia described the positive side of the Backdoor Listing as a corporate action compared to the Go Public process of a Limited Liability Company through the IPO process. The development of Backdoor Listing in Australia was mostly carried out by considering the cost efficiency incurred by private Limited Liability Companies rather than having to conduct an IPO, as well as the availability of Limited Liability Companies that were already listed which were ready to carry out a Reverse Merger. The complexity of the IPO procedure encouraged private Limited Liability Companies to prefer Backdoor Listing as an alternative to Go Public or a shortcut to obtain funding from public investors.

By looking at several studies conducted on Backdoor Listing corporate actions done in America, Canada, England and Australia, there are several positive and negative impacts from the implementation of Backdoor Listing. The positive impact is, of course, Backdoor Listing tends to be lower in cost, not complicated and procedural, can avoid taxes, the distribution of shares released to the public can be more preserved, there is no need to prepare registration administration and make prospectuses first. In addition, changes in leadership and management are carried out in one package with Backdoor Listing and the most beneficial consideration is the time efficiency achieved.

Meanwhile, the negative side of Backdoor Listing is that it looks unfair, not transparent and the public has a negative view of Backdoor Listing as a corporate action. Backdoor Listing is known as a shortcut for Limited Liability Companies that are less qualified (lack of capital, have a small business scale, are not profitable and are not "invest-catching"). Several studies actually prove that the Backdoor Listing corporate action does not provide benefits in the long term, the transaction can take longer than implementing an IPO, changes in business domains might occur too noticeably (such as the Backdoor Listing of Limited Liability Companies operating in mining sector by a Limited Liability Company engaged in agriculture, where in the capital market the change in the business domain of the listing company is considered too conspicuous) and share prices tend not to fluctuate (Maria, 2011).

The discussion above raises an urgency for the establishment of laws and regulations that can accommodate Backdoor Listing as a corporate action in the context of capital market law in Indonesia. This is because the implementation of Backdoor Listing may intersect with public or broader interests, not only the parties, but also the government and the public. Therefore, although Bank Indonesia (BI) and the OJK and even the Capital Market Supervisory Agency (BAPEPAM) state that the Backdoor Listing is a corporate action that can have a positive impact, it is also necessary to pay attention to the negative impacts of the Backdoor Listing based on the studies conducted in several countries.

Several issues, for example the share price of a Limited Liability Company that is open as an acquired company, may no longer fluctuate or be liquid is as a result of the company's Backdoor Listing action. Then it is also necessary to consider that Backdoor Listing can be carried out by an acquirer company that is less qualified and/or done by manipulating the capital market (Kolompoy, 2016). There are also other shortcomings,

such as the non-transparent implementation process of the Backdoor Listing and some groups that give a negative stigma because the Backdoor Listing is considered a shortcut to achieve Go Public status (Liu, 2016). It is also feared that the Reverse Merger or acquisition action can have a negative impact on the business competition climate in certain relevant markets.

Conclusions

Based on the explanation of the paper above, several conclusions can be drawn including:

1. An IPO is a mechanism that a Limited Liability Company must go through when offering its equity in the form of shares or bonds to public investors and the public in general. The IPO activity itself has broad dimensions such as having to consider the condition of the company from all aspects to announce it to the public. So, do not be surprised if the IPO has a comprehensive technical regulation from upstream to the downstream. The stages that must be passed through are long and consuming much time, money and effort. Not to mention the potential for failure of an IPO which is dominated by economic factors of certain conditions such as underpricing which creates uncertainty in the business sector (Utamaningsih, 2013).
2. Backdoor Listing appears as an alternative that does not violate the rules of the IPO. Backdoor Listing is a corporate action by a closed limited liability company that makes an acquisition of a public limited liability company that has been listed on the stock exchange. The aim is to make right issue without going through the IPO process, expand the potential for capital, and increase public understanding of a company. There are no specific rules, but it can be associated with several existing laws such as the Capital Market Law of the Republic of Indonesia, the Indonesian Limited Liability Company Law and the Capital Market Supervisory Agency (BAPEPAM) Regulation. However, the Backdoor Listing action itself is not prohibited by the OJK, the Indonesia Stock Exchange (IDX) and the Capital Market Supervisory Agency (BAPEPAM) as long as the activities are reported so that they can be monitored. Through this paper, the writers have found several eligibility requirements as legal consequences for the acquirer in conducting Backdoor Listing including information disclosure, protection of minority investors (Dimyati, 2014), embodiment of GCG, protection of capital market notaries and not violating fair business competition and noticing the interests of the parties involved.

Suggestions

1. The House of Representatives is expected to consider the procurement of the Law of the Republic of Indonesia specifically for Backdoor Listing as an alternative to going public for companies in addition to conducting an IPO.

2. For the OJK, the Indonesian Stock Exchange (IDX), the Capital Market Supervisory Agency (BAPEPAM) and KPPUN, they are expected to create a monitoring mechanism for Backdoor Listing activities.

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