

The Financial Services Authority's Regulatory Role in Backdoor Listings in Indonesia

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Abstract

Efforts that a limited liability company can make to increase profits and the existence of its business are to become a public company. IPO requirements, which are complicated and require many costs, are an obstacle experienced by companies wishing to list their shares on the stock exchange. To overcome this problem, business people have found various strategies to gain profits in the capital market, like public companies, but without going through the IPO mechanism. Backdoor listing is a company listing its shares on the stock exchange without going through the IPO process. Otoritas Jasa Keuangan has been declared an independent institution that supervises financial institutions, both banks and non-banks. Supervision of capital markets and the non-bank financial industry, which the Ministry of Finance previously carried out through Bapepam-LK (Capital Market and Financial Institution Supervisory Agency), has officially shifted to the OJK. To carry out a public offering, the issuer must first obtain "permission" from the OJK by submitting a registration statement. The Backdoor listing process does not have a clear legal umbrella, so there is no standard reference for the procedures carried out, whereas compared to an IPO, which has a definite legal basis, has wide circulation, and is strictly supervised by the competent authorities. This study aims to determine the role of the OJK in regulating the implementation of backdoor listing in Indonesia, which is then examined using normative juridical methods with statutory and conceptual approaches. The results of this study are that it is hoped that the government, especially the OJK, will make special regulations regarding the implementation of backdoor listing.

1. Introduction

In general, investment or capital investment is an activity carried out by an individual or group of people who submit several funds to an industrial sector to earn a profit from the money they have.¹ Efforts that a limited liability company can make to increase profits and its business existence are to become a public company or an open limited liability company by selling company shares to the public to obtain fresh funds (fresh money) or what is known as an Initial Public Offering. In Indonesia, becoming a public company is not easy because it must go through a strict and long process. Initial Public Offering (IPO) requirements are complicated and require many costs, which is one of the obstacles experienced by companies that want to list their shares on the stock exchange.

Expenses associated with a public offering encompass payments to investment banks, accountants, auditors, legal professionals, and various service providers and consultants.

¹ Az Zahra Zain Auralia and Abraham Ferry Rosando, "Perlindungan Hukum Sebagai Upaya Pengembalian Hak Korban Penipuan Uang Kripto Melalui Restitusi," *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance* 3, no. 2 (n.d.): 2023, <https://doi.org/10.53363/bureau.v3i2.236>.

These costs are incurred for their guidance and assistance in preparing essential documents such as registration statements, prospectuses, and other legal paperwork. In addition to the nominal cost required, which is very large, implementing a public offering takes a long time, ranging from 6 to 12 months. Therefore, companies seeking capital for growth or to offer liquidity to investors continue to explore faster, more cost-effective and flexible alternatives to access the stock market. To overcome this problem, business people have found various strategies to benefit from the capital market, like a public company, but without going through the IPO mechanism.

In the world of capital markets, companies have many different strategies to ensure the growth and progress of their business. A commonly used strategy is through backdoor listing. Backdoor listing is a strategy for a private company to become a public company without following the applicable provisions to sell its shares to the public. Backdoor listing is a strategy employed by a privately held company to list its shares on the stock exchange without undergoing the typical IPO process usually undertaken by newly established companies. This method is done by buying shares of companies listed on the stock exchange. Thus, a company that conducts a backdoor listing will have shares that can be traded to the public without going through a complicated IPO process and demanding strict requirements. The backdoor often avoids the hassle of complicated listing rules and regulations.

Since the enactment of Law Number 21 of 2011 Concerning the Financial Services Authority (*Otoritas Jasa Keuangan* hereinafter OJK), it has been declared an independent institution that supervises financial institutions, both banks and non-banks. The supervision of the capital market and non-bank financial industry, which used to be managed by the Ministry of Finance through Bapepam-LK (Capital Market and Financial Institutions Supervisory Agency), has officially shifted to OJK. The issuer must first obtain a 'license' from OJK to conduct a public offering by submitting a registration statement. Referring to Article 1 point 19 of Law Number 8 of 1995 Concerning the Capital Market (hereinafter referred to as Law No. 8/1995), a registration statement is a document that a public company or issuer must submit to the OJK, particularly in the context of a public offering. Permission from OJK is granted by declaring the registration statement submitted by the prospective issuer 'effective'. In other words, the sale of securities through a public offering only if OJK approves the public offering from the registration statement's effective date. The backdoor listing process does not have a clear legal umbrella, and there is no standard reference of the procedures carried out, whereas an IPO has a definite legal basis, wide circulation, and is closely monitored by the competent authority. The absence of clear rules regarding backdoor listing in Indonesia creates uncertainty about whether a backdoor listing is allowed according to Indonesian law. Therefore, regulators must introduce specific rules and regulations governing backdoor listing.

In this study, researchers compared research with 3 (three) previous studies. First, research by Fajar Tri Pamungkas with the title "The Role of the Financial Services Authority (OJK) in Supervising Fraud in the Investment Business in the Perspective of Islamic Economic Law" this study focuses on the contribution of the Financial Services Authority (OJK) to

overseeing fraud in the investment business in the perspective of Islamic economic law.² Second, research by Annisa Arifika Sari with the title "The Role of the Financial Services Authority in Supervising Financial Services in Indonesia" This research focuses on the role of the Financial Services Authority as a financial services supervisory institution in Indonesia and the obligations and authorities of the Financial Services Authority.³ Third, research by Elvira Fitriyani Papahan with the title "The Role and Authority of the Financial Services Authority (OJK) Towards Transaction Security in the Capital Market" this research focuses on the role of the OJK on transaction security in the capital market and what authority the OJK has in maintaining the security of capital market transactions.⁴ Meanwhile, this research focuses on the role of the financial services authority on companies that carry out corporate actions in the capital market.

2. Methods

In this research, the author uses normative juridical research using a statutory approach by examining applicable laws and regulations and a conceptual approach that refers to legal principles carried out by examining the views of legal experts.⁵

3. Results and Discussion

3.1. Understanding the Sequential Stages of Initial Public Offering

The capital market is where companies seek additional capital to expand their business. By doing this activity, the company seeks additional capital by selling part of the company's share ownership⁶. The existence of the capital market can provide many benefits where companies in Indonesia have a new alternative in obtaining sources of funds for expansion activities other than bank loans that must include collateral. In addition, the capital market also opens up opportunities for the wider community to participate in owning the company with a relatively small amount of funds. Thus, the income earned by the company can also be enjoyed by the wider community who owns the company's shares.

Not all companies can sell their shares on the stock exchange, only public companies (Tbk) and those that have made a public offering by selling initial shares on the stock market can. Article 1 point 7 of Law Number 40 of 2007 Concerning the Limited Liability Companies (hereinafter referred to as Law No.40/2007) states that a public company can be said to be a Public Company if it conducts a public offering of shares to the public, which is regulated in the laws and regulations in the field of capital markets. Meanwhile, in Article 1 point 8 of Law No. 40/2007, a public company is a company that meets the criteria of the number of shareholders and paid-up capital in accordance with the provisions of laws and regulations in the field of capital markets. Then, in Article 1 Point 22 of Law 8/1995, it is underscored that a

² Fajar Tri Pamungkas and Ahmad Arif Zulfikar, "Peran Otoritas Jasa Keuangan (OJK) Dalam Mengawasi Adanya Fraud Dalam Bisnis Investasi Dalam Perspektif Hukum Ekonomi Islam," *Jurnal Penegakan Hukum Dan Keadilan* 2, no. 1 (2021): 19–40, <https://doi.org/10.18196/jphk.v2i1.9507>.

³ Annisa Arifka Sari, "Peran Otoritas Jasa Keuangan Terhadap Pengawasan Lembaga Keuangan di Indonesia," *Jurnal Gagasan Hukum* 01, no. 02 (2019), <https://journal.unilak.ac.id/index.php/gh/>.

⁴ Elvira Fitriyani Pakpahan et al., "Peran dan Kewenangan Otoritas Jasa Keuangan (OJK) Terhadap Keamanan Transaksi di Pasar Modal" 4, no. 1 (2020).

⁵ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2022).

⁶ Mas Rahma, *Hukum Pasar Modal* (Jakarta: Kencana Prenada Media Group, 2021).

public company is defined as a company with a minimum paid-up capital of IDR 3,000,000,000 (three billion rupiah) and its shareholders base comprising at least 300 (three hundred) shareholders. According to Law No. 8/1995, a public offering is a securities offering carried out by the public, following the procedures outlined in this law and its corresponding implementing regulations. The capital market defines a public offering of securities as an offering of securities to the public based on the order and procedures specified in this Law and the regulations implementing this Law.

Being a public company is the enthusiasm of many companies because becoming a company listed on the stock exchange will benefit the company.⁷ The benefits obtained by companies that are listed on the stock exchange include obtaining funds that can be used to increase working capital to finance company growth, pay debts, and make investments. In practice, public offerings are carried out through the primary market, which takes a limited time for only a few days. The securities offering is conducted directly by the issuer to potential investors. With the end of the primary market, investors can buy and sell their securities on the secondary market (stock exchange). In general, companies that make public offerings (go public) record several positive things, such as good financial records, profit generation, enlargement of business volume due to increased profit potential, and the company's position in society.

The initial phase that needs to be done by the company to conduct a public offering is to form a team internally and appoint underwriters and capital market support professional institutions that will help the company prepare to go public. During this phase, the company must secure approval from the General Meeting of Shareholders (GMS) and make amendments to the company's Article of Association to transition into a public company. Additionally, the company must prepare the essential documents for submission to the stock exchange and OJK. Furthermore, the company must submit a listing application and the required documents. Stock Exchange will evaluate the application submitted by the company and invite the company, underwriters and supporting experts to present documents, strategic business outlines and plans for public offering. If the company has met the requirements, then the Stock Exchange will give in-principle approval of the listing application to the company.

Additionally, the company must submit its registration statement and supporting documents to the OJK. The supporting documents required include the prospectus. In conducting the inspection, OJK may ask the company to change or add information to the company to ensure that all facts relating to the share offering, including the financial condition and business activities of the company, are announced to the public through the prospectus. Before publishing a concise prospectus in a newspaper or conducting a book building, the company must wait for permission from OJK.⁸

⁷ Wicipto Setiadi, "Penawaran Umum Efek Bersifat Utang Oleh Perusahaan Tertutup," *Esensi Hukum* 3, no. 1 (2021): 1-19, <https://doi.org/10.35586/esensihukum.v3i1.56>.

⁸ bagus, Suryanti, Nyulistiowati Sujatmiko, "Perlindungan Hukum Bagi Investor Pada Perusahaan Terbuka Yang Pailit Ditinjau Dari Hukum Kepailitan," *Jurnal Bina Mulia Hukum* 2, no. 1 (2017): 15-25.

The company can hold a public expose once it obtains the publication license from OJK.⁹ OJK issues an effective statement after the company submits information about the share's public offering price and other disclosure details. This occurs following the declaration of effectiveness of the company's Registration Statement by OJK. The company publishes corrections/additions to the concise prospectus information in newspapers, provides prospectuses to the public or prospective share buyers, and conducts a public offering. In addition, the company must apply for registration of shares to be deposited collectively (scriptless) to the Indonesian Central Securities Depository.

Conducting a public offering requires preliminary preparations that need to be considered by companies that will list their shares on the stock exchange. First, the company needs to consider its long-term business plan, the estimated nominal funds it needs from the IPO, and the percentage level of public ownership desired by the shareholders.¹⁰ Second, the company must change its articles of association from a closed company to a public one. Third, the company must first submit a registration form to the OJK to list its shares on the stock exchange. An application for listing on the Indonesia Stock Exchange accompanied by several documents that need to be prepared, includes a company profile, information about the public offering plan, underwriters, supporting professions, opinions and due diligence reports from legal counsel, audited financial statements, articles of association of a public company that have been approved by the Ministry of Law and Human Rights, prospectus containing detailed information about the company from profile to financial statements. After the public offering, the Company's shares will be officially listed and traded on the stock exchange.

3.2. The Practical Implementation of Backdoor Listing in the Indonesian Context

Seeing the many requirements that the company must meet, the preparation process and implementation of the listing, which takes a long time, and the high costs that need to be incurred by the company after the IPO, many business people are looking for other alternatives so that the company can go public.¹¹ Alternatives that a closed company can do to become a go-public company without having to conduct an IPO by acquiring a public company that has been listed on the stock exchange and has received an effective statement from the OJK. This strategy is often called Backdoor Listing. Backdoor listing is a corporate action that is often carried out in Indonesia. The benefits felt in the backdoor listing process where acquisitions or mergers require less work than public offerings. In addition, a closed company that wants to do a backdoor listing also does not have to be very attractive compared to a company that does a public offering, where the company must have bright prospects to attract the attention of underwriters.

⁹ Efridani Lubis and Haryogis Susanto, "Penerapan Good Corporate Governance Di Pasar Modal Sebagai Upaya Melindungi Investor," *Jurnal Hukum Dan Bisnis (Selisik)* 5, no. 1 (2019): 48-76, <https://doi.org/10.35814/selisik.v5i1.1285>.

¹⁰ Setiadi, "Penawaran Umum Efek Bersifat Utang Oleh Perusahaan Tertutup."

¹¹ Gress Gustia and Adrian Pah, "Full Disclosure and Material Information Principle for Back Door Listing Companies," *RUSSIAN LAW JOURNAL*, vol. XI, 2023.

Unlike the public offering, backdoor listing does not yet have strict legal provisions in Indonesia's positive law.¹² This action is a procedure where a private company that wants to list on the stock exchange takes over a public company listed on the stock exchange so that the private company does not need to make a public offering on the stock exchange. The reasons for the company to carry out this strategy include:

1. Provide access to the capital market in a faster and more efficient way than through the IPO process;
2. Avoiding the complicated process and high costs of implementing an IPO, such as public offerings to the public and strict disclosure requirements;
3. Companies can take advantage of the reputation of companies that have been listed and can increase investor confidence in the company.

The implementation of backdoor listing is carried out by merging or taking over the company.¹³ Unlisted companies are looking for companies that are already listed and suitable as target companies for mergers or takeovers. If a closed company purchases shares of a public company, purchasing up to a certain number of shares must be by a special procedure called a tender offer. A tender offer is a procedure that offers to purchase shares to the shareholders of a company. This is especially the case if the shares being sold are control shares, which are a certain number of shares that, if transferred, also give rise to control rights over the company. It is usually considered controlling shares if the number of shares is more than all voting shares, or 51% (fifty-one percent).¹⁴

The first step is to hold a GMS; a company listed on the stock exchange conducts a GMS to agree to increase capital by providing rights issues. Right Issue is known in the corporate world and capital market, where the word describes how a company increases capital by offering shares to existing shareholders. In the explanation of Article 82 paragraph (1) of Law 85/1995, right issues are rights attached to shares that allow the relevant shareholders to purchase new securities before they are offered to other parties. Granting rights issues to existing shareholders is usually done when a company issues new shares (shares in propel) to increase paid-up/placed capital. This right is given in proportion to the shareholders' share ownership when the company offers the shares to its shareholders. Public companies that wish to increase capital by issuing equity securities must provide rights issues to existing shareholders. Article 43 of Law 40/2007 states that if the company issues new shares, they must first be offered to shareholders. If the shareholders do not exercise the right to purchase and pay in full for the shares purchased, then within 14 (fourteen) days from the offer date, the remaining shares that are not taken can be offered to third parties. This is also confirmed in Article 2 of Financial Services Authority Regulation Number 32/POJK.04/2015 (hereinafter POJK 32/POJK.04/2015) concerning Capital Increase of Public Companies with

¹² Ayup Suran Ningsih, "Rules Regarding Mandatory Equity Securities Listing: Is It Possible for A Public Company Without Listing on The Indonesian Stock Exchange?," *Jurnal Penelitian Hukum De Jure* 22, no. 3 (September 30, 2022): 285, <https://doi.org/10.30641/dejure.2022.v22.285-294>.

¹³ Yoga Partamayasa, "Back Door Listing: Kewenangan Badan Usaha Dan UMKM Untuk Melakukan Initial Public Offering Tanpa Melewati Proses IPO," *Media Iuris* 3, no. 3 (October 1, 2020): 383, <https://doi.org/10.20473/mi.v3i3.19518>.

¹⁴ Munir Fuandy, *Hukum Tentang Akuisisi, Take Over & LBO*, 2014.

Pre-emptive Rights which states that if a public company plans to augment its capital by issuing shares or other convertible capital securities, or by providing the right to purchase shares, the company must offer pre-emptive rights to each shareholder in a specific proportion corresponding to their existing shareholding percentage.

Second, in this concept, in agreeing to transfer pre-emptive rights between shareholders and standby buyers, an agreement is made so that shareholders will never exercise these rights and then transfer them to standby buyers. This exercise makes the rights of the majority shareholder exercised by the standby buyer so that it changes the new control of a company. Where the previous majority shareholder switches to the standby buyer, in this case, majority shareholders do not exercise their rights, resulting in the standby buyer obtaining new shares from the public company with a large enough nominal. Implementing the Pre-emptive Rights, which is the right of the majority shareholder carried out by the standby buyer, can change the position of the standby buyer to become the new controller of a public company. The implementation of the backdoor listing is usually also followed by a change in the composition of the Board of Directors and/or Commissioners, changing the name of the company, to changing the main business activities of the public company, where the public company's business changes to the main business activities of the closed company or other activities that support the business activities of the closed company.

3.3. The Financial Services Authority's Regulatory Framework for Backdoor Listing in Indonesia

Before OJK was established, the Capital Market and Financial Institutions Supervisory Agency (BapepamLK) supervised financial services in the capital market industry. Bapepam's position has changed with the enactment of Law No. 21/2011 on the Financial Services Authority (hereinafter referred to as Law 21/2011).¹⁵ Since the enactment of Law 21/2011, functions, tasks, and supervising and regulating financial services activities in the capital market sector have been transferred from the Minister of Finance and Bapepam-LK to OJK, followed by the transfer of state assets and documents owned and/or used by the Ministry of Finance and Bapepam-LK to carry out the functions, duties and authority to regulate and supervise the capital market sector can be used by OJK. Since the transfer of regulatory and supervisory authority in the capital market sector from Bapepam-LK to OJK, all the authority of Bapepam-LK, as stipulated in Law 85/1995, has also been transferred to OJK.¹⁶ OJK is an independent institution that oversees the banking and non-banking financial sectors. OJK is authorized to regulate and supervise activities in the capital market. The emergence of OJK, stepping into the role previously held by Bapepam, involves responsibilities such as fostering, regulating, and overseeing daily activities within the capital market. Additionally, OJK is tasked with crafting and implementing technical standardization policies for financial institutions, guided by policies established by the finance minister and in accordance with

¹⁵ I Gusti Agung Wisudawan, Budi Sutrisno, and Diman Ade Mulada, "Optimasi Pengawasan Oleh Otoritas Jasa Keuangan Di Bidang Pasar Modal Menurut Hukum Positif Di Indonesia," *Ganec Swara* 15, no. 1 (2021): 798, <https://doi.org/10.35327/gara.v15i1.177>.

¹⁶ Andika Prayoga and Fully Handayani Ridwan, "Kedudukan Notaris Sebagai Profesi Penunjang Pasar Modal Di Indonesia," *Kertha Semaya: Journal Ilmu Hukum* 10, no. 4 (2022): 960, <https://doi.org/10.24843/ks.2022.v10.i04.p18>.

relevant laws and regulations. Companies conducting emissions must first present a registration statement to the OJK to sell or offer securities to the public. This registration statement must fulfill the provisions of the regulations issued by OJK. The registration statement document is a document that must be submitted to OJK by prospective public companies in the context of a Public Offering. Companies that will conduct a public offering to the public after the registration statement is declared effective by the OJK. OJK's policy, which emphasizes the importance of the registration statement before making a public offering to the issuer, is intended so that people who will buy and sell shares are not harmed, especially if the company that will make a public offering does not have a complete prospectus.

The successful approval of the registration statement serves as a clear indication for the issuer to proceed promptly with the initial public offering of equity securities on the primary market. The effectiveness of the registration statement is a crucial milestone, signaling the kind of green light that gives the issuer the right to conduct securities transactions. The existence and disclosure of material information remains the responsibility of the Issuer, underwriters, capital market support professionals, and other parties involved in preparing registration statement documents. Companies that do backdoor listing do not get an effective statement from OJK. This means that the company does not comply with the provisions Article 70 paragraph (1) of Law 8/1995, which states that only issuers that have submitted a registration statement to Bapepam (now OJK) to offer or sell securities to the public can conduct a public offering and the registration statement has been effective. The effectiveness of the registration statement is a kind of green light that gives the issuer the right to conduct securities transactions. The effectiveness of the registration statement does not mean a form of approval or permission from OJK to the issuer to conduct a public offering. Although the implementation of backdoor listing does not fulfill the first stage, the effective statement is the same as the first entrance that must be passed, but backdoor listing does not fulfill this stage.

4. Conclusions

An alternative that can be done by a limited liability company that wants to list its company on the stock exchange is to do a backdoor listing. Backdoor listing is a corporate action carried out by a private company that takes over the ownership of a public company already listed on the stock exchange. The company takes this action to avoid the IPO process, which requires a lot of requirements and documents that must be prepared, the amount of costs incurred, and the implementation process, which is quite long. Until now, there has been no regulation related to the practice of backdoor listing, which makes it uncertain whether backdoor listing is allowed or not. OJK, as the regulator of financial services activities in the capital market sector, is expected to make regulations regarding backdoor listing that regulate the actions that must be taken to carry out backdoor listing.

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