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Legal Protection for Notaries in the Backdoor Listing Process Based on Capital Market Law in Indonesia (Study of PT Pantai Indah Kapuk Dua Tbk)

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Abstract: Notaries as defined by Law Number 30 of 2004 modified by Law Number 2 of 2014 are public officials authorized to create authentic deeds and play a critical role in capital market transactions. In Indonesia, the capital market is governed by Law Number 8 of 1995, which serves businesses to raise funds, with Initial Public Offerings (IPOs) being a common method. However, due to the high cost and lengthy process through IPOs, companies often seek faster and more cost-effective alternatives such as backdoor listings. The backdoor listing process involves a company becoming public by acquiring an already listed company without undergoing the IPO process. This research employs a normative legal methodology to analyze primary and secondary legal materials to provide a comprehensive understanding of this topic. Despite its cost efficiency compared to traditional IPOs, backdoor listings still have legal uncertainties. Notaries, who are crucial in this process, require legal protection to ensure compliance and professionalism. This highlights the need for specific regulations governing the backdoor listing process. Ensuring the legal protection of notaries is essential for maintaining the integrity of capital market transactions and providing a secure environment for all parties involved.

Keyword: Notaries, Backdoor Listing, Capital Market, Legal Protection, IPOs.

INTRODUCTION

A notary is a public official entrusted by the state to create authentic deeds, including the drafting of agreements. Article 1 of Law Number 30 of 2004 as modified by Law Number 2 of 2014, defines a notary as a public official authorized to create authentic deeds and to perform other authorities as specified in this law or other relevant laws. In the realm of capital markets, notaries play an important role as one of the supporting professions that ensure the validity of every transaction, in accordance with Article 64 paragraph (1) of Law Number 8 of 1995. Professions that provide support in the capital market are accountants, legal advisors, appraisers, notaries and other regulated professions as mandated by the government.

The capital market is crucial for a country's economic progress as it provides financing for businesses and investment opportunities for the public. One of the corporate actions in the capital market is an initial public offering (IPO). Article 1 point 15 of Law Number 8 of 1995 defines a public offering as the activity of offering securities conducted by an issuer to sell securities to the public based on the procedures stipulated in this law and its implementing regulations. Therefore, an IPO is the activity of offering securities by an issuer to the public for the first time. This process provides companies with the opportunity to raise additional funds and can increase the company's value. However, the IPO process requires high costs and considerable time. Costs associated with an IPO process involve payments to investment banks, accountants, auditors, legal experts and consultants. These expenses are accrued for their assistance in preparing vital documents like registration statements, prospectuses and other legal paperwork. Apart from the substantial nominal cost, which is quite significant, conducting a public offering typically involves a considerable amount of time, spanning from 6 to 12 months. As a result, businesses aiming to secure funds for growth or provide investor liquidity are consistently exploring faster, more economical, and adaptable approaches to enter the stock market.

Alternatively a company may opt for backdoor listing as a means to list its shares on the stock exchange without going through the traditional IPO procedure. According to David Logan Scott, backdoor listing involves the acquisition of a listed company. Meanwhile, Professor Morris Vilijoen states that backdoor listing is a method of listing shares in the capital market without undergoing the IPO process. Backdoor listing is a process whereby a company becomes a public company by acquiring a listed company on the stock exchange without an IPO. One instance of backdoor listing in Indonesia was carried out by PT Multi Artha Pratama acquiring PT Pratama Abadi Nusa Industri Tbk (PANI). PT Multi Artha Pratama holds 80% of PANI's shares. PANI, initially involved in holding company activities and the canned packaging industry, has now transformed into PT Pantai Indah Kapuk Dua Tbk, which is expanding into the property sector.

Financial Services Authority Regulation Number 67/POJK.04/2017 stipulates that notaries engaging in activities in the capital market sector must be registered and fulfill the requirements sent by the OJK. However, despite backdoor listing becoming a common practice, there are currently no specific regulations governing this process in Indonesia. The absence of specific rules is concerning as it may pose risks and legal uncertainties, given the important role of notaries in ensuring transparency and legal certainty in capital market transactions.

The legal protection of notaries mentioned in this writing is important to enable notaries to effectively fulfill their duties without unwanted legal pressure or risk. Notaries play a crucial role in the capital market, especially in the IPO and backdoor listing processes. Therefore, it is imperative to establish more precise regulations governing backdoor listings in Indonesia to ensure legal clarity and safeguard to all stakeholders participating in these transactions, including notaries.

METHOD

The methodology employed in this writing is a normative legal research approach. Normative legal research emphasizes the analysis of written regulations and library materials. The objects of study in this research include legislation, publications, journals and related literature. The research approach uses a legislative approach, which entails studying and analyzing laws and regulations pertinent to the legal issues being addressed.

The legal materials utilized in this research encompass primary sources like legislation and secondary sources such as books, journals, and prospectuses. The data collection technique entails a literature review of the amassed legal materials, which are then analyzed comprehensively and qualitatively. Using this research method and examining these

legal materials provides a foundation and understanding related to the legal protection of notaries in the backdoor listing process based on capital market law.

RESULTS AND DISCUSSION

Implementation of Legal Norms Regulation Concerning Backdoor Listing in Indonesia

Until today, there is no standard definition or term for backdoor listing in Indonesian legislation. However, according to international doctrine presented by Carlos Correia in a book “Financial Management”, backdoor listing is defined as a company obtaining a listing indirectly by using an existing listed company to achieve a listing. Although all activities in the Indonesian capital market refer to Law Number 8 of 1995, still there are no specific regulations governing the process of backdoor listing.

Nevertheless, many companies opt for backdoor listing because it's cost efficient compared to an IPO, which requires a significant amount of time and high expenses. Additionally, companies that fail to meet the criteria for an IPO but still find access to the capital market use the backdoor listing strategy to be listed on the stock exchange. Backdoor listing is often considered an alternative for companies to become listed on the stock exchange.

The process of backdoor listing is usually carried out through the acquisition of a company. Therefore, in addition to complying with capital market regulations and other implementing regulations, this process is also governed by Law Number 40 of 2007. The term “akuisisi” originates from the English word “acquisition”, meaning one company taking over the controlling interest in another company.

According to Article 1 point 11 of Law Number 40 of 2007, “acquisition” or “takeover” defined as : “An acquisition is a legal act conducted by a legal entity or an individual to take over shares of a company, resulting in the transfer of control over the company”

The process of backdoor listing can occur through two methods:

1. Acquisition of a Public Company by a Private Company, involves the private entity purchasing all or a majority of shares of the publicly traded company listed on the stock exchange.
2. Acquisition of a Private Company by a Public Company involves the public entity acquiring the private company. Following the completion of this acquisition, the new controlling entity of the public company, which underwent the backdoor listing will restructure it.

The procedure for backdoor listing through company acquisition generally involves first identifying and targeting a publicly traded company. Next, due diligence is conducted to assess the financial and operational conditions of the target company. Then, a General Meeting of Shareholders (RUPS) is held to approve the acquisition in accordance with legal regulations, followed by drafting agreements and completing the acquisition process. After the acquisition, the company undergoes reorganization, incorporating alterations to the board of directors and a shift in the primary operations of the publicly traded entity.

Based on this, backdoor listing in Indonesia's capital market is permissible as it involves the acquisition of companies and is not explicitly prohibited. Since there are no specific governing backdoor listings in Indonesia, this process is carried out in accordance with the procedures for company takeovers, adhering to the Capital Market Law, the Company Law and regulations administered by OJK.

Legal Protection of Notaries in the Backdoor Listing Process Based on Capital Market Law

PT Pratama Abadi Nusa Industri (PANI) is an example of a backdoor listing process in Indonesia. Established in 2000, PANI was acquired by PT Multi Artha Pratama. As stated

in Deed of Extraordinary General Meeting of Shareholders (RUPS Luar Biasa) dated June 19, 2023, PANI has changed its name from PT Pratama Abadi Nusa Industri to PT Pantai Indah Kapuk Dua Tbk. PT Multi Artha Pratama, the main shareholder, holds 88.07% of PANI's shares. According to the company's Articles of Association, PANI operates as a holding company in the tin can packaging industry and now focuses on real estate development. PANI has offered new shares through a right issue (PMHMETD) approved by the Extraordinary General Meeting of Shareholders (RUPS Luar Biasa) on September 15, 2023, allowing for the issuance of up to 8,000,000,000 new shares.

In this process, notaries, as capital market supporting professionals, are responsible for preparing and drafting documents related to the right issue, including amendments to the Articles of Association, Share Administration Management Agreements and Remaining Share Purchase Agreements. Based on this, companies went through a backdoor listing process as a strategy to have their shares listed and traded on the stock market without going through the IPO process. Additionally, in terms of time and cost, backdoor listing can save time compared to the IPO process, which is quite complex, requires meeting strict requirements and typically takes a longer time.

Legal protection is an effort made by the state to protect the rights and interests of individuals or groups from being harmed by certain parties. C.S.T Kansil, in his book titled "Pengantar Ilmu Hukum dan Tata Hukum Indonesia", legal protection is defined as the legal measures enforced by law enforcement to ensure individuals mental and physical security, protecting them from disruptions and threats.

Article 15 of Law Number 30 of 2004, as modified by Law Number 2 of 2014, outlines the authority of notaries as follows: "Notaries are authorized to draft authentic deeds concerning all actions, agreements, and stipulations required by legislation and or desired by interested parties to be stated in an authentic deed, ensure the certainty of the date of the deed's creation, store the deed, provide grosse, copies, and excerpts of the deed, provided that the creation of such deeds is not also assigned or excluded to another official or person as specified by law."

Based on this, notaries, as government-appointed officials authorized to draft authentic deeds, are entitled to legal protection due to their crucial role in the creation and validation of deeds and legal agreements. This legal protection is essential to guarantee that notaries can perform their duties and are protected from threats by parties who might dispute the deeds they create.

The presence of Law Number 30 of 2004 as amended by Law Number 2 of 2014 in Indonesia is to ensure the certainty and legal protection of notaries as public officials offering legal assistance to the public. In the realm of the capital market, notaries are one of the supporting professions of the capital market based on Article 64 paragraph (1) of Law Number 8 of 1995. Furthermore, in Article 64 paragraph (2) of Law Number 8 of 1995, notaries that work in the capital market first must be registered with the OJK. Notaries are also required to adhere to the code of ethics and professional standards set by their respective professional associations as long as they do not contravene the law, as stated in Article 66 of Law Number 8 of 1995.

Notaries that are professionals who provide support in the capital market, may be terminated by the OJK if their notarial professional license is revoked by the competent authority, as stated in Article 65 paragraph (1) of Law Number 8 of 1995. In the realm of the capital market, the role of a notary is essential, such as in drafting minutes of the General Meeting of Shareholders and amending the articles of association. In the process of backdoor listing, notaries are obliged to ensure that every process, such as amending the company's articles of association, complies with the regulations. This is because notaries are responsible for every deed they create.

Law Number 8 of 1995 specifies three types of sanctions : administrative, civil and criminal sanctions. Notaries, as supporting professionals in the capital market, must be protected in performing their duties. If a capital market notary has drafted deeds and agreements correctly, in accordance with applicable laws and ethical codes, notaries are protected. However, if a notary is discovered to have committed a criminal offense or breached regulations during the backdoor listing process, they may face legal sanctions. Therefore, notaries are expected to have an understanding of legal materials and relevant regulations, ensuring they possess good integrity, morality, skills and attention to detail, allowing them to work professionally in the capital market.

CONCLUSION

There is no standard definition or specific legislation for backdoor listing in Indonesia but according to international doctrine, backdoor listing involves a company obtaining a listing by acquiring an already listed company. Despite the absence of detailed regulations in Indonesian law for backdoor listing process, companies still pursue this method due to its cost efficiency compared to traditional IPOs, which are time consuming and quite an expensive process. The backdoor listing process involves the acquisition of a public company by a private company or vice versa, followed by restructuring and reorganization of the acquired company. The case study, exemplifies the use of backdoor listing as an alternative to traditional IPOs in Indonesia. Based on this, the process of backdoor listing in Indonesia's capital market is not prohibited because it involves the acquisition of companies. However, although the practice of backdoor listing through acquisition is not prohibited in Indonesia, it can still create legal uncertainty and legal risks in practice. Therefore, it is necessary to establish specific regulations regarding the backdoor listing process to protect all parties involved.

Notaries play a crucial role in the backdoor listing process by drafting and validating deeds and legal agreements. As public officials, they are entitled to legal protection under Indonesian law to ensure they can do their duties without undue risk. Law Number 30 of 2004 as modified by Law Number 2 of 2014 and Law Number 8 of 1995, outline the responsibilities and protections for notaries, particularly in the capital market. These laws mandate notaries to comply with ethical codes and professional standards. The legal protection for notaries ensures that they can carry out their essential functions, such as drafting minutes of the General Meeting of Shareholders (RUPS) and amending articles of association without fear of legal repercussions. This protection is crucial for maintaining the integrity and professionalism of notaries in the capital market in Indonesia, ensuring that notaries have the necessary skills, integrity and legal knowledge to navigate the complexities of the backdoor listings process.

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