



FULL DISCLOSURE AND MATERIAL INFORMATION PRINCIPLE FOR BACK DOOR LISTING COMPANIES

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Abstract-- *This paper provides an analysis of the private company transactions in Indonesia known as BDL that are not listed on the stock exchange. The focus of this paper is on the significance of disclosure and material information for companies engaging in "back door listings." The research methods employ normative legal research with a legal perspective. This research relies on main legal materials, namely Financial Services Authority Regulation 7/POJK.04/2017 on Registration Statement Documents. Meanwhile, secondary legal resources are legal materials that explain main legal materials. The findings proved that Investors should be wary of BDL stock transactions in Indonesia as they are often not overly regulated by comprehensive listing laws and are vulnerable to signs of fraud. Hence, investors are advised to avoid investing in BDL companies. In terms of implementing BDL in Indonesia, corporate action by way of acquisition must have the same standard of Principles of Openness (Full Disclosure) and material information that applies to IPO's by revising Investment Law and Limited Liability Company Law as well as Financial Services Authority Regulation Number 7/POJK.04/2017 concerning Documents Registration Statement for Public Offering of Equity Securities, Debt Securities, and/or Sukuk by authorizing OJK to conduct a SWOT analysis (strengths, weaknesses, opportunities, and threats).*

Keywords— *Back Door Listing, Full Disclosure, Initial Public Offering, Material Information*

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INTRODUCTION

The development of the globalization era is very influential with the development of technology, communication, transportation, and informatics, especially in these developments resulting in the economic sector, investment and trade in a country, if we look at the national goals in Pancasila as the basis of the state, especially in the fifth and second precepts, namely justice social welfare for all Indonesian people and just and civilized humanity, it can be seen the meaning of the fifth principle of Pancasila which reflects that Indonesia has a mandate to realize general welfare. In order to realize the general welfare, the capital market has a strategic role in national development as a source of financing for the business world and a vehicle for investment for the community as well as being one of the important barometers for a country's economy (Sudja'i & Mardikaningsih, 2021). Justice that is enforced in a country can affect economic growth for the welfare of society. Richard A. Posner in Ray (1968) states that:

"I use "justice" in approximately the sense of John Rawls. "For us the primary subject of justice is the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation. By major institutions I understand the political constitution and the principal economic and social arrangements"



Posner emphasizes that the main subject of justice is the basic structure of society, or more precisely, the way in which the main social institutions distribute fundamental rights and obligations. Economic Arrangements in Public Offering Instruments carried out by Issuers to sell Securities to the public have an important role in building the economy and justice (Fabozzi et al., 2010). Initial Public Offering (hereinafter referred to as IPO) or go public or initial public offering considered as the first significant stage in the evolution of a company. The two main reasons why companies decide to go public are, firstly the company founder wants to diversify its portfolio and secondly the company does not have alternative sources of funds to finance its investment program (Nasirwan, 2000).

Currently, approximately the number of public companies listed on the Indonesia Stock Exchange (hereinafter referred to as IDX) has reached 760 (Seven Hundred Sixty) companies (Indonesia Stock Exchange (IDX)). It requires quite a long preparation, both from an IPO review to fulfilling administrative requirements as regulated in Financial Services Authority Regulation Number 7/POJK.04/2017 concerning Registration Statement Documents for Public Offering of Equity Securities, Debt Securities, and/or Sukuk, based on According to the regulation, at least more than 15 (fifteen) important documents must be submitted to OJK. In addition, the preparation stage is also required to follow the procedure for submitting a registration statement which has been regulated in several rules.

In its development, the IPO process is quite complicated for private companies to enter and be listed on the IDX, resulting in private companies not getting the same justice in obtaining capital through the capital market. Based on these problems, there is an alternative for private companies to be able to list in the Capital Market without going through an IPO, namely by doing Back Door Listing (hereinafter referred to as BDL). The instrument used in BDL is to acquire shares of a public company which is taken over by a private company (Kamaludin & Usman, 2015). Tumbuan (2014) stated that the BDL transaction is a private company transaction that is not listed on the stock exchange and will be able to enjoy facilities like a public company, this is a way that can bypass the stages that should be passed by companies that enter the stock exchange through an initial public offering or IPO.

Some examples of companies that have successfully listed using the BDL method are PT Prime Capital Asia (hereinafter referred to as PAC). Another example of a company doing BDL is PT AirAsia Indonesia Tbk (hereinafter referred to as AAID) which was approved by the Ministry of Law and Human Rights of the Republic of Indonesia on December 29, 2017.

In some countries such as China, United Kingdom, United States of America, Canada, and Australia, regulations regarding BDL are not as strict as in IPOs (Shao, 2017). Thus far, Indonesia has not regulated and has no problem with companies conducting BDL transactions by way of acquisitions in the context of rights issues as another way for companies to conduct IPOs, but if we look at the provisions of the principle of full disclosure in Law Number 8 of 1995 concerning Markets, Capital (hereinafter referred to as UUPM) which must be passed by a private company to become a public company in Article 70 paragraph (1) of the Capital Market Law states that:

“Only Issuers who can make a Public Offering have submitted a Registration Statement to Bapepam to offer or sell Securities to the public and the Registration Statement has been effective.”

Based on these provisions, the principle of full disclosure in the Capital Market Law is not passed by companies that carry out BDL, while acquisitions in the UUPT (refers to Limited Liability Companies Law) does not require the principle of full disclosure and does not distinguish between the acquisition of a private company and a public company. For every public company, the application of the principle of full disclosure and correct and complete information is a moral obligation that must be fulfilled by the company (Nasarudin, 2014). These moral obligations are important, for classical natural law theory and validity according to morals is a logical condition for legal validity (Murphy, 2018). If it is linked between BDL transactions and moral laying, it is in line with the upholding of the principle of full disclosure Safitri (2020) to protect the interests of investors in the capital market and provide justice for every company that wishes to list in the capital market.

Therefore, this article explores the following research questions; How is BDL's legal position in the Capital Market is related to providing legal protection for investors, as well as the principle of full



disclosure and material information for companies making acquisitions in the context of BDL.

1. LITERATURE REVIEW

1.1. Justice and Morals

Bill Bonner in Bingham (1912) states that between law and morals cannot be separated in the form of legislation and law enforcement, because the law will experience degradation, injustice will occur, and the law will only be a means of destroying justice if there is no morals. Justice itself can be realized if law and morals can be married together. Therefore, morals are not only attached to individuals alone, but also attached to legal entities if linked based on Organ Theory (Otto Van Gierke), namely legal entities are not abstract, but actually exist, legal entities are real organisms, legal entities become collectivist, independent of individuals (Handri Raharjo, 2012) and has a moral obligation attached to the organ. Nevertheless, for a company in the form of a legal entity, such as a limited liability company, legally the principle of the property belonging to the company is separate from the assets of the founder/owner (Fuady, 2014). Thus, efficiency and integrity in contemporary financial markets are not correlated without direct intervention, but the impact can be felt on investors and issuers in the capital market (O'Brien, 2007).

1.2. The Principle of Full Disclosure is Mandatory in UUPM

Each law (Statute) may contain mandatory provisions or directory provisions. In America, the application of the principle of openness is very important and is a mandatory thing, but the principle of full disclosure itself is not sufficient, there are developments regarding the American Chaos Theory in the capital market, where in this Chaos Theory the principle of full disclosure itself does not It is sufficient that the phenomenon of seemingly random (efficient) public capital markets is in fact not random and internally dependent. Chaos Theory also suggests that behavior or actions that may appear irrational may also be rational because they occur in systems that are inherently nonlinear. According to this view, the principle of full disclosure and material information that is company-oriented is still important for investors. However, Lehn & Kamphuis (1992) state that in other words, the market's treatment of discrete bits of information simultaneously takes into account the systemic changes that information implies.

1.3. Company Stages Towards IPO

Initial Public Offering (IPO) is a requirement that must be done for issuers who sell their shares on the Stock Exchange for the first time. The company's decision to become a go public company is a decision that is not without calculation, but is full of careful calculations because the company is faced with several consequences that are beneficial and detrimental (cost) (Mohamad, 2015). The main reason companies go public is because of the encouragement of capital needs. Companies that go public are companies that experience rapid growth. Due to rapid growth, companies are required to be able to provide funds for expansion purposes and for new investment purposes. By going public, companies can enjoy various benefits, both financial and non-financial (Anorago, 1992). According to Sitompul in Sofyan (2012) Beneficial things that can be taken into consideration in carrying out a public offering include that through going public, the company will get fresh funds that can be used as capital for the long term and are also very useful for developing the company, paying debts and other purposes. By going public, it can also increase the market value of the company because generally companies that have become public companies, their liquidity will increase more when compared to companies that are still private.

In the IPO process, prospective issuers must go through several stages (Ang, 1997), namely as follows: (Paramitha, 2016)

a) Preparation stage

In this stage, the General Meeting of Shareholders (GMS) is the first step to obtain approval from shareholders regarding the plan to go public. The articles of association of the company must also be amended and adjusted to the articles of association of the public company. Other activities at this



stage are the appointment of lead underwriters and capital market institutions and professions, namely public accountants, legal consultants, appraisers, Securities Administration Bureau (BAE), notaries, security printers and prospectus printers. Every public company that wants to make a public offering is "obligated" to register with the OJK (Harahap, 2021).

b) Marketing Stage

At this stage, OJK will conduct research on the validity of documents, disclosure of all legal, accounting, financial and management aspects. The next step is the registration statement submitted to OJK until the registration statement is effective, then the other steps that must be taken are: Due diligence meetings; Public exposes and roadshows; Book building (in the process of roadshow); and Determination of the initial price (Paramitha, 2016).

c) Public Offering Stage

At this stage, the prospective issuer publishes a summary prospectus in 2 (two) Indonesian-language print media, which is then continued with the distribution of the final complete prospectus, distribution of the Share Buyer Order Form (FPPS), receiving payments, allocating, refunding, and finally submitting Collective Shares (SKS) for those who get their share.

d) Secondary Trading Stage

This stage includes the stage of registering to the stock exchange to list its shares in accordance with the continuation of the pre-listing agreement that has been approved. Once listed, the shares can be traded on the stock exchange.

e) Obligations after Go Public

Although it has been listed on the IDX, the process of going public is not yet finished. The next stage is the fulfilling its obligations that must be fulfilled after recording, the most important of which include: Issuing an annual report; Pay the fee to go public; Hold a GMS; and An equally important step after going public is that issuers must be open, for example by establishing a corporate secretary (Widiatmodjo, 2015).

1.4. Legal Position of BDL in Indonesia

BDL transactions, namely transactions of private companies that are not listed on the stock exchange, will be able to enjoy facilities like public companies, this is a way that can cut the stages that should be passed by companies that enter the stock exchange through an IPO. BDL transactions can be done in several ways. The usual way in Indonesia is through the acquisition process. BDL according to Prof. Morris Viljoen is a method of listing a business on the stock market without going through an IPO. Meanwhile, David Logan Scott stated that BDL was an acquisition and merger with a listed company by an unlisted company to get a listing on the stock exchange.

Furthermore, Tumbuan (2014) stated that the BDL Transaction is a private company that is not listed on the stock exchange, will be able to enjoy facilities such a public company is a way that can bypass the stages that should be passed by companies that enter the stock exchange through an Initial Public Offering or IPO. Moreover, in the sector of the Indonesian capital market, which also need to be considered in BDL transactions in Indonesia, which include: (Diantha, 2016)

a. Law No. 40 of 2007 concerning Limited Liability Companies ("UUPT");

b. Law No. 13 of 2003 concerning Manpower;

c. Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition;

d. Government Regulation No. 57 of 2010 concerning Mergers and Acquisitions;

e. Regulation of the Business Competition Supervisory Commission (KPPU) No. 13 of 2010 concerning Implementation Guidelines on Merger or Consolidation of Business Entities and Acquisition of Company Shares which Can Result in Monopolistic Practices and Unfair Business Competition as amended several times and most recently amended by KPPU Regulation No. 2 of 2013 concerning the Third Amendment to the Regulation of the Business Competition Supervisory Commission No. 13 of 2010 concerning Guidelines for the Implementation of Merger or Consolidation of Business Entities and Acquisition of Company Shares which may Result in Monopolistic Practices and Unfair Business



Competition; and

f. Tax provisions that apply in Indonesia;

One of the BDL transactions that occurred in the past few years was the transaction of PT AirAsia Indonesia Tbk (AAID), previously known as PT Rimau Multi Putra Pratama Tbk (RMPP) which is a public company listed on the Indonesia Stock Exchange (IDX). The name change from RMPP to AAID was approved by the Ministry of Law and Human Rights of the Republic of Indonesia on December 29, 2017. AirAsia Group CEO Tony Fernandes in Wirayani (2018) revealed that the reason for choosing this scheme over the IPO was because BDL was faster and due at that time AirAsia Indonesia had not fulfilled all the requirements stipulated by the regulations that had passed to fully list its shares, and one of the things that hampered AirAsia Indonesia's IPO process when it was the financial statements that still posted losses when regulators require companies that want to IPO to post operating profit in the last financial year.

1.5. Legal Protection for Investors from BDL Practices

The consequence of investor protection in the Capital Market Law is the application of the principle of information disclosure, because every investment decision contains risks, issuers and supporting professions in the capital market must be responsible for the accuracy and completeness of information, this is confirmed in Article 4 of the Capital Market Law which states that "Guidance, regulation, The supervision as referred to in Article 3 is carried out by Bapepam with the aim of creating an orderly, fair and efficient Capital Market activity as well as protecting the interests of investors and the public".

In providing the protection provided by the laws and regulations, investors must be independent, meaning that investors must bear their own profits and losses due to the investments they have made. This protection is called minimum protection (Koesnadi, 1993).

The next precautionary measure taken by Bapepam-LK is to stipulate that the securities prospectus are prohibited from containing misleading content or incorrect information about material facts or presenting information about the advantages and disadvantages of the securities offered. Goodhart stated that material facts such as person, time, place, type and amount (Mertokusumo et al., 1984).

In addition to supervising BDL transactions, Bapepam-LK is also authorized to conduct inspections and investigations. This is a consequence of the supervisory function given by law to Bapepam-LK.

In addition to several institutions already mentioned, there is an institution for the establishment of a Clearing Guarantee Institution (LKP) which is regulated as in Articles 13 to 17 of the Capital Market Law, and in Articles 15 to 22 of Government Regulation Number 45 of 1995 concerning the Implementation of Activities in the Capital Market which has been amended as in Government Regulation Number 12 of 2004 concerning Amendments to Government Regulation Number 45 of 1995 concerning Implementation of Activities in the Capital Market Sector. The purpose of establishing this LKP is to provide clearing and guarantee services for the settlement of stock exchange transactions in an orderly, fair and efficient manner (Hariyani & Purnomo, 2010).

Another instrument that can be used to protect BDL transactions is the OJK, with the aim that all activities in the financial services sector can be carried out in an orderly, fair, transparent and accountable manner, are able to realize a financial system that grows in a sustainable and stable manner, and is able to protect interests consumers and the public which is realized through the existence of an integrated regulatory and supervisory system for all activities in the financial services sector (Sutedi, 2014). Article 28 of the OJK Law provides legal protection in the form of preventing consumer and public losses carried out by the OJK, namely:

- 1) provide information and education to the public on the characteristics of the financial services sector, services and products;
- 2) ask the Financial Services Institution to stop its activities if the activity has the potential to harm the community; and
- 3) other actions deemed necessary in accordance with the provisions of the legislation in the financial services sector.

This includes the Investor Protection fund which aims to provide compensation to investors for the loss of investors' assets in the form of securities or funds deposited with the Custodian, as a party providing securities custody services and other assets related to securities. Protection for investors is also regulated in Consumer Protection in the Capital Market Sector according to Financial Services Authority Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector.



Figure 1. Investor Protection Structure in Capital Market (Komandoko, 2020)

2. METHODOLOGY

This research technique employs normative legal research with a legal perspective by examining the statutory provisions pertaining to the legal issues at hand. Where the way of approaching legislation has a tight relationship with the concept of hierarchy and the principles of legislation (Marzuki, 2021). This research relies on main legal materials, namely Financial Services Authority Regulation 7/POJK.04/2017 on Registration Statement Documents for Public Offerings of Equity Securities, Debt Securities, and/or Sukuk (Sharia Securities or Securities in the Form of Certificate or Proof of Ownership). While secondary legal resources are legal materials that explain main legal materials, the most significant or fundamental materials are textbooks containing legal science concepts or guidelines, scientific works, periodicals, and the views of highly competent legal professionals.

3. RESULTS AND DISCUSSION

3.1. Principles of Full Disclosure and Material Information

Information disclosure with the term transparency or full disclosure principle is the disclosure of all information that will have implications for price changes and transactions in the capital market (Rahmah, 2019). Disclosure of this information must be used as a standard in companies that will do listings either through IPO or BDL. Disclosure of information for public companies at least includes the level of reliability of information, completeness of information, and balance in the balance sheet (Sutedi, 2014).

Based on Article 1 number 25 UUPM, the information provided must be related to events, occurrences, facts that can affect the price of securities on the stock exchange or decisions that will be taken by interested investors on all such information or facts. The information is in the form of a company prospectus containing information about the real state of the company. Principle of Openness (Full Disclosure) affect Investor's decision, which can be in the form of: (Damang Averroes Al-Khawarizmi, 2011)

1. Submission of periodic and incidental reports;
2. Information disclosure to the public through mass media;



3. Criminalization of concealment/misleading of information.

Several things in the principle of openness include: (Wallace, 1993)

1. Disclosure of Merger (Agsa et al., 2021);
2. Disclosure of Forward - Looking Statement (Sutedi, 2015);
3. Disclosure of Issuer's Financial Condition;
4. Disclosure regarding Rumors;
5. Issuer's Business Risk Disclosure.

In order for investors to know the performance of the issuer whose securities will be purchased; it is the obligation of the company conducting the IPO to provide a prospectus as referred to in Article 74 jo. Article 78 UUPM. Material facts include information on the state of the business, both in terms of finance, law, management, and company assets, with the aim that investors can understand and decide on their investment policies (Yulfasni, 2005).

The purpose of information disclosure is nothing but legal certainty for investors. Kusumohamidjojo (1999) stated that legal certainty is an almost absolute requirement for a modern and democratic legal state. Inconsistent law enforcement will not make people want to rely on the law as a set of rules that regulate life together. Consistency in the implementation of the law in this case, especially the OJK, is needed as a reference for the protection of investors from companies that conduct BDL transactions.

3.2. Acquisition as Corporate Action for Companies who perform BDL Based on Economic Analysis of Law

Government Regulation of the Republic of Indonesia Number 27 of 1998 concerning Merger, Consolidation, and Takeover of Limited Liability Companies defines an acquisition as a legal act carried out by a legal entity or individual to take over, either all or most of the company's shares which may result in the transfer of control over the individual (Untung, 2020).

BDL transactions are carried out by way of acquisition in the context of a rights issue / Issuance of Pre-emptive Rights (HMETD). The rights issue and acquisition are legal actions carried out to improve the existence and efficiency of a company by buying or selling shares of the company concerned either to individuals or to other companies. BDL by way of acquisition in the context of a rights issue, in which a private company acquires a public company (a company already listed on the stock exchange) in the context of a rights issue conducted by the public company. An example of a BDL transaction by way of acquisition in the context of a rights issue which it is involved in is as shown in the following figure: (Tumbuan, 2014)

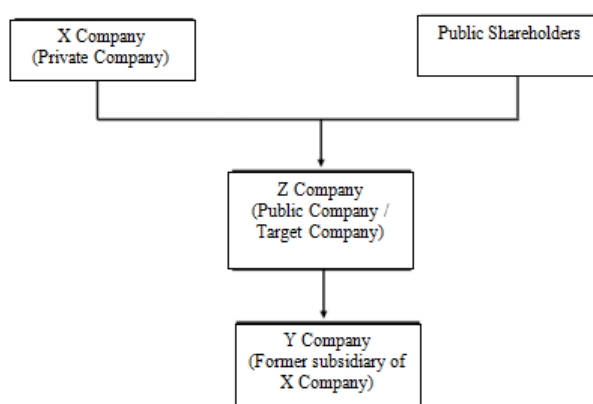


Figure 2. Back Door Listing Transaction by way of acquisition in rights issue

After the BDL transaction process by way of acquisition in the context of the rights issue was carried out, there was a change in the company structure to be as shown in Figure 2 below: (Tumbuan, 2014)

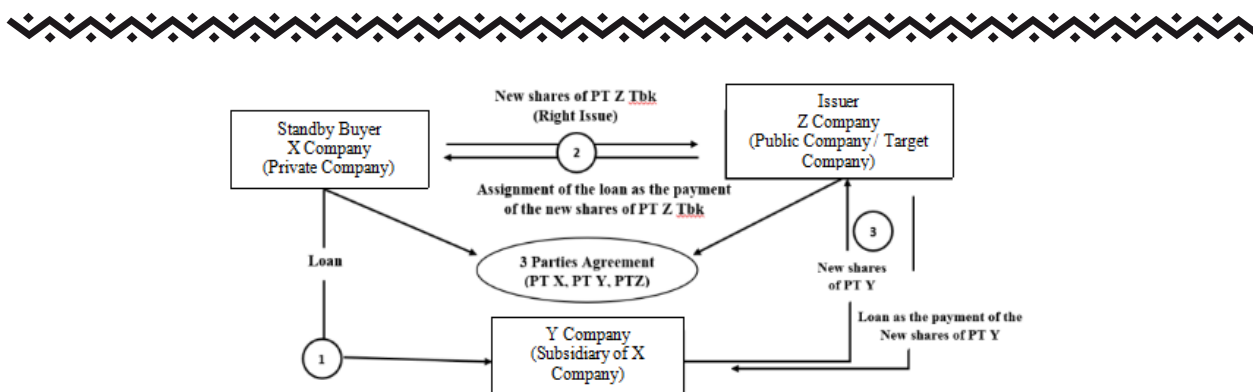


Figure 3. Company structure changes after Back Door Listing

The legal consequences of a backdoor listing transaction by way of acquisition in the context of a rights issue include:

- a. a private company becomes the controller in a public company as the majority shareholder;
- b. decrease in the percentage of share ownership of the initial shareholders of a publicly listed company due to dilution;
- c. changes in the management of public companies; and
- d. changes in the main business activities of a public company

Companies that conduct BDL transactions by way of acquisitions in the context of the rights issue, conduct a legal examination process first against the acquired public company, which includes:

- a. examination of important company documents;
- b. legal issues that have the potential to cause problems and
- c. audited financial statements.

So far, the BDL process does not have a clear legal umbrella compared to IPOs which have a definite legal basis, wide circulation, and are under strict supervision of the competent authority. Then, most of the companies that carry out BDL actions are small companies which, although they have met the requirements for the minimum share distribution value, the shares traded are often illiquid shares and cause a wider share offering (Nicholson, 2017). The possibility of not meeting the concept of transparency owing to shortening the stages that should be carried out through the IPO is a major concern and should be taken into account. This has serious consequences for the fulfillment of the principle of openness. Hence, it is very important to take actions in order to fulfill the principle of openness in carrying out BDL actions.

In addition to success, BDL acquisitions also often fail, for example RIMO shares owned by Benny Tjokro, is an example of a bad BDL. Currently, its shares are threatened with delisting because they have been suspended by the Indonesia Stock Exchange (IDX) for 12 months (Malia, 2021). Another example is PT Indosat, which failed in the development of BDL, and even this became a concern. Deputy Chairman of Commission VI, Martin Manurung, admitted that he was a little worried about the process that took place in Indosat and Tri. This is related to the government's share ownership in Indosat, which currently has 14.6 percent remaining (Malia, 2021).

One of the success or failure factors in the acquisition of BDL is in the preparation process, both for the acquirer and the target company for the acquisition. Therefore, it is impossible for BDL to be able to succeed in making a profit in the capital market and provide protection for investors without applying the principle of full disclosure to material information. One of the corporate actions taken by way of acquisition in the context of the BDL transaction can be successful if the acquisition can be carried out and does not rule out full disclosure of material information. John H. Dunning points out 6 (six) criteria that must be in order for an acquisition to be successful, namely: (Untung, 2020)

1. Reduce transaction costs;
2. Avoid loss of gain due to loss of control;



3. Continue to control the supply inputs;
4. Facing government intervention well;
5. Protect rights and property; and
6. Optimize existing capacity, taking advantage of the size of the company, from co-production or from integration/diversification.

If we pay attention to the practice of BDL transactions, none other than heavily influenced by the views of the Economic Analysis of Law put forward by Richard A. Posner, namely: (Posner, 2014)

“The Previous section bandied about some pretty highly charged word value, utility, efficiency about which we need to be more precise.”

From Posner's view above, there are at least 3 (three) things that are key to the application of Economic Analysis of Law, the first is value, the second is utility and the third is efficiency (Merkuro, 2012). This concept has the difference that utilitarians, regardless of their concern for social welfare, must logically ascribe the value of all kinds of asocial traits, such as envy and cruelty, because these are common sources of personal satisfaction (Posner, 1983). Economic Analysis of Law also tries to improve the law by pointing out the cases where existing or proposed laws have unintended or unintended consequences, either on economic efficiency, or the distribution of income and wealth, or other values (Kronman, 1995).

3.3. BDL Regulatory Practices in Some Countries

Some countries also recognize BDL as a shortcut for companies that want to go public in the capital market. In Australia, BDL is also known as an alternative for private companies that will go public in the capital market. BDL in Australia is widely carried out by private companies that are small in scale, in the development stage, and are in the technology business. Companies that conduct BDL are also indicated to be illiquid, less profitable, and more at the development stage than companies that carry out IPOs. Similar to Indonesia, in Australia there is no formal regulation related to BDL actions. However, the term “back door listing” itself is not found in any regulations relating to the listing rules of the ASX (Australian Stock Exchange or the Australian Stock Exchange) or the Australian Corporation Acts. In addition to the absence of specific regulations related to BDL, there are several provisions in the Australian Corporations Act and the listing rules that allow it to be applied to several aspects of BDL activities. One possible exception, is the implementation of the basic accounting published by the International Accounting Standards Board (IASB). In addition, in the Australian equivalents to International Financial Reporting Standards (AIFRS) there are provisions related to good faith in BDL using accounting principles (Lam, 2010).

The most recent data on the list of BDL implementations in Australia confirms this cycle while 76% (seventy six per cent) of the Australian BDL list was carried out by mining companies in 2012 (Bell, 2013).

While in the United States, the BDL action is better known as a reverse merger (hereinafter referred to as RM) or a reverse acquisition. Basically, the RM or BDL procedure that occurs in the US is the same as BDL in other countries in general. The United States uses a SWOT (strengths, weaknesses, opportunities, and threats) analysis in assessing the benefits and challenges of BDL. The United States considers the regulatory framework related to BDL, consisting of listing rules and other securities laws and regulations, to help mitigate the weaknesses and threats associated with BDL. In fact, appropriate regulations will make BDL a more attractive alternative for private companies to enter the capital market (Vermeulen, 2014). The following is a BDL SWOT analysis used in the United States:



<p style="text-align: center;">Strengths</p> <ul style="list-style-type: none"> ○ Lower costs ○ Less time consuming ○ No initial listing requirement ○ Less complex procedure ○ Imperviousness to equity market ○ Control over timing listing ○ Possibility of losing without raising capital ○ <i>Synergies (United Kingdom)</i> 	<p style="text-align: center;">Weaknesses</p> <ul style="list-style-type: none"> ○ No underwriter certification to support the company ○ Feeble initial trading ○ Complicated/non-clean shell companies to deal with ○ Auditing conflicts ○ Trading volume
<p style="text-align: center;">Opportunities</p> <ul style="list-style-type: none"> ○ Small but promising company can go public ○ PIPE financing ○ Possible tax benefits ○ <i>Follow on offering (United Kingdom)</i> 	<p style="text-align: center;">Threats</p> <ul style="list-style-type: none"> ○ Risk of damaging the firm reputation ○ Company's stock might trade at a discount rate ○ Probability of reverse stock split

Source: Adapted from (Ojha et al., 2013)
Figure 4. SWOT BDL used by the United States

Unlike the US, the UK has more experience in BDL. In the UK in general the listing of shares after the RM is done will be cancelled. Companies that intend to do BDL are forced to meet the readmission requirements as if the company were applying for an IPO. However, these rules and regulations do not make BDL any less attractive. In contrast, the practice of BDL in the UK is more widespread than in the US (Roosenboom & Schramade, 2007). The regulatory framework can be said to bring balance between SWOT; therefore regulators are increasingly directing attention regarding the optimization of regulatory intervention in RM. This was adapted based on consideration of the implementation of stricter rules on BDL by the China Securities Regulatory Commission (CSRC) which in 2011, stated that private companies seeking access to the capital market through BDL are required to meet the same disclosure standards that apply to IPOs.

Regulation of BDL in various countries has its own impact. The United States undertook a number of initiatives spearheaded by the SEC and PCAOB by issuing warnings to investors for stricter listing rules against RM. To ensure investors have sufficient information to distinguish prudent and unwise BDL, The Rule Book of OMX NASDAQ Stockholm, provides a signal that allows policy makers to grant provisional observation status to companies participating in BDL (Vermeulen, 2014).

The lack of transparency in the implementation of BDL often causes the company's activities in the context of conducting RM to raise suspicions of fraudulent activities and accounting errors. In response, the SEC and PCAOB issued investor bulletins noting the potential increased risks connected with investing in BDL firms and enforced stiffer listing requirements for companies seeking public listing.

In addition, in a country such as the UK, proving that supervision and regulation of policies related to BDL that upholds the principle of openness does not make BDL unattractive, but makes BDL an attractive alternative while guaranteeing protection for investors. Thus, it can actually be said that BDL regulations or policies with the application of the principle of transparency are beneficial for both companies wishing to be listed on the capital market, as well as for investors who will invest in the listed companies.

In Indonesia, the obligation to fulfill juridical requirements comes from various laws and regulations, such as the Capital Market Law and the Company Law. To fulfill the juridical requirements, a Company must go through three stages, namely the preparation period, the bidding period, and the listing period (Widoatmodjo, 2009). After going through these stages, the Company has completed the IPO process which makes a company as a public company and will begin to comply with various obligations in the capital market sector.



The importance of complying with the principle of transparency in company takeovers is not unreasonable. In practice, it is often found that there is unfair treatment for shareholders, especially minority shareholders

In Indonesia, there are several things that need to be considered for companies conducting BDL in order to comply with the principles of information disclosure, as well as the laws and regulations in the Indonesian capital market sector, including:

- 1) Regulation of the Financial Services Authority (formerly Bapepam. LK) No. IX.D.I on The Right to Pre-Order Securities;
- 2) Regulation of the Financial Services Authority (formerly Bapepam-LK) No. IX.II concerning the Plan and Implementation of the General Meeting of Shareholders;
- 3) Regulation of the Financial Services Authority (formerly Bapepam-LK) No. XMI regarding Information Disclosure of Certain Shareholders;
- 4) Regulation of the Financial Services Authority (formerly Bapepam-LK) No. IX.EI regarding Affiliated Transactions and Conflicts of Interest in Certain Transactions (if any);
- 5) Financial Services Authority Regulation (formerly Bapepam-LK) No.IX.E.2 regarding Material Transactions and Changes in Main Business Activities (if any);
- 6) Regulation of the Financial Services Authority (formerly Bapepam-LK) No. IX.).I concerning the Principles of the Articles of Association of Companies Conducting Equity Public Offerings and Public Companies; and
- 7) Stock Exchange Regulation No.IA concerning Listing of Shares and Equity Securities Other than Shares Issued by the Listed Company.

In addition to the regulation regarding the Disclosure Principle in BDL, the Company must also pay attention to Material Transactions (TM) and Changes in Main Business Activities. Material transactions are every transaction carried out by a public company or controlled company that meets the value limit as stipulated in the OJK Regulation. Business Activities are business activities listed in the articles of association of the Public Company and have been carried out.

Most of the BDL cases in Indonesia implement a rights issue scheme that allows new shareholders to acquire public companies. This is the purpose of the regulation on the capital market, namely: “they can give policy makers additional policy instruments that allow them more effective and less costly macroeconomic stabilization measure”, namely the government can provide policy makers with additional policy instruments that enable them to carry out more effective and cheaper macroeconomic stabilization measures by taking into account the principles in the capital market (Ocampo & Stiglitz, 2008).

CONCLUSION

Investors should be wary of BDL stock transactions in Indonesia as they are often not overly regulated by comprehensive listing laws and are vulnerable to signs of fraud. Therefore, investors are advised to avoid investing in BDL companies. Another recommendation is suggested to the Indonesian capital market regulator, namely OJK. It is recommended that OJK design additional protection for Indonesian stock exchange investors in the form of special regulations related to the formulation of BDL. Capital market regulations in other countries can serve as good benchmarks for OJK. The fact that BDL has become a new trend as an alternative publication medium in recent years may be a good reason for OJK to immediately draw up a draft regulation.

In terms of implementing BDL in Indonesia, corporate action by way of acquisition must have the same standard of Principles of Openness (Full Disclosure) and material information that applies to IPO's by revising UUPM and UUPT as well as Financial Services Authority Regulation Number 7/POJK.04/2017 concerning Documents Registration Statement for Public Offering of Equity Securities, Debt Securities, and/or Sukuk (Sharia securities or securities in the form of certificates or proof of ownership) by authorizing OJK to conduct a SWOT analysis (strengths, weaknesses, opportunities, and threats) in assessing the benefits and challenges of BDL for companies that choose BDL as an alternative become



a public company.

REFERENCES

- [1] Agsa, M. A. R., Nasution, B., Sunarmi, S., & Siregar, M. (2021). Penerapan Prinsip Keterbukaan Perusahaan Publik (Studi Mengenai Laporan Keuangan Ganda). *Iuris Studia: Jurnal Kajian Hukum*, 2(2), 234-240.
- [2] Anorago, P. (1992). *Pasar Modal Keberadaan dan Manfaatnya bagi Pembangunan*.
- [3] Bell, S. (2013). *Back Door' May Be Closing for Miners*.
- [4] Bingham, J. W. (1912). *What is the Law*. *Mich. L. Rev.*, 11, 1.
- [5] Damang Averroes Al-Khawarizmi. (2011). *Prinsip-Prinsip Hukum. Negara Hukum*.
- [6] Diantha, I. M. P. (2016). *Metodologi penelitian hukum normatif dalam justifikasi teori hukum*. Prenada Media.
- [7] Fabozzi, F. J., Modigliani, F., & Jones, F. J. (2010). *Foundations of financial markets and institutions*. Pearson/Addison-Wesley.
- [8] Fuady, M. (2014). *Teori-teori Besar Dalam Hukum: Grand Theory*. Prenada Media.
- [9] Handri Raharjo, S. H. (2012). *Hukum Perusahaan*. MediaPressindo.
- [10] Harahap, Y. (2021). *Hukum perseroan terbatas*. Sinar Grafika (Bumi Aksara).
- [11] Hariyani, I., & Purnomo, S. D. (2010). *Buku Pintar Hukum Bisnis Pasar Modal*. Jakarta: Transmedia Pustaka.
- [12] IDX. (2021). *Profil Perusahaan Tercatat*. Jumat, 29 Okt 2021 | 08:02 WIB.
- [13] Kamaludin, K. C. S., & Usman, B. (2015). *Restrukturisasi, Merger & Akuisisi. I*. Bandung: CV. Mandar Maju.
- [14] Koesnadi, D. (1993). *Perlindungan Minimum Bagi Pemodal*. Pusat Pengkajian Hukum, Jakarta.
- [15] Komandoko, K. (2020). *Penegakan hukum dan perlindungan konsumen dalam bidang pasar modal*.
- [16] Kronman, A. (1995). *The Second Driker Forum for Excellence in the Law*.
- [17] Kusumohamidjojo, B. (1999). *Ketertiban yang adil: problematik filsafat hukum*.
- [18] Lam, H. L. (2010). *Backdoor listing in Australia: An exploratory analysis*. UNSW Sydney.
- [19] Lehn, K., & Kamphuis, R. W. (1992). *Modernizing US Securities Regulation: Economic and Legal Perspectives*. Irwin Professional Publishing.
- [20] Malia, I. (2021). *Praktik Backdoor Listing Bisa Rugikan Investor, Mengapa?*
- [21] Marzuki, P. M. (2021). *Penelitian Hukum (15th ed.)*. Kencana.
- [22] Merkuro, N. (2012). *Law and Economic*, (N. Mercurio (ed.); Ncolas Me). Kluwer Academic Publisher.
- [23] Mertokusumo, S., Basuki, K., & Supartinah, R. (1984). *Bunga Rampai Ilmu Hukum*. Liberty.
- [24] Mohamad, S. (2015). *Pasar Modal dan Manajemen Portofolio, Edisi 2*. Jakarta: Erlangga.
- [25] Murphy, J. G. (2018). *Philosophy of law: An introduction to jurisprudence*. Routledge.
- [26] Nasarudin, M. I. (2014). *Aspek hukum pasar modal Indonesia*. Kencana.
- [27] Nasirwan, D. (2000). *Analisis Faktor-faktor yang Mempengaruhi Initial Return Saham yang Listing di BEJ tahun 1990-1997*. *Kumpulan Makalah Simposium Nasional Akuntansi III*, 556-572.
- [28] Nicholson, C. (2017). *Backdoor Listing*.
- [29] O'Brien, J. (2007). *Private equity, corporate governance and the dynamics of capital market regulation*. World Scientific.
- [30] Ocampo, J. A., & Stiglitz, J. E. (2008). *Capital market liberalization and development*. OUP Oxford.
- [31] Ojha, S., Maherwari, R., & Jain, S. (2013). *Reverse mergers: The way forward*. *IOSR Journal of Business and Management*, 10.
- [32] Paramitha, A. (2016). *Analisis Hukum Terkait Pelaksanaan Backdoor Listing Dalam Prespektif Good Corporate Governance*. Universitas Gadjah Mada.
- [33] Posner, R. A. (1983). *The economics of justice*. Harvard University Press.
- [34] Posner, R. A. (2014). *Economic analysis of law*. Wolters Kluwer.
- [35] Rahmah, M. (2019). *Hukum Pasar Modal (Pertama)*. Kencana (Divisi Prenada Media Group).
- [36] Ray, A. (1968). *The Economics of Packaging*. *Economic and Political Weekly*, 333-336.
- [37] Roosenboom, P., & Schramade, W. (2007). *Reverse mergers in the United Kingdom: Listed targets and private acquirers*. In *International Mergers and Acquisitions Activity Since 1990* (pp. 181-194). Elsevier.
- [38] Safitri, I. (2020). *Good Corporate Governance : Capital Market Lawyer OECD Principles of GCG*.
- [39] Shao, C. (2017). *Choice between backdoor listing and regular initial public offering in China*.
- [40] Sofyan, T. (2012). *Perlindungan Hukum Pemodal Publik Melalui Keterbukaan Informasi Dalam Perdagangan Saham di Pasar Modal*. *Supremasi Hukum*, 21(1), 47-62.



- [41]Sudja'i, & Mardikaningsih, R. (2021). *Correlation Of Worker Welfare And Industrial Relations. CASHFLOW : Current Advanced Research On Sharia Finance And Economic Worldwide*, 1(1), 29-32.
- [42]Sutedi, A. (2014). *Aspek Hukum Otoritas Jasa Keuangan*. RAS.
- [43]Sutedi, A. (2015). *Buku Pintar Hukum Perseroan Terbatas. Raih Asa Sukses*.
- [44]Tumbuan, F. B. . (2014). *Jurnal Hukum & Pasar Modal Kesiapan Pasar Modal Indonesia Akan Integrasi Pasar Modal Asean. Himpunan Konsultan Hukum Pasar Modal, IV/Edisi 8*.
- [45]Untung, H. B. (2020). *Hukum Akuisisi*. Andi.
- [46]Vermeulen, E. P. (2014). *Rules on backdoor listings: a global survey. Indonesia-OECD Corporate Governance Policy Dialogue, 2012-2015*.
- [47]Wallace, P. E. (1993). *Disclosure of environmental liabilities under the securities laws: The potential of securities-market-based incentives for pollution control. Wash. & Lee L. Rev.*, 50, 1093.
- [48]Widoatmodjo, S. (2015). *Pengetahuan Pasar Modal untuk Konteks Indonesia. Elex Media Komputindo*.
- [49]Widoatmodjo, S. (2009). *Pasar Modal Indonesia: Pengantar dan Studi Kasus. Ghalia Indonesia*.
- [50]Wirayani, P. (2018). *Tony Fernandes: Alasan AirAsia Indonesia Backdoor Listing*.
- [51]Yulfasni. (2005). *Hukum Pasar Modal. IBLAM*.