

# Concept of Listing on the Indonesian Stock Exchange (IDX) in Building Capital Market Law

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The capital market has a significant role in bringing about the welfare of the people and the prosperity of the people. This is found in the preamble of the 1945 Constitution and Article 33 paragraph (3) of the 1945 Constitution. The ideals of the founders of the nation in order to realize the welfare and prosperity of the people are not easy matters to realize, therefore a synergy between the government and the community is needed to realize them. In Indonesia 693 companies are listed on the Indonesia Stock Exchange (IDX), all of which are domestic companies. The Capital Market Law only provides opportunities for domestic companies listed on the Indonesia Stock Exchange (IDX). The formation of the capital market through Law No. 8 of 1995 aims to carry out national development through financing as a source of financing for the business world as well as a vehicle for investment for the community. This study will examine the concept of listing securities on the Indonesia Stock Exchange in establishing capital market law. The theory used is Richard Posner's economic theory of law. The methodology in this research is this study is evaluative and comparative. The results of this study allow foreign companies to enter the Indonesia Stock Exchange without having to establish a company in Indonesia.

**Key words:** *Listing of Securities, Indonesia Stock Exchange, Capital Market*

## Introduction

Legal reform is something that cannot be avoided by adjusting the development of society, so that it is possible for national law to change as long as it meets the requirements to follow the changing times in order to achieve the goals of the country. According to Gustav Radbruch, law must fulfill three values, namely justice, usefulness, and legal certainty. (Satjipto

Raharjo: 2000 ) Legal reform should ideally have positive implications with the existence of values of justice, usefulness and legal concern in order to strengthen the development and renewal of national law. One way to do legal reform through legal politics is legal policy or official policy lines regarding the law that will be enforced either by making new laws or by replacing old laws in order to achieve the country's goals. (Moh. Mahmud MD: 2010) Legal reform can be done by the government on national law which is not based on the values of justice, certainty, and usefulness by changing or changing national laws in an effort to realize the goals of the country. The above description provides an understanding among others that the politics of law is the direction of legal development which is grounded in the national legal system to achieve the goals and ideals of the state or nation society. (Moh. Mahfud MD: 2010) Development must be based on ideals and prioritize the elimination of unfair laws that have been living in the social fabric of society and violate human rights, especially capital market law.

The development of the Indonesian capital market to date has registered 693 companies listed on the Indonesia Stock Exchange (IDX), all of which are domestic companies. The Capital Market Law only provides opportunities for domestic companies listed on the Indonesia Stock Exchange (IDX) to carry out national development as a source of funding for the business world and a vehicle for investment for the community. Article 1 number 13 of Law Number 8 of 1995 concerning Capital Market defines the capital market is an activity concerned with public offering and trading of securities of public companies relating to the issuance of securities as well as institutions and professions related to securities. The definition according to the author is very broad because there are terms that if needed to get further explanation, so that everyone can understand it in order to attract new investors to entrust their capital in the capital market.

The joining of foreign companies that conduct public offerings and listing of securities (listings) can make a major contribution to the development of the Indonesian capital market as well as the national economy as well as provide public welfare and participate in building the national economic order in order to create an advanced, fair and prosperous society based on Pancasila and the Law 1945 Constitution. Consideration of Law Number 8 Year 1995 Concerning Capital Market states that 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. Currently there are 693 companies listed on the Indonesia Stock Exchange with a composition of 19 State-owned enterprises (BUMN) and 674 Private-owned Business Entity (BUMS). The number of companies listed on the Indonesia Stock Exchange is very small when compared to Malaysia which reached 904 companies and other countries. The number of companies in Indonesia based on the 2016 Central Bureau of Statistics (BPS) economic census reached 26.7 million companies. (<http://se2016.bps.go.id/Lanjutan/>) Most companies in Indonesia are not yet listed on the Indonesia Stock Exchange (IDX), which is very large in number, this is a huge potential to be developed at the same time to make

Indonesian companies widely known to the global community and able to capture unlimited sources of financing through the capital market Indonesia. The listing of foreign companies on the Indonesia Stock Exchange (IDX) can also help improve national economic growth and prosperity for the people. Based on this the authors are interested in conducting a research on the Concept of Listing on the Indonesian Stock Exchange (IDX) in Building Capital Market Law.

### **Underlying Theory**

Richard Posner's economic of law analysis theory emphasizes the principle of Wealth Maximization efficiency, a condition where resources are allocated so that its value is maximized. In economic analysis, efficiency in this case is focused on ethical criteria in the context of making social decisions (social decision making) concerning the regulation of public welfare. (Fajar Sugianto: 2015) Efficiency according to Posner's view is interpreted as an increase in one's wealth without causing losses to other parties. In this regard, economic analysis in law like this is known as the idea of wealth maximization or in the Posner term "Kaldor-Hicks" where changes in the rule of law can improve efficiency if the winning party's profits outweigh the losses of the losing party and the winning party can provide compensation for losses for the losing party, so that the losing party is still better. In this context, Posner views one aspect of justice that includes not just distributive and corrective justice. Posner stressed "Pareto improvement" in which the objectives of legal regulation can provide valuable input for justice and social welfare. (Nicholas Mercuro and Steven G Medumo: 1999) Therefore foreign companies listed on the Indonesia Stock Exchange without establishing a company in Indonesia will have a positive impact on economic development and develop capital market laws. Thus, the three values in law according to Gustav Radbruch namely justice, usefulness, and legal certainty can be realized. (Satjipto Raharjo: 2000)

### **Method**

Erlyn Indarti stated that the method is part of the methodology. (Erlyn Indarti: 2010) This is also consistent with the opinion of Bagele Chilisa and Barbara Kawulich that the method is a means to collect data and is an important part of the methodology. (Bagele Chilisa and Barbara: 1997) The method as part of the methodology can be considered as the fourth issue of alternative paradigm inquiry. Ontology is the core layer while the method is the outermost layer of paradigmatic concepts. (Erlyn Indarti: 2010) This research is evaluative and comparative research. Comparative case studies are used to compare two or more cases. (Delwyn Goodwick: 2014) An evaluative approach is used to evaluate government policies regarding the capital market. The comparison in this study is the comparison of laws and regulations regarding the capital market in Indonesia with several countries.

## Results and Discussion

### *Regulation of Listing on the Indonesian Stock Exchange (IDX)*

The law is a rule that continues to evolve with the times and never stops to create a new idea in order to realize justice, usefulness and certainty. The law must be able to respond to every problem by providing solutions to all the hustle and bustle of the problematic life of the nation and state society. The development of the human mindset about the conception of law has an impact on fundamental changes in law so that the law can bring changes to realize the values of justice. In fact, the law does not prohibit changes, without changes in law will be abandoned by the community, at a concrete level, changes will occur in the legal system and regulations. (Satjipto Raharjo: 2009)

At present Indonesian law is seen as a non-standard and not rigid rule, so that it is possible for national law to change as long as it meets the requirements to follow the changing times in order to achieve the country's goals. According to Gustav Radbruch, law must fulfill three values, namely justice, usefulness, and legal certainty. (Satjipto Raharjo: 2000) Therefore, legal changes should ideally have positive implications with the existence of values of justice, usefulness and legal concern in order to strengthen the development and renewal of national law. The change in law is a response to social problems, especially the capital market in Indonesia. Problems in the capital market sector regarding securities recording to date have not yet yielded maximum results, which can lead to protracted legal problems. Such a situation ultimately harms the Indonesian people, and therefore must seek illusions through legal development in the field of capital markets.

Development simply means changing a situation that is not good for the better or that does not exist for the better. Likewise, the listing of securities of foreign companies on the Indonesia Stock Exchange does not yet exist. The situation was caused by foreign companies not being allowed to enter the Indonesia Stock Exchange (IDX). Scohten as quoted by Sudikno Mertokusumo argues that the law is an open system because it contains legal regulations that are incomplete and may not be complete. (Sudikno Mertokusumo: 2003) Therefore, there is a need for legal development by forming new laws that are in accordance with the noble values of the Indonesian people to complete an open and incomplete legal system.

At present the capital market has an extraordinary influence on extra-fast capital transfers from one country to another. The capital market is also the driving force of the economy of a country by bringing together the capitalists (suppliers of funds) with the users of funds (user of funds) with the aim of earning profits while accelerating the development of the national economy amid the current global economic development. Article 1 number 13 of Law Number 8 of 1995 concerning the Capital Market defines the capital market is an activity

concerned with the public offering and trading of securities of public companies relating to the issuance of securities as well as institutions and professions related to securities.

In the context of conducting transactions in the capital market, the stock exchange is a party that organizes and facilitates as well as a place to bring together prospective sellers and prospective buyers to conduct transactions in the form of securities between themselves. Before the parties make a transaction on the stock exchange the issuer conducts the sale of securities for the first time through a public offering mechanism. The action is an option for issuers to add capital as well as a vehicle for the public to invest in the form of securities portfolios. So far, the public offering of equity (shares) conducted in the context of a public offering of securities to the public can only be done by a legal entity, namely a Limited Liability Company (PT) either privately owned or a State-Owned Enterprise (BUMN). A legal entity is an association of people who enter into cooperation and on this basis is a unit that has fulfilled the conditions determined by law. (R. Soeroso: 2001) Legal entities (rechtspersoon) as associations can carry out legal actions while at the same time have the rights and obligations as humans (*legitima persona standi in iudicio*) in this case can be in the form of Limited Liability Companies (PT). Every company that conducts a public equity offering must comply with Law Number 40 of 2007 concerning Limited Liability Companies. According to Article 1 number 1 of the Company Law, a limited liability company is a legal entity which is a capital alliance, established based on an agreement, conducts business activities with authorized capital which is entirely divided into shares and fulfills the requirements stipulated in this law and the implementing regulations.

In principle, the assets of a Limited Liability Company (PT) were separated from their founders since they were legalized as a legal entity through the AHU Director General of the Indonesian Ministry of Law and Human Rights. Referring to the International Court of Justice (ICJ) in the case of Barcelona Traction Light & Co., 1970 in connection with ICJ company property states "So long as the company is in existence, the shareholders have no rights to the corporate assets". (Achmad Zen Umar Purba, 2016) Article 1 number 20 of the Act Law Number 8 of 1995 concerning the Capital Market states "the company is a limited liability company as referred to in Article 1 number 1 general provisions of Law Number 1 of 1995 concerning Limited Liability Companies".

Pursuant to Article 2 letter b of the Decree of the Chairperson of the Capital Market Supervisory Agency Number KEP-13 / PM / 1997 concerning the Principles of the Company's Articles of Association Conducting a Public Offering of Equity Securities and a Public Company, states that the company's domicile is a Sub-District or city in Indonesia where the Company is headquartered , with the provision that if the domicile is located in a Sub-District, it must also mention the Second Level Region of the sub-district. Article 2 letter b Decree of the Chairperson of the Capital Market Supervisory Agency Number KEP-13 / PM / 1997 requires that the company's domicile must be domiciled within the territory of

Indonesia or may be referred to as an Indonesian legal entity. The legal basis prohibits foreign companies from conducting public offerings and listing securities on the IDX.

The term foreign legal entity is explicitly never encountered either through expert opinion or legal entity theories. The definition of a foreign legal entity, although it has never been found explicitly, we can find in the statutory regulations, namely Article 1 number 8 of Law Number 25 of 2007 concerning Investment states that foreign capital is capital owned by a foreign country, a foreign national, foreign business entities, foreign legal entities, and / or Indonesian business entities that have part or all of their capital owned by foreign parties.

The term foreign legal entity can also be found in the explanation of Article 8 paragraph (2) letter a of Law Number 40 Year 2007 concerning Limited Liability Companies, namely in establishing a company, it is necessary to clarify the founding citizenship, basically Indonesian legal entities in the form of companies established by citizens Indonesia or an Indonesian business entity, but to foreign citizens, or foreign legal entities are given the opportunity to establish an Indonesian legal entity in the form of a company as long as the law governing the company's business field allows or the establishment of the company is regulated in a separate law. Based on the description above, Iwan Permadi stated that foreign legal entities are one of the legal subjects in Indonesia, so that foreign legal entities are allowed to establish companies in Indonesia. (Iwan Permadi: 2002) According to the author, a foreign legal entity is a legal entity established and domiciled abroad and subject to and complies with the applicable laws and regulations in the country where the foreign legal entity is established. According to the theory of incorporation of a legal entity is subject to the law in which it was founded or formed ie the state whose law has been followed when establishing the establishment / formation of the legal entity. (Mutiara Hikmah: 2007) Based on this theory, Indonesia tends to use the theory of incorporation in determining the status of a legal entity as stated in Article 5 paragraph (1) of the Limited Liability Company Law.

The Capital Market Law restricts companies that conduct public offerings and listing on Indonesian stock exchanges only Limited Legal Entity (PT) which is domiciled in Indonesia and has not provided an opportunity for PTs with legal status abroad to register securities (listing ) on the Indonesian stock exchange. Indonesian legal entity is a legal entity domiciled in Indonesia and established according to the laws and regulations in force in Indonesia. (Handri Raharjo: 2009) In the context of the capital market also found a number of Limited Liability Companies (PT) having legal status in Indonesia but carrying out public offerings on foreign exchanges and there are also companies that conduct securities listing (listing) on foreign exchanges.



*The Concept of Listing of Securities on the Indonesia Stock Exchange (IDX) in Building Capital Market Law*

Law is an institution that aims to bring people to a just, prosperous life and make people happy. (Sadjpto Rahardjo: 2009) National law was created, developed and developed to organize life and society throughout Indonesia. National law is used to manipulate the joints of people's lives.( Soetandyo Wignjosoebroto: 2002) Therefore, legal development is an ongoing effort to make a change from an unfavorable condition to become better in order to provide justice for human well-being and happiness. This is closely related to all aspects of national legal development, especially listing of securities on the Indonesia Stock Exchange (IDX).

Every law is positioned as a tool to achieve the goals of the country. (Moh. Mahfud MD: 2010) The founders of the nation in the opening of the 1945 Constitution mandated to protect the entire nation of Indonesia, and the whole of Indonesia's blood and to promote public welfare as the goal of forming a nation. Therefore there is no harm if the author makes a legal comparison of the recording of securities in several countries. According to Soenarjati Hartono, as quoted by R Soeroso, it states that legal comparison is a method of investigation and not a branch of science as is often assumed by some people. (R. Soeroso: 2005) Meanwhile, according to R Soeroso himself, that comparative law is a branch of legal science that uses comparative methods in order to find the right answer to concrete legal problems. (R. Soeroso: 2005)

The capital market has an extraordinary influence on the extra-fast capital transfer from one country to another as well as economic development for a country and it is not possible to rely solely on the development of the government alone. The capital market is part of the driving wheel of a country's economy by bringing together the owners of capital (suppliers of funds) with users of funds (user of funds) with the aim of earning profits while accelerating the development of the national economy amid the current global economic development. Article 1 number 13 of Law Number 8 of 1995 concerning Capital Market defines the capital market is an activity concerned with the public offering and trading of securities of public companies relating to the issuance of securities as well as institutions and professions related to securities. The development of the capital market as found in Singapore, Malaysia and the Philippines is carried out with the connectivity of players in the capital market by allowing foreign companies to register shares in two / more stock exchanges both from domestic and international. The listing system for more than one stock exchange basically follows the regulations contained in each country that bring good and bad impacts to the investor community, companies and countries.

**Table 1** Number of issuers of Asia Pacific as of January 2009

Exchange	January 2009			Persen Change Jan.
	Total	Domestic Cies	Foreign Cies	
Asia - Pasifik				
Australian SE	2003	1918	85	0.0%
Bombay SE	4925	4925	0	0.6%
Bursa	974	970	4	-1.5%
Colombo SE	236	236	0	0.4%
Hongkong	1262	1252	10	1.8%
Indonesia SE	397	397	0	3.1%
Jasdaq	918	918	0	-5.7%
Korea	1796	1792	4	2.0%
National SE	1405	1405	0	4.9%
New Zealand	171	146	25	-3.4%
Osaka SE	469	468	1	-1.7%
Philipine SE	246	244	2	0.8%
Shanghai SE	864	864	0	0.5%
Shenzhen SE	740	740	0	9.3%
Singapore	768	455	313	0.4%
Taiwan SE	723	719	4	1.8%
The SE of	525	525	0	0.4%
Tokyo SE	2389	2372	16	-1.1%

Source : *World Federation of Exchanges*

Each country has regulations regarding the listing of securities (listing) which differ from one country to another in their stock exchanges. The Indonesia Stock Exchange (IDX) only allows companies with legal status to be able to register shares on the IDX. The Decree of the Board of Directors of the Indonesia Stock Exchange No. Kep-00001 / BEI / 01-2014 in the letter "a" states that the legal entity is a limited company. The regulation regarding this PT is affirmed Article 2 letter b Decree of the Chairperson of the Capital Market Supervisory Agency Number KEP-13 / PM / 1997 Concerning Principles of Articles of Association of Companies Conducting a Public Offering of Equity-Type Securities and Public Companies states that the company's domicile is a Sub-District or city in Indonesia where the Company is headquartered, with the provision that if the domicile is located in the Sub-District, it must also mention the Second Level Region of the said Sub-district. There are different arrangements in each country regarding the listing of securities on the stock exchange, for example the malaysia exchange which allows the listing of securities for foreign companies as stipulated in Article 4A paragraph (2) letter A stating that foreign issuers mean foreign companies, foreign collective investment schemes or registered foreign business trusts in the Main Market, further in letter C stating that foreign business trust means business trust which is mainly regulated in jurisdictions other than Malaysia and established outside Malaysia. On the London Stock Exchange opens an opportunity to enter the London Stock Exchange, which mostly originates from Europe as long as it meets the specified minimum



requirements. On the Singapore Stock Exchange securities listing rules are regulated in Article 711A which requires each listed issuer to prepare an ongoing report based on compliance and clarity. The New York Stock Exchange also provides an opportunity for foreign issuers to declare several foreign listed companies listed on the U.S. resulting in better corporate governance, increasing attractiveness. Attracting US investors helps expand and diversify foreign issuers based on shareholders, reducing dependence on domestic investors for their capital needs. Likewise, the Tokyo Stock Exchange (TSE) begins with the listing of shares submitted by the company that issued the shares and then followed up with an examination by the TSE to determine whether it meets the requirements to be listed on the TSE as a form of protection for investors. (New Listing Guidebook: 2018)

### **Conclusion**

The Indonesia Stock Exchange (IDX) securities listing system has not provided an opportunity for foreign companies to be listed on the Indonesia Stock Exchange (IDX). Arrangements regarding securities registration for foreign companies need to be done in order to provide capital market added value for the government as well as domestic, international and foreign company investors. Therefore it is necessary to make changes to the legislation concerning the capital market through Law Number 8 of 1995 concerning the capital market.

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