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LEGAL PROTECTION FOR MINORITY SHAREHOLDERS ARISING FROM THE DELISTING OF ISSUER SHARES (A COMPARATIVE STUDY OF INDONESIAN, UNITED STATES, AND SINGAPORE LAW)

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Abstract

This research paper provides a comparative analysis of the legal frameworks governing the delisting of issuer shares in Indonesia, the United States, and Singapore. Using a normative legal research approach, supplemented by interviews with members of the Financial Services Authority (OJK) and a Member of the House of Representatives Commission XI, the study explores how each jurisdiction addresses the delisting process, particularly focusing on the protection of minority shareholders . The analysis reveals that Indonesia's legal system, influenced by its Civil Law heritage, contrasts with the Common Law approaches of the US and Singapore, especially in terms of shareholder involvement in voluntary delisting and the specificity of conditions for forced delisting. The study suggests enhancements to the Indonesian framework, such as clearer guidelines for shareholder approval in delisting decisions and more transparent criteria for forced delisting. These recommendations aim to improve the protection of minority shareholders within Indonesia's Capital Market.

Keywords: Delisting of Issuer Shares, Comparative Legal Analysis, Indonesian Legal System, US and Singapore Legal Frameworks

INTRODUCTION

The capital market performs a vital role in contemporary economies, providing a platform for corporations to secure funds for their growth and day-to-day activities, while enabling investors to pursue financial gains based on the success of these organizations. The inclusion of shares on a stock exchange is a crucial process within the capital market ecosystem, since it facilitates the public trading of a company's securities.

Nevertheless, there are circumstances in which a corporation elects to withdraw its shares from the stock exchange, a procedure commonly referred to as delisting.[1]

Delisting can be transpire through either voluntary action undertaken by the firm or through enforcement by stock exchanges or market authorities. This can transpire due to a variety of reasons, including non-adherence to exchange regulations or the company's unfavorable financial circumstances. [2]The methods and rules pertaining to delisting in Indonesia, the United States, and Singapore exhibit distinct characteristics that are influenced by the respective legal and market policy frameworks of each nation. However, the impact of delisting, particularly when it is involuntary, on minority shareholders frequently arises as a subject that necessitates additional legal and policy consideration. In the context of delisting, minority shareholders, who possess limited authority over the company, face the possibility of experiencing financial losses and relinquishing their entitlements. [3] Given the rapid expansion of capital markets worldwide and in Indonesia in particular, the question of how to protect the interests of minority shareholders in delisting cases has become more pressing.

In order to fill a knowledge gap, this research will examine how Indonesia, the US, and Singapore protect minority shareholders' rights throughout delisting processes through their respective legislative frameworks and regulatory systems. With a particular emphasis on protecting the interests of minority shareholders, this study seeks to offer suggestions for improving the policy and legal environment surrounding delisting. The laws and policies of three nations will be compared in order to arrive at these suggestions.

The motivation for this study stems from the recent legislative revisions in Indonesia, specifically Law No. 4 of 2023, which maintains the enhancement and advancement of the financial sector. These revisions entail modifications to specific clauses under Law No. 8 of 1995, which focuses on capital markets. Furthermore, it expands upon existing scholarly literature regarding the delisting of themes in Indonesia, as well as comparative legal examinations involving Indonesia, the United States, and Singapore.[4]

In this context, the utilization of comparative legal analysis functions as a suitable research approach to discern the merits and drawbacks inherent in each legal structure, as well as to propose enhancements and alignment of regulations on both national and regional scales [5]. In light of the prevailing trends of economic globalization and the convergence of financial

[1] Eugenio Rocco and Francesco Zanon, 'Listings and Delistings on the Italian Stock Exchange: An Analysis of Strategies and Their Correlation with Firm Performance' (Politecnico Milano1863, 2022).

[2] Nikhil Kalyanpur and Abraham L Newman, 'Mobilizing Market Power: Jurisdictional Expansion as Economic Statecraft', *International Organization* , 73.1 (2019), 1–34 <https://doi.org/DOI: 10.1017/S0020818318000334>.

[3] Hubert de La Bruslerie, 'Multiple Class Shares And Double Voting Rights: Literature Review And Research Prospects', *Finance Control Strategy* , 26.3 (2023), 22–46 < https://doi.org/https://doi.org/ 10.4000/fcs.11185>.

[4] Ibid. p.20

[5]Sya'bani, A. (2014). Minority shareholders' protection in the Indonesian Capital Market. Indonesia. L. Rev., 4, 114.

policies, the outcomes of this study are anticipated to offer significant contributions to ongoing dialogues regarding the advancement of equity and transparency in capital markets. Additionally, it is expected to provide enhanced safeguards for minority shareholders during delisting procedures.[6]

Based on the provided background information, the author presents a number of issues that are formulated, including but not limited to this inquiry regarding the legal regulations governing the delisting of shares issued by companies in Indonesia, the United States, and Singapore. Then, in what ways may the Indonesian legal framework regarding the delisting of shares by issuers be enhanced to safeguard the legal rights of minority shareholders? This research aims to explore the legal landscapes of the above jurisdictions in order to gain insights that could contribute to the development of a stronger legal framework in Indonesia. The proposed framework aims to offer improved safeguards for minority owners during the process of delisting, with the goal of protecting their legal and financial interests effectively.

RESEARCH METHODS

In the realm of scientific inquiry, the utilization of a methodological approach is of utmost importance as it serves as a guiding framework to direct the trajectory of research endeavors, contingent upon the specific subject matter being investigated. The selection of a research methodology is of utmost importance in acquiring the requisite data to effectively address the concerns outlined within the research topic. [7]This study refers to normative legal research, a field under legal science or dogmatic law that involves in tasks such as cataloging, clarifying, interpreting, organizing, and assessing the entirety of positive legislation within a specific community or nation. The primary objective is to provide legal remedies for prospective legal challenges in society, presenting alternative legal alternatives to specific legal matters. The discourse enumerates five discrete methodologies: statutory, caselaw, historical, conceptual, and comparative approaches. Of the several approaches considered, the statute approach is deemed the most relevant for this research, as it focuses on the comprehensive examination of all laws and regulations relevant to the legal issue under investigation. The objective is to look into the consistency or alignment of numerous laws and regulations. Furthermore, it is important to adopt a conceptual methodology in order to analyze the notion of shareholder protection. Subsequently, a comparative technique will be utilized to juxtapose various components encompassed within this particular concept.

Data can be categorized into two main types: primary data, which is collected directly from the society being studied, and secondary data, which is obtained by a comprehensive analysis of existing literature. In this context the primary data were taken from results of interviews with the Financial Services Authority, results of interviews with members of DPR RI Commission XI. Legal documents are classified into main, secondary, and tertiary categories based on their level of binding authority. main legal materials, such as the constitution and laws, possess the highest level of binding potency. The study utilized two primary methods for

[6] Harun, A. A., Puluhulawa, F. U., ElFikri, N. F., & Moha, M. R. R. (2023). "Indonesian Mining Regulations Shift as a Potential Sector in Developing the Economy." *Jurnal Pamator: Jurnal Ilmiah Universitas Trunojoyo,* 16(2), 419-434.

[7] J Oberdiek, *Imposing Risk: A Normative Framework* (Oxford: Oxford University Press, 2017). p.12

data collection: literary analysis and a restricted number of interviews.[8] The field of literary studies involves the collection of various reading materials, including relevant legislation and documents related to the specific issue being examined. On the other hand, the methodology of limited interviews entails engaging in direct conversations with knowledgeable personnel from the Financial Services Authority and the Jakarta Stock Exchange, with the specific objective of obtaining valuable insights relating to the matter being investigated. After the acquisition of legal materials, the third step entails the examination and manipulation of these materials using a qualitative analysis approach. This study examines societal phenomena related to the removal of securities from listings and analyzes them using positive law and existing theories. The objective is to identify the legal and theoretical foundations that support the removal of securities records, thus offering a comprehensive legal perspective on the issue.

RESULT AND DISCUSSION

Delisting Regulation in Indonesia Stock Exchange

Interview Results with the Financial Services Authority (OJK)

In relation to the delisting of shares on the Indonesian Stock Exchange, the Financial Services Authority (OJK) holds the authority to instruct Public Companies to change their status to Closed Companies. This change in status is followed by a share delisting by the Stock Exchange, which is further regulated by the Exchange itself. The authority of the OJK is strictly outlined under Article 66 (1) of POJK No. 3 of 2021, which is then followed by the effective withdrawal of the Registration Statement by the OJK, share delisting by the Stock Exchange, and the deregistration of Securities in collective custody at the Depository and Settlement Institution (LPP) as described under Article 66 (7) and (8) of POJK No. 3 of 2021.[9]

The objective behind this regulation is to enable the OJK to intervene to protect the interests of investors and/or the state under certain conditions, by ordering Public Companies to change their status to Closed Companies. Some certain conditions outlined include, among others, legal violations that result in the prohibition of business operations for Public Companies, the expiration of all business permits from an authorized party, directives from an authorized authority, legal provisions requiring a Public Company to change its status , bankruptcy based on a court decision, not operating fully for at least the last three years, receiving business operation restrictions that disrupt business continuity for at least the last three years, and the absence of contactable members of the Board of Directors, Board of Commissioners , and main shareholder for at least the last three years.

According to POJK No. 3 of 2021, there are three mechanisms for changing the status from a Public Company to a Closed Company. First is based on the request of the Public Company as per Article 64 to Article 65 of POJK No. 3 of 2021, where a company can voluntarily submit a request for the effective withdrawal of the Registration Statement to the OJK. Second is based on the order of the OJK as per Article 66 to Article 67 of POJK No. 3 of 2021, where the OJK orders the status change considering the “certain conditions” faced by

[8] Oberdiek. 2017. Op Cit p.13

[9] Financial Services Authority, *Regulation Number 3 /POJK.04/2021 concerning the Implementation of Activities in the Capital Market Sector* (Indonesia, 2021), p. 22 <https://peraturan.bpk.go.id/Details/227118/peraturan-ojk-no-3pojk042021-tahun-2021>.

the Public Company. Lastly, it's based on the request by the Stock Exchange as per Article 68 to Article 70 of POJK No. 3 of 2021, where the Stock Exchange considers significant conditions or events negatively impacting the business continuity of the Public Company, and/or if the Public Company does not meet the requirements for listing Securities on the Stock Exchange.[10]

The procedure for changing status based on the order of the OJK is set forth in Article 66 to Article 67 of POJK No. 3 of 2021, where the OJK can issue an order for the Public Company to change its status after considering certain conditions, and send the order to the Stock Exchange. The Stock Exchange must then cease the trading of the Public Company's Securities as soon as possible, at the latest on the next business day after receiving a copy of the OJK's order letter. The Public Company must fulfill several obligations including obtaining approval from the GMS, announcing the status change to the public at the latest 2 working days after receiving the order from the OJK, conducting a buyback of all shares until the number of shareholders is less than 50 parties or another number set by the OJK, and requesting approval for the amendment of the articles of association regarding the status change to the Ministry of Law and Human Rights of the Republic of Indonesia.

After fulfilling these obligations, the Public Company must submit proof of fulfilling the obligations to the OJK at the latest 14 working days after the date of approval of the amendment of the articles of association. Then, the OJK revokes the effectiveness of the Registration Statement at the latest 14 working days after receiving proof of fulfilling the obligations. This is followed by the issuance of an order letter from the OJK to the Stock Exchange to cancel the listing of Securities on the Stock Exchange, and to the LPP to cancel the registration of Securities in collective custody, at the latest 14 working days after receiving the OJK's letter.[11]

There are no specific provisions governing the notification by the OJK to the Public Company in issuing the order to change the status. However, the order for the status change by the OJK is not issued immediately, but is based on the results of supervision conducted by the OJK's working unit tasked with supervising Issuers or Public Companies. Before the OJK issues the order for a status change followed by delisting, the Supervisor first takes the necessary actions/measures to improve the condition of the said Public Company.

Through the supervision process, the Public Company has understood the conditions it is facing, including the consequence of a possible status change to a Closed Company, in the event that the Public Company cannot improve its conditions based on matters previously ordered by the OJK. Notifications to investors or the public must be submitted by the Public Company receiving the order for a status change by the OJK as soon as possible, at the latest 2 working days after receiving the order for the status change from the OJK, as specified in Article 66 (4) letter b of POJK No. 3 of 2021.

Lastly, based on Article 53 (1) of Law No. 9 of 2004 concerning Amendments to Law No. 5 of 1986 concerning Administrative Courts, individuals or legal entities who feel their interests are harmed by an Administrative Decision may submit a written lawsuit to the

[10]Ibid. p.23

[11] Indonesian Stock Exchange, *Decision of the Board of Directors of PT. Indonesian Stock Exchange No. Kep-OOI83/BE1112 of 2018 concerning Amendments to Regulation Number IA Concerning the Listing of Shares and Equity Securities Other than Shares Issued by Listed Companies* (Indonesia, 201AD), p. 34.

competent court containing claims to declare the contested Administrative Decision null or invalid, with or without accompanying claims for compensation and /or rehabilitation. Nonetheless, the OJK always ensures that the orders issued for changing the status from a Public Company to a Closed Company have been in accordance with the authority of the OJK and the procedures regulated in POJK No. 3 of 2021 along with other related legislation.

Interview with Member of the House of Representatives Commission XI

According to the interview conducted on July 6, 2023, with Mr. Heri Gunawan, a member of Commission Financial Services Authority (OJK). Regarding forced delisting by the BEI, the existing regulation mandates adverse two conditions: either a substantial effect on the Issuer's business continuity, either financially or legally, or a lack of indications of recovery for both the Issuer and the company. One of the factors considered for the process of delisting is the occurrence of a suspension in the regular and cash market, resulting in the exclusive trading of company shares in the negotiation market for a continuous period of 24 months.

In order to safeguard the interests of investors, issuers who intend to delist their shares, either freely or involuntarily, are obligated to repurchase shares from the investors. [12]This mechanism guarantees that investors possess a method or avenue through which they can divest themselves of their shares.[13] The repurchase of shares can be executed without the requirement of convening a General Meeting of Shareholders (GMS) before hand. Furthermore, this repurchase can encompass an amount exceeding 10% of the paid-up capital of the publicly traded firm, resulting in a reduction of the number of shareholders to a maximum of 50 entities. This exemption applies in the event of a tender offer including all shares or a reduction in the number of shareholders to below 50, as decided by the OJK.

The buyback price is classified into three categories, contingent upon the voluntary transfer from a public to private firm, as mandated by the Financial Services Authority (OJK), or as requested by the Indonesia Stock Exchange (BEI). [14]In the event of a request from the firm or an order from the OJK, it is necessary for the buyback price to exceed the average daily trading price on the exchange during the preceding 90-day period. In the event that the shares have undergone a suspension period lasting 90 days or longer, it is necessary for the buyback price to exceed the average value derived from the largest daily trading prices observed on the exchange throughout the preceding 12-month period, calculated in reverse order from the day of suspension. In the event that the transition is initiated at the request of BEI, the buyback price should be determined as the higher value between the average trading price observed over the preceding 30-day period and the book value per share as indicated in the most recent financial reports.

[12] Ulya Yasmine Prisandani, 'Shareholder Activism in Indonesia: Revisiting Shareholder Rights Implementation and Future Challenges', *International Journal of Law and Management* , 64.2 (2022), 225–38 <https://doi.org/10.1108/IJLMA-07-2021 -0169>.

[13] Gobel, R. T. S., Muhtar, M. H., & Putri, V. S. (2023). Regulation And Institutional Arrangement Of Village-Owned Enterprises After The Work Creation Era Applied. *Jurnal Pamator: Jurnal Ilmiah Universitas Trunojoyo, 16*(1), 15-33.

[14] Rocco and Zanon. 2022. Op Cit p.22

In an ideal scenario, it is recommended that issuers who have been suspended for a period exceeding two years should be delisted from the exchange. [15]Nevertheless, several companies such as PT Akbar Indo Makmur Stimec Tbk (AIMS) and PT Trikomsel Oke Tbk. (TRIO) have surpassed this timeframe, as they have been under suspension for nearly four and three years respectively, as of the year 2023. In the case of corporations facing financial challenges such as negative equity or insufficient operational income, it can be inferred that they may encounter difficulties in financing share buyback initiatives. In general, Business Entity Insolvency (BEI) would afford issuers a period of time to enhance their business continuity measures and defer the repurchase of shares held by shareholders. The task at hand requires the appointment of a responsible person, such as a controller, who assumes the duty until its completion. The fundamental aspect concerns the manner in which corporations withdraw from the capital market and attributes the outcomes to the investments made by investors.

There is a contention among certain individuals that the requirement for share buybacks might have negative consequences for the issuer, particularly in terms of creating difficulties for public issuers seeking to transition to a private status. [16]It is evident that issuers would experience financial losses as they need to spend substantial cash for this specific purpose. While it is true that many delisted firms face various challenges, it is important to note that not all closed companies may be attributed to poor conditions. For example, AQUA's decision to go private was not driven by fundamental concerns.

At present, the Financial Services Authority (OJK) is engaged in the process of updating legislation relating to the repurchase of shares by publicly traded firms, in accordance with their transition to closed corporations. The modification in status is a consequence of BEI's decision to delist securities, which was prompted by the substantial adverse effects on business continuity. OJK has identified a number of difficulties relating to the buyback price, re-allocation price of buyback shares, disclosure, and re-allocation period. Several suggested revisions involve the implementation of obligatory publication of repurchase plans by publicly traded firms. Additionally, it is proposed that the buyback process should commence no later than one month after the delisting decision by the BEI, which stands in contrast to the previous law that mandated completion of the buyback within 18 months following approval by shareholders at a meeting. The revised version stipulates that the fulfillment of the task must occur within a period of 12 months subsequent to the convening of the shareholder meeting.[17]

Furthermore, modifications have been implemented with regards to the redistribution of repurchased shares. This includes a reduction in the number of stated techniques from seven to five in the revised version. In addition, the revised version of the policy permits the redistribution of repurchased shares through either the execution of payments or the settlement of designated transactions, or alternatively, through the equitable distribution among existing shareholders.

In the event that the buyback is not carried out, the Financial Services Authority (OJK) is authorized to issue a prescribed action order in accordance with Regulation No.

[15] Sha'bani. 2014. Op Cit 110

[16] Prisandani. 2022. Op Cit p.17

[17] Berto Usman, 'Ownership Structures, Control Mechanism and Related Party Transactions: An Empirical Study of the Indonesian Public Listed Companies', *International Journal of Economics & Management* , 13.1 (2019), 1–20 <https://api.semanticscholar.org /CorpusID:229334378>.

23/POJK.04/2021 of the Financial Services Authority, which maintains subsequent supervision in the capital markets sector. In the event that the designated sequence of actions is not carried out by the relevant firm, the OJK possesses the jurisdiction to issue a formal directive requiring the public company to undergo a transition into a closed company. In the event that the status change is not implemented, the OJK (Financial Services Authority) is empowered to seek the liquidation of the public business.[18]

Delisting Regulations on Stock Exchanges in The United States of America

Legal Framework on Stock Exchanges in The United States of America

The regulation in the United States concerning stock delisting is based on its legal framework, which was initially influenced by British law after the formation of the United States on July 4, 1776. In contrast to the United Kingdom, the United States has a constitution that serves as the fundamental basis for its legal structure. Within the framework of this federal system, individual states possess the autonomy to establish their own legal frameworks and constitutions, except in cases where federal legislation supersedes them. The United States encompasses two coexisting legal systems: federal law, which is applicable across the entire nation, and state law, which is valid within individual states. In instances of dispute, federal law takes precedence over state law according to established legal principles. Historically, case law served as the dominant source of legal principles. However, as societies have progressed economically, statutes have gained prominence and have begun to supplant or fortify judge-made laws in instances of inconsistency.

The judicial framework in the United States consists of both federal and state courts that operate concurrently, each with their own specific competences. [19]In general, it can be observed that state courts are primarily responsible for adjudicating routine conflicts that arise on a daily basis, whereas federal courts are primarily concerned with addressing more expansive and significant legal matters. The judicial system consists of three tiers: trial courts, appellate courts, and the state and federal supreme courts, each with distinct designations in certain jurisdictions. Specialized courts, such as tax courts, are present within the federal judiciary system. Jury trials, which consist of a panel of 12 individuals from the general public, are constitutionally guaranteed in both criminal and civil proceedings. In the legal system, the jury is responsible for determining the veracity of factual evidence presented during a trial, whereas the judge assumes the role of overseeing and administering the court processes, as well as rendering decisions on subjects pertaining to the law. In circumstances of complexity, the judge is limited to providing instructions to the jury without exerting any influence on their decision-making process. Decisions are reached through unanimous agreement, and in exceptional instances of stalemate, a fresh jury is selected to conduct a trial. In contrast to the inquisitorial nature of Indonesian court procedures, the United States employs an adversarial legal system that requires the active involvement of parties, typically represented by legal professionals, in order to present and contest evidence with the aim of establishing the truth.

The stock market in the United States, which had initially operated in an informal manner since 1624, underwent a process of formalization with the establishment of the Buttonwood Agreement in 1792. This pivotal agreement ultimately led to the establishment of the New

[18] Prisandani. 2022. Op Cit p.19

[19] Kalyanpur and Newman. 2022. Op Cit p.25

York Stock Exchange (NYSE) in 1817. In response to the stock market crash of 1929, the United States Congress enacted the Securities Exchange Act on July 2, 1934, thereby establishing the Securities and Exchange Commission (SEC). Enforcing uniform standards for the functioning of stock exchanges across the country was the principal goal of this regulatory agency. At its Washington, DC, headquarters, the Securities and Exchange Commission (SEC) is an independent body charged with monitoring the securities trading industry and enforcing civil laws against individuals or companies that violate securities laws through accounting fraud, the dissemination of false information, or any other violation. Quarterly and annual financial reports are mandatory for publicly traded companies. Executives are required to give a synopsis of past performance, future goals, and upcoming activities in these reports. An extensive platform for accessing all essential information kept by the SEC, the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) database was established by the Securities and Exchange Commission (SEC) to assist investors. Among these are the yearly and quarterly reports of different companies. The president nominates five commissioners to serve on the board of the Securities and Exchange Commission (SEC). A network of twenty-five offices spread out around the country allows the SEC to carry out its mission, which is organized into six sections. In charge of enforcing several securities-related statutes is the Securities and Exchange Commission (SEC). A number of statutes have been enacted to regulate various financial services, including securities registration (Securities Act of 1933), exchanges (Securities Exchange Act of 1934), bondholder protection (Trust Indenture Act of 1939), investment companies (Investment Company Act of 1940 and the Investment Advisers Act of 1940), and the Securities Investor Protection Corporation (SIPC) (Securities Investor Protection Act of 1970). Coverage for each account can reach $500,000, and there is a $100,000 cash claim limit per client inside each account, all with the goal of protecting investors from financial losses caused by broker and dealer failures.

The regulatory standards for stock exchanges in the United States are characterized by a high level of stringency, with unique guidelines established for the New York Stock Exchange (NYSE) and the National Association of Securities Dealers Automated Quotation System (NASDAQ). [20]In the context of the New York Stock Exchange (NYSE), the consideration of listing eligibility does not take into account the jurisdiction of the industry. Foreign Private Issuers (FPIs) are provided with the option to be listed based on either the domestic firm listing rules or an additional set specifically designed for FPIs. The latter option offers greater freedom since it does not impose any minimum distribution requirements in the US and North America. In order to be listed, it is necessary for a company to have a minimum operational history of three years, however there may be instances where exceptions are granted for companies that have been bought by corporations with a longer operational history. The NYSE rules require a minimum of 1.1 million publicly traded shares and compliance with one of three criteria related to shareholders holding 100 shares or more and trading volume. In order for initial public offerings (IPOs) or existing securities to be eligible for listing or transfers to the New York Stock Exchange (NYSE), it is required that the market value of publicly owned shares be no less than $40 million for IPOs and $100 million for existing securities. Financial requirements encompass the fulfillment of either an income test or a worldwide market capitalization test. Companies also have the option to pursue Primary Direct Floor Listings, which enables them to circumvent the conventional underwritten offering process. Foreign Portfolio Investors (FPIs) possess different listing criteria, which include prerequisites for minimum distribution,

[20] Collins C Ngwakwe, 'Effect of COVID-19 Pandemic on Global Stock Market Values: A Differential Analysis', *Economica* , 16.2 (2022), 255–69 <https://journals.univ-danubius.ro/index.php/oeconomica /article/view/6548>.

market value, and financial norms. In addition to the stipulations set forth by the New York Stock Exchange (NYSE), corporations are obligated to undergo registration with the Securities and Exchange Commission (SEC), comply with specific corporate governance criteria delineated in the NYSE Listed Company Manual, secure a CUSIP number from CUSIP Global Services, and designate a professional Market Maker.

In contrast, NASDAQ possesses its own distinct set of requirements. In order to be listed on the Global Select Market, companies are required to satisfy certain ownership criteria, maintain a minimum market value of publicly held shares, and meet specific financial requirements. [21]These financial requirements include a minimum bid price of $4 per share, as well as adherence to one of four financial standards pertaining to income, cash flows, or market capitalization. The listing requirements for the Global Market exhibit similarities in their criteria, albeit with different limits. These criteria include a minimum bid price of $4 per share and a minimum of 1.1 million publicly held shares that are not subject to any restrictions. The Nasdaq Capital Market requires securities to possess a minimum of 1 million unrestricted publicly owned shares, a bid price of at least $4 per share, and satisfy one of three criteria pertaining to equity, market value, or net income. The many markets within NYSE and NASDAQ have distinct requirements that are determined by the type of market and the financial condition, size, and activities of the company seeking to be listed.

The Mechanism of Stock Delisting in the United States

The process of stock delisting in the United States, namely on the New York Stock Exchange (NYSE) and the National Association of Securities Dealers Automated Quotation System (NASDAQ), is designed to uphold the integrity and excellence of the market. The New York Stock Exchange (NYSE) has established three main conditions for the delisting of listed securities. [22]The first and foremost requirement for issuers is to meet the minimum share distribution criterion. The delisting of the issuer might happen if these standards aren't met. If there are fewer than 400 shareholders overall or 60,000 public shareholders, delisting may take place. Delisting can also occur if the average monthly trading volume for a 12-month period is less than 100,000 shares. In addition, if a company's market capitalization falls below specific thresholds, the New York Stock Exchange (NYSE) may consider delisting it. The purpose of this is to guarantee that the company's trading volume and profitability can cover the expenses of being listed on the NYSE. Once the average closing price drops below one US Dollar for a continuous period of thirty trading days, delisting becomes a consideration. On the other hand, companies that meet this criterion on their own have six months to boost their stock price. The standard delisting process begins after this period has passed.

In addition, when a firm experiences a significant decrease in its operational asset size, files for bankruptcy, or publicly declares its intention to file for bankruptcy, the New York Stock Exchange (NYSE) will take into account the possibility of delisting the company [23]. Additional triggers for delisting include recommendations from authoritative entities regarding

[21] Libo Xu, 'Stock Returns and the COVID-19 Pandemic: Evidence from Canada and the US', *Finance Research Letters* , 10.1 (2021), 8–72 <https://doi.org/https://doi.org/ 10.1016/j.frl.2020.101872>.

[22] Mingsheng Li, Karen Liu, and Xiaorui Zhu, 'The Effects of NASDAQ Delisting on Firm Performance', *Research in International Business and Finance* , 67.1 (2024), 10–21 < https://doi.org/https://doi.org/10.1016/j.ribaf.2023.102101>.

[23]Libo Xu. 2021. Op Cit. p.14

the lack of value of the securities, inadequate registration of the securities, failure to solicit proxies for all shareholder meetings, violations of agreements, discontinuation of a particular class, issuance, or series of securities through payment or redemption, and involvement in activities deemed to be against public interest by the New York Stock Exchange (NYSE). The New York Stock Exchange (NYSE) maintains the authority to evaluate and decide, on an individual basis, the ongoing inclusion of a stock in its listings. This assessment takes into account all pertinent information as judged suitable, irrespective of whether the securities satisfy or do not satisfy the specified criteria.

In contrast, the delisting method employed by NASDAQ exhibits similarities to that of the NYSE. NASDAQ considers delisting if certain criteria are not met. These criteria include a shareholder equity of $10 million, public ownership of 750,000 shares, a minimum public-held stock market value of $5 million for 30 consecutive working days, a bid price that does not fall below $1.00 for 30 consecutive working days, a minimum of 400 round lot shareholders, and the presence of at least two market makers for 10 consecutive working days. Moreover, the delisting of a firm from the NASDAQ stock exchange might occur in the event that the company files for bankruptcy or publicly declares its intention to liquidate its assets in accordance with applicable bankruptcy legislation. Similar to the New York Stock Exchange (NYSE), the delisting criteria of NASDAQ are based on regulations that establish the exchange as a Self-Regulatory Organization (SRO). This designation grants NASDAQ the authority to refuse or terminate a listing if there is any event or condition that deems the listing unadvisable or unwarranted, regardless of whether the securities meet all specified criteria for listing .[24]

Both the New York Stock Exchange (NYSE) and the NASDAQ have the authority to remove firms from their listings if they fail to meet specific corporate governance criteria. [25]However, instances of delisting due to non-compliance are infrequent, since the exchanges often prefer to encourage compliance through discussions with the companies involved. Foreign corporations may potentially be granted exemptions from these criteria in the event that comparable requirements are not present in the laws of their home country. Companies that have been removed from the NASDAQ stock exchange have the option to trade their shares through the NASDAQ Over-the-Counter Bulletin Board (OTCBB), as long as they have not been declared bankrupt and are still fulfilling their reporting obligations to the US Securities and Exchange Commission (SEC). [26]Market actors are also obliged to adhere to formal rules while providing price quotes on the exchange, namely for a duration of 30 days prior to delisting.

Delisting Regulation on The Singapore Stock Exchange

A regulatory framework based on a set of established norms and criteria, which have their origins in Singapore's common law system, governs the delisting of shares on the Singapore Stock Exchange (SGX). Following a hierarchical judicial structure, the Court of Appeal is the highest authority in Singapore's legal system. Established in 1970, the Monetary Authority of

[24]Libo Xu. 2021. Op Cit. p.21

[25] Li, Liu, and Zhu. 2024. Op Cit. p.18

[26] Bran Alexandra-Carmen, 'USA-China Rivalry in The Age of De-Globalization. An Assessment of The Security Concerns Posed by the Delisting of Chinese Companies on the US Stock Exchange', *In Proceedings of the International Conference on Business Excellence* , 16.1 (2022), 1390–98 < https://doi.org/10.2478/picbe - 2022-0126>.

Singapore (MAS) regulates and oversees the financial industry, including securities. Keeping the country's currency stable so that it can assist economic progress is its fundamental goal. If a company wants to list its shares on the Singapore Exchange (SGX), it must fulfill certain requirements. Minimum quality standards, competent operations and management, open communication with investors, and fair treatment of all shareholders are all part of these needs. Listed firms on the Main Board of SGX have met specific financial requirements, such as a minimum market capitalization, a history of profitability, and a specific consolidated pre-tax profit. Companies may be delisted from the Singapore Exchange (SGX) if they fail to comply with their listing regulations or if it is necessary to maintain a fair, structured, and transparent market. The delisting procedure can be initiated by either the listed firm or the Singapore Exchange (SGX). To offer an Exit to the listed entity's shareholders, substantial shareholder consent is required. The involvement of an impartial financial expert in the evaluation process guarantees that the delisting procedure is carried out fairly and reasonably. The purpose of this regulatory action is to safeguard shareholder wealth and maintain the SGX's market integrity.

Comparative Analysis of Legal Systems in Indonesia, the United States, and Singapore Regarding Delisting of Issuer Shares

The formation of a legal system in a country is deeply intertwined with its historical and cultural legal evolution. Indonesia's legal system, heavily influenced by its Dutch colonial past, adopted the European Continental or civil law system. [27]This system primarily relies on written legislation as the main source of law, with legislative bodies playing a crucial role in its development. Court decisions sometimes serve as complementary references but are not the primary source of law. In contrast, the United States and Singapore, with their historical ties to the British legal system, follow the Anglo-Saxon or Common Law System. This system does not recognize a codified legal source as in the Continental system. Instead, it is primarily shaped by societal customs and judicial decisions developed in courts, making court precedents the highest source of law. Indonesia operates under a uniform set of laws applicable across all provinces. However, the United States presents a more complex structure with federal laws applicable nationwide and state laws varying across different states. In cases of conflict, federal law takes precedence. This federal structure leads to distinct legal nuances in the US compared to the more centralized legal framework in Indonesia.

Despite these differences, there are similarities between the Indonesian and US legal systems. Both countries have foundational laws or constitutions that establish the framework for their legal systems. [28]Indonesia has a single Constitution, whereas the US, following a federal system, has both federal and state laws. Moreover, while US judges in the past relied heavily on precedents, recent developments show a growing reliance on written legislation, particularly in economic matters, such as the Antitrust Laws. This shift brings the US closer to Indonesia's approach, where written laws guide judicial decisions.

In the United States, there are two separate but complementary systems of law: the federal courts and the state courts. Every day, people living in the United States go to their respective state courts to resolve issues involving law and order, such as criminal and civil problems. On

[27] Usman. 2019. Op Cit. p.22

[28] HM Sahat Radot Siburian, 'Constitution Formulation and Amendment in Indonesian and American Legal Systems: A Comparative Study', *Journal of Law and Legal Reform 3* , 1.1 (2022), 39–66 <https://doi.org/https: /doi.org/10.15294/jllr.v3i1.49536>.

the other hand, the federal system follows a standard format nationwide, including the Supreme Court, Courts of Appeals, and District Courts. Unlike the United States, which relies on jury trials, Singapore and Indonesia do not. In American trials, juries are vital in deciding the facts, leaving the judge's job to do nothing more than make legal rulings and monitor the process. But this kind of jury trial is not recognized under Indonesian law. Judges in Indonesian criminal trials take an inquisitorial stance by aggressively questioning both the accused and any witnesses presented. In civil proceedings, the judge takes a back seat while the parties bring their witnesses and evidence to the table. Conversely, in the United States, the judge or jury serves as an impartial arbiter in an adversarial system where the parties bear the full weight of the evidence.

Similar to the US, Singapore's legal system adheres to the Common Law system, characterized by the doctrine of judicial precedent (stare decisis). [29]In this system, judges form laws by applying legal principles to facts in cases, bound to follow precedents set by higher courts. Singapore's judicial structure includes Subordinate Courts for smaller cases and the Supreme Court, which consists of the High Court and Court of Appeal, for more significant cases.

Singapore's civil procedural laws are governed by The Supreme Court of Judicature Act, The Subordinate Courts Act, and other regulations. The evidence system in Singapore's Common Law is open, allowing various forms of evidence to be presented in court, unlike the more restrictive approaches in other systems.

The legal provisions regarding the delisting of issuer shares in Indonesia and Singapore show more similarities with each other than with those in the United States. [30]In cases of voluntary delisting requested by the issuer, both Indonesia and Singapore require approval from shareholders. Indonesia does not specify a minimum percentage of votes needed for this approval, while Singapore explicitly requires at least 75% of shareholder approval for the delisting plan.

In terms of forced delisting, where the exchange removes the issuer from listing, both Indonesia and Singapore tend to be vague about the conditions under which an issuer is delisted. Indonesian regulations state that an issuer can be delisted if it significantly negatively impacts the financial health of the public company without showing adequate signs of recovery, or if the company has been suspended for more than twenty-four months. Similarly, the Singapore Exchange Securities Trading Limited (SGX-ST) specifies three conditions for delisting a company, including failure to maintain a public float of 10%, voluntary delisting accompanied by an exit offer, or failure to meet the listing requirements set by SGX -ST. Compared to Indonesia, Singapore's provisions are slightly more detailed, specifying the minimum public float and conditions under which a company fails to meet exchange requirements.

In the United States, the legal approach to voluntary delisting is markedly different. US regulations do not require company directors to obtain shareholder approval for voluntary delisting. Instead, directors have the absolute right to decide whether to list or delist from the

[29] George Mousourakis, *Comparative Law and Legal Traditions, Historical and Contemporary Perspectives* (Switzerland: Springer Cham, 2019) <https://doi.org/https://doi.org/10.1007/978-3-030-28281-3> .

[30] Lu. 2022. Op Cit. p.296

exchange, guided by the principle of fiduciary duty which assumes that such decisions are made solely in the company's interest. The US Securities and Exchange Commission (SEC) must be notified of the delisting requests under Rule 12d2-1(b)(1)(C), but the SEC does not have the authority to deny these requests. Protection for investors in the US against potentially harmful delisting plans comes in two forms: additional conditions set by the SEC before delisting can occur, and the right for investors to file legal suits against directors for breaches of fiduciary duty.

American stock exchanges like NASDAQ and NYSE have more specific provisions for forced delisting compared to the Indonesian Exchange (BEI) and SGX-ST. [31]The NYSE clearly outlines conditions that can negatively impact a company, including minimum thresholds for share distribution, total shareholders, public share amount, trading volume, and closing price. Similarly, NASDAQ specifies conditions for delisting, including shareholder equity, public share amount, market value of shares, bid price, round lot shareholders, and the number of market makers. In the Indonesian Capital Market industry, the opportunity for investors to trade their securities post-delisting is touched upon in Regulation number II regarding delisting and relisting. This regulation provides a 20-day window for trading the issuer's securities post-delisting. However, this regulation does not fully protect investor interests. Trading during this period requires permission and objective assessment from BEI, meaning BEI can treat issuers subject to forced delisting differently. If BEI deems it unnecessary to grant trading opportunities, investors must find alternative ways to sell their shares outside the exchange. Contrarily, in the US, Over the Counter (OTC) trading is available for companies experiencing forced delisting, allowing automatic registration for share sales through a network of broker-dealers. Commonly used OTC services in the US include Pink Sheets. A similar arrangement is not found in SGX-ST regulations, which do not provide opportunities for investors to trade their shares on the exchange post-forced delisting.

In summary, while Indonesia and Singapore show parallels in their legal frameworks for issuer share delisting, particularly in terms of shareholder approval requirements and the conditions for forced delisting, the United States differs significantly in its approach. The US provides broader autonomy to company directors in voluntary delisting decisions and offers more detailed criteria for forced delisting, along with additional protections for investors in such scenarios.

Strengthening the Provisions for the Delisting of Issuer Shares in Indonesia to Protect the Legal Interests of Minority Shareholders

The foundation of the Indonesian state, as per the Preamble of the 1945 Constitution, is to protect the entire nation and all of Indonesian territory, advance public welfare, educate the nation's life, and contribute to world order based on independence, lasting peace, and social justice. [32]These objectives should be achieved by applying the values of Pancasila, the philosophical and common platform basis of the Indonesian state. This implies that law, its application, and implementation are inseparable from the values of Pancasila. The state must understand and address the conditions necessary to achieve the goals outlined in the 1945 Constitution Preamble. A key focus area is the Indonesian economy, with the financial sector being a pivotal pillar supporting national economic growth. Economic growth, indicative of

[31] Siburian. 2022. Op Cit. p.40

[32] Prisandani. 2022. Op Cit. p.230

societal welfare and compared with other nations, is a critical measure of a country's prosperity. As a developing country, Indonesia has a responsibility to continually enhance its economy. Article 33(1) of the 1945 Constitution states that the economy is structured as a collective endeavor based on family principles. Furthermore, Article 34(4) specifies that the Indonesian economy is organized on the principles of democracy, sustainability, environmental awareness, independence, and maintaining a balance between national progress and unity. Accordingly, economic policies must be formulated based on national interests, and the continually evolving financial sector requires adequate policies that consider these national interests.

The business activities in the financial sector are rapidly evolving, driven by advances in science, information technology, and global economic forces. This development necessitates an expansion and enhancement of regulatory scope. However, current regulations in the Capital Market sector are still inadequate to support the activities in the financial sector. There is a need for additional inputs to the Capital Market Law to accommodate the current industry requirements. Laws encompassing all aspects of the financial sector should address contemporary issues and challenges, promoting national independence and competitiveness on the global stage.[33]

All stakeholders must continuously strive to develop and strengthen the Capital Market sector. Legislation plays a crucial role in driving the growth of the Capital Market by providing a legal foundation for the operations and development of the sector. The existing laws related to the Capital Market, however, do not adequately address the needs of industry participants. This issue requires immediate attention to ensure the efficient development of the Capital Market sector.

The strengthening of legal provisions for the delisting of issuer shares in Indonesia is rooted in philosophical, sociological, and juridical considerations. [34]It is aimed at aligning with the national objectives set out in the Indonesian Constitution, responding to the dynamic changes in the financial sector, and providing a robust legal framework that supports the growth and efficiency of the capital market sector, thereby safeguarding the interests of minority shareholders. The capital market plays a vital role in Indonesia's economy, serving two primary functions: as a means for companies to raise funds from investors and as a platform for the public to invest in financial instruments. The Capital Market is where investors and issuers, needing capital, meet. To create a regulated, fair, and efficient Capital Market, it is crucial to establish the scope and content of capital market law in line with current developments.

Protection for investors begins before the implementation of an issuer's share delisting plan. The issuer must obtain shareholder approval through a General Meeting of Shareholders (GMS). Delisting impacts investors' ability to sell shares, potentially leading to monetary loss. [35]It's essential that delisting plans are based on the company's best interests, free from financial misinformation or fraudulent actions by company controllers. Singapore requires a minimum of 75% shareholder approval for delisting, but this threshold is challenged as the remaining 25% minority can still be marginalized. An ideal approach considers the 'majority of the

[33] Ridwan Khairandy, *Capital Market Law 1* (Yogyakarta: FH UII Press, 2010). P.71

[34] Usman. 2019. Op Cit p.56

[35] Prisandani. Prisandani. 2022. Op Cit. p.231

minority' or the shareholder structure, requiring majority approval from non-controlling shareholders to ensure balanced consideration of all parties.

The Indonesian Stock Exchange (BEI) regulations state that the exchange may suspend trading for five business days, followed by negotiation-only trading for twenty business days before the effective delisting date. In contrast, the United States and Singapore do not specify a waiting period. Providing a time gap between the delisting announcement and its effective date allows shareholders to sell their shares and mitigate potential losses. This period also minimizes the direct cost impact on the company. However, a lengthy waiting period could hinder the company's strategic plans, so a shorter duration is preferred to ensure investor protection.[36]

Derivative lawsuits are a crucial mechanism for protecting minority shareholders in a corporation, allowing court intervention. [37]These lawsuits are based on the primary right of the corporation but executed by shareholders on the corporation's behalf due to a failure within the company. Derivative actions target directors or commissioners who have harmed the corporation. Although the corporation may be named as a defendant for procedural reasons, the lawsuit's main elements include its initiation by shareholders, targeting of company executives, and allocation of any legal gains to the corporation. Derivative lawsuits are limited to ensuring fairness for all stakeholders, focusing on breaches of fiduciary duty by directors. When filing a derivative lawsuit, interests of the corporation, minority shareholders, and third-party legal relations with the corporation, especially creditors, must be considered.

According to BEI Regulation No. II, one delisting criterion is a company's stock suspension in regular and cash markets, traded only in the negotiation market for the last 24 months. However, BEI sometimes hesitates to delist companies suspended for over 24 months, aiming to allow companies a chance to rectify their operations. For example, companies like PT Akbar Indo Makmur Stimec Tbk and PT Trikomsel Oke Tbk have been suspended for over two to three years. BEI's reluctance stems from wanting to offer companies an opportunity to recover and give investors a chance to recoup their investments. If delisting is necessary, a party responsible for repurchasing shares, typically the controlling shareholder, should be designated. This obligation is outlined in POJK No. 3/POJK.04/2021.

Referencing POJK, companies can conduct buybacks without a General Meeting of Shareholders (GMS). Buybacks can continue until exceeding 10% of the paid-up capital of the public company, limiting shareholders to no more than 50 entities. However, the obligation for share buybacks, especially during financial difficulties, poses challenges. For example, companies facing financial issues like negative equity or no operational income may not have the funds for buybacks. In such cases, investors bear the risk. The Financial Services Authority (OJK) plans to revise regulations on buybacks for companies delisting in 2023, considering various obstacles such as buyback pricing, information disclosure, and timeframe for reallocating bought-back shares. The revisions suggest shorter implementation periods and multiple methods for reallocating shares. In conclusion, while providing the highest level of protection for investors, share buyback obligations can financially burden companies, especially those intending to go private. The OJK's upcoming revisions are expected to address

[36] *ibid*. p.232

[37] Sha'bani. 2021. Op Cit p.119

these concerns, balancing investor protection with the financial realities of companies facing delisting.

CONCLUSION

This research, examining the legal regulations governing the delisting of issuer shares in Indonesia, the United States, and Singapore, reveals distinct approaches with unique strengths and weaknesses. The primary finding is that while the US grants substantial autonomy to company directors in delisting decisions and Singapore mandates a higher threshold of shareholder approval, Indonesia's framework is less specific, pointing to a need for enhancement. To better safeguard the legal rights of minority shareholders, the Indonesian legal system could benefit from: first, implementing more explicit guidelines for shareholder approval in voluntary delisting processes. The last is introducing clearer conditions and transparency in the criteria for forced delisting. Adopting these measures would align Indonesia's approach more closely with the best practices observed in the US and Singapore, thereby enhancing the protection of minority shareholders during the delisting process.

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