THE ROLE OF THE NOTARY IN IMPLEMENTING THE INITIAL PUBLIC OFFERING (IPO) CORPORATE ACTION THAT IMPLEMENTS THE CLASSIFICATION OF SHARES WITH MULTIPLE VOTING RIGHTS ACCORDING TO THE FINANCIAL SERVICES AUTHORITY REGULATION NUMBER 22/POJK.04/2021

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ABSTRACT

Drawing up of deed, a procedure for a notary to include in deed related to the application of share classification and legal consequences for a notary in the event of an error in drawing up of deed related to the application of share classification in the process of Initial Public Offering (or in the future referred to as IPO) based on Financial Services Authority Regulation Number 22/POJK. 04/2021 (starting now referred to as "POJK Share Classification"), referring to this matter, this study tries to analyze the procedures carried out by a capital market notary in applying the classification of shares with multiple voting rights to the deed of implementing an IPO corporate action and understanding the comparison of the articles of association between closed companies and public companies that do not apply share classification.

The procedure carried out by the capital market notary in applying the classification of shares with multiple voting rights leads to the POJK, which according to the POJK, stipulates the conditions that must be fulfilled in the articles of association of an Open Limited Liability Company, which will apply the classification of shares according to the POJK.

INTRODUCTION

The rapid development of technology has brought changes in the economic sector, thus creating technology-based companies that create new breakthroughs. It is an opportunity for the Indonesian capital market, especially the Indonesia Stock Exchange (from now on referred to as IDX), so that companies with specific categories can register their securities (listing) in Indonesia. From the perspective of company law and the capital market in Indonesia, it is necessary to adapt provisions to be in line with international practice; where one of these adjustments is the application of provisions regarding the classification of shares with multiple voting rights for Shareholders, this is as described in the POJK Summary of Classification Share.

The only publicly listed PT that implements the classification of shares with multiple voting rights for its Shareholders is PT GOTO Gojek Tokopedia, Tbk (starting now referred to as PT GOTO, Tbk), which was listed on April 11, 2022.

In accordance with the Limited Liability Company Law, it is stated that a company can determine one or more classifications of shares, some of which are ordinary shares.

This classification provides special rights, for example, in the election of management, shares with or without voting rights and the right to receive dividends first.

IDENTIFICATION OF PROBLEMS

Several core issues can be drawn referring to the background as previously mentioned, namely:

1. What does a capital market notary apply the classification of shares with multiple voting rights to a deed to implement an Initial Public Offering (IPO) corporate action?

2. What is the comparison of the articles of association between public companies and public companies that apply share classification according to POJK Number 22/POJK.04/2021?

RESEARCH METHODS

1. Approach Method

This research is studied through normative juridical research types with the following approaches:

a. Legislation, namely by examining the provisions related to legal issues regarding the role of a Notary in implementing an IPO that applies the classification of shares.

b. The conceptual approach is to understand the concepts of the role of a notary in carrying out an initial public offering (IPO) corporate action with different classifications of shares so that the application of the provisions relating to the problem can be understood.

2. Research Specifications

The research specification used is descriptive-analytic, according to Nomensen Sinamo, namely research that describes individual characteristics, conditions, symptoms or a particular group.

The author describes the role of a Notary in carrying out an Initial Public Offering (IPO) corporate action according to POJK Classification of Shares as an object.

3. Research Stage

The stages of the research carried out are:

a. Library Research

Literature research aims to obtain theoretical data through a study of other sources related to the problem in the thesis, consisting of:

1) Provisions related to research objects (primary legal materials), namely:

a) the 1945 Constitution;

b) Civil Code;

c) Capital Market Law;

d) Limited Liability Company Law;

e) Law on Notary Office (UUJN);

f) POJK Notary Conducting Activities in the Capital Market;

g) POJK Public Company GMS; And

h) POJK Classification of Shares.

2) Results of research/journals, books or opinions of legal experts (secondary material).

3) Other materials related to the problem (tertiary materials), for example, dictionaries.

b. Field Research

Research to support secondary materials, for example, holding questions and answers to capital market notaries relating to the role of a notary in carrying out an Initial Public Offering (IPO) corporate action with the application of share classification.

4. Data Collection Techniques

To support this research, the authors collect data through:

a. Library Studies

Collect written data or books relating to the role of a Notary in the implementation of an Initial Public Offering (IPO) corporate action that applies the classification of shares according to POJK Share Classification, which is then carried out in an organized and systematic data classification process.

b. Field Study

The author prepares questions and confirms with a Notary experienced in the capital market sector regarding the role of a Notary in implementing an Initial Public Offering (IPO) corporate action by applying the classification of shares with multiple voting rights.

5. Data Collection Tools

a. Library Data

Obtained by reading regulations or related literature to support research.

b. Field Data

Field data were obtained from questions and answers related to processes and procedures to a capital market notary regarding the role of a notary in carrying out an IPO with the classification of shares containing multiple voting rights. The interviews were conducted to focus on issues that the author examined as legal research through a series of questions regarding the role of a Notary in implementing an Initial Public Offering (IPO) corporate action with the classification of shares containing multiple voting rights.

6. Data Analysis

The analysis is carried out through scientific reasoning on legal materials, which will be analyzed through deductive logic, which is used to conclude that general matters become a reality.

The analysis used then through a qualitative descriptive analysis with a complete review. Existing legal materials will be grouped and then analyzed so that they can be described and illustrate how the role of a Notary is in practice.

7. Research Locations

a. Library Research Locations

Place of research at Pasundan University by analyzing related data.

b. Field Research Locations

Field research took place at the Notary Office registered with the regulator.

DISCUSSION

In the Initial Public Offering (IPO) process, of course, a process supporting institution outside the company is needed, as the first step in the IPO process requires approval to make an offer to the public from shareholders in the meeting forum of its shareholders, and also approval for changing the status of a closed company to a public company including adjustments to the deed of its Articles of Association.

The first step that needs to be carried out by the company is to analyze the number of shares to be issued in relation to the need for funds and also analyze the momentum and performance of the company so that the offer to the public becomes attractive. The next stage is preparing for the approval of the existing shareholders at the GMS forum and adjusting the Articles of Association with the provisions of the capital market.

The role of the notary then becomes essential when preparing the deeds so that the process is legally valid, bearing in mind that the notary will have a role from the start, starting from making the deed of minutes of the GMS to approve the IPO, amending the Articles of Association to making agreement deeds related to IPO transactions, for example making a deed of the underwriting agreement, share administration agreement and other agreements.

If it is related to the object of research, namely PT GOTO, with the Deed of Establishment Number 135 dated December 15 2021, the classification of these shares is only related to the rights attached to the shareholders, such as having voting rights, the right to propose management, as well as other provisions regulated in the company deed.

In the Deed of Establishment of PT GOTO, the classification of shares with multiple voting rights is applied. Then the Capital Market Notary who makes the Articles of Association must explain the classification of shares, namely series A shares with multiple voting rights and series B shares with multiple voting rights. , where the requirements to become a shareholder are determined in the articles of association. What distinguishes the articles of association that apply the classification of shares with multiple voting rights is that there is a maximum ratio for the voting rights of Series A to Series B with the ratio as determined by the POJK Classification of Shares, the calculation is as follows:

|  |  |  |
| --- | --- | --- |
| **Series B Shareholder Ownership** | **Multiple Share Voting Rights** | **Common Stock Voting Rights** |
| 10% - 47,36% | 10 | 1 |
| 5% - 10% | 20 | 1 |
| 3,5% - 5% | 30 | 1 |
| 2,44% - 3,5% | 40 | 1 |

This policy of granting multiple voting rights can be said to maintain the vision and mission of the original shareholders. It can be seen from the ownership of shares ranging from 2.44% to 47.36% owned by the company's founders. In this case, the founder of the company is obliged to inform the notary regarding the implementation of multiple voting rights.

Based on the Deed of Establishment, the notary must clearly and in detail state the requirements for shares with multiple voting rights in their articles of association as stated in Article 4 of the OJK Regulation on Classification of Shares, namely at least containing:

a. There is a classification of shares and their rights;

b. Requirements for shareholders with multiple voting rights

c. Rules related to the ratio of voting rights (between shares with multiple voting rights and voting rights from ordinary shares);

d. Rules regarding the comparison of voting rights (multiple have voting rights of up to 90% compared to the voting rights of ordinary shares);

e. Rules of equality of rights for specific agenda items at the GMS;

f. The period or period for shares with multiple voting rights and their extensions;

g. Rules regarding the conditions that cause shares with multiple voting rights to become ordinary shares before the expiration of the shares with multiple voting rights; And

h. The voting treatment rules differ from those of shareholders with multiple voting rights at a shareholder meeting, where the minor vote is deemed to have cast the same vote as the most significant vote for the shareholder with multiple voting rights.

As for the comparison of the articles of association between public companies that do not apply the share classification following POJK and public companies that apply, namely public companies that do not apply the classification of shares under the POJK Share Classification refers to the Limited Liability Company Law, Capital Market Law, Bapepam Regulation Number IX.J.1 and POJK Public Company GMS. In contrast, public companies that apply refer to these provisions but with the addition of POJK Share Classification provisions related to arrangements, rights and obligations of share ownership with multiple voting rights.

Based on the details in the Deed of Establishment of PT GOTO, Tbk Number 135, it can also be analyzed that the notary must describe the provisions regarding multiple shares as required in the POJK Classification of shares.

CONCLUSION

1. The procedure for a Notary in applying the classification of shares containing multiple voting rights to a deed in the implementation of an IPO is under the procedure for making a deed as the authority of a notary as stipulated in the Law on the Position of a Notary, in particular, article 15 with the first stage namely the preparation stage for making the deed then the negotiation stage for then pouring it out on the deed under Article 4 POJK Classification of Shares; And

2. Comparison of the articles of association between a public company and a public company that applies a share classification is a company that applies a non-multiple voting rights classification concerning the Limited Liability Company Law, the Capital Market Law, POJK GMS of Public Companies and Bapepam Regulation Number IX.J.1. At the same time, companies that apply the classification of shares with multiple voting rights also refer to the provisions above, with additional special conditions under the provisions in the POJK Classification of shares.

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