

CHAPTER I

INTRODUCTION

A. Background of Study

The capital market is a fairly popular instrument in making investments, the capital market is also one of the important instruments for a company or government to get funding. In capital market investment, investors will benefit from returns, which in capital market investment allows investors to own shares of companies listed on the stock exchange. Law No.8 of 1995 defines that the capital market is an activity involving public offerings and securities trading, with public companies as the parties who offering securities and investors as the providers of capital.

In capital market investment there are two types, namely short term and long-term investment, in short-term investment means buying shares and then selling them back to generate income less than one year (12 month), the main objective is to obtain profits in a relatively short period of time, while in long-term investment investors aim to maintain these shares in the long term or more than a year¹.

The capital market investment, shares are divided into conventional shares and Islamic shares, in the sharia capital market only trades the instrument that are in accordance with Islamic law, on the other hand,

¹ Paningrum, Destina, *Buku Referensi Investasi Pasar Modal*, Kediri, Lembaga Chakra Brahmanda Lentera, 2022, p.4

conventional capital markets do not have the certain restrictions or does not apply any sharia aspect or even contradict to sharia principles.²

The popularity of the Islamic capital market is no less rapidly growing than the conventional capital market, especially since the majority of Indonesia's population is Muslim, of course there are many Muslims who want to invest in the capital market but afraid of whether the conventional capital market is in accordance with the applicable Islamic law, therefore the Islamic capital market also gets quite a lot of attention from the average Indonesian citizen. Since 2017 the development of Islamic stocks has encountered a fairly upward phase until 2022. In the first period in 2020, Islamic stocks reached the number of 457 and in the second period of 2021 Islamic stocks increased to 484 and after the covid 19 Islamic stocks experienced another increase to 524.³

In the capital market investment, of course, there are quite high risks that investors should be aware of such as interest rate risk, purchasing power risk, financial risk, liquidity risk⁴, Which investors must pay attention to and consider the above risks before investing in the capital market in a company's shares.

Companies that wish to have their shares listed on the exchange must meet the listing requirements and mechanism of the Indonesia stock Exchange

² Wiku Suryomoruti, *Super Cerdas Investasi Syariah*, Jakarta, Qultum Media, 2011, p.118

³ Imroatus, Sholiha, *Jurnal Perkembangan Pasar Modal Syariah Dalam Menghadapi Ancaman Resesi Ekonomi Global Pandemi, Covid*, Universitas, Ibrahimy Sukorejo Situbondo, h.106

⁴ Adnyana, IM, *Manajemen Investasi dan Portofolio*, Jakarta, LPU-UNAS,2020, p.6

(IDX), And also meet the standards and comply with the rules set by the Indonesia Stock Exchange by conducting an IPO (Initial Public Offering).⁵

If the company cannot meet the standards and also the rules of the Indonesian Stock Exchange (IDX), then the IDX are be able impose several sanctions such as administrative sanction, written warning, suspension, fines or even in the form of revocation of shares from the stock exchange or what is commonly referred to as Forced Delisting.⁶

BEI delist companies that no longer meet the stock exchange requirement as a measure taken to maintain market integrity and transparency, the example was the case of forced delisting of PT. Indo American Leasing, which was forced to delist by the Indonesian Stock Exchange (BEI) in 2021. This company is a financing company that focuses on use and new car loans. Prior to the delisting by the Indonesia Stock Exchange (BEI). PT. Indo American Leasing also had its securities trading temporarily suspended, then in the following year of 2020, the Financial Services Authority (OJK) revoked the business license of PT. First Indo American Leasing Tbk. The revocation of the business license was due to the company's failure to comply with several regulations. PT. Indo American Leasing Tbk. does not submitting an *anti-fraud* strategy report to the Financial Service Authority (OJK), and not complying with the disclosure of information to debtors regarding the return of proof of ownership of collateral, as well as not complying with the *gearing*

⁵ Khairandy, Ridwan, *Hukum Pasar Modal*, Yogyakarta, UII Press, 2020, p.115

⁶ Keputusan Direksi PT Bursa Efek Indonesia No: kep-307/BEJ/07-2004

ratio provision on net financing receivables to total funding. The gearing ratio is a measure of the level of net debt to equity.⁷

The implementation of forced delisting by Indonesia Stock Exchange raises legal issues related to investor rights protection. Forced delisting has implications for shareholders, whereby investors lose liquidity on their share because it cannot be traded anymore, this will certainly have an impact on the shares of investors, the return of investor funds can go through a fairly long process and in some cases there are no compensation mechanism such as share buyback at fair prices, leaving the shareholders suffer total losses.

The obligation of the companies that affected by forced delisting status are clearly explained in regulations such as in the regulation by the Indonesian Stock Exchange/Bursa Efek Indonesia (BEI) and regulation of Financial Services Authority/Otoritas Jasa Keuangan (OJK), in the Bursa Efek Indonesia (BEI) regulation No.1-H stated that the obligation of companies affected by forced delisting are to give public notification, implementation of buybacks, and give compensation for investors.⁸ While in Otoritas Jasa Keuangan (OJK) regulation No. 57/POJK.04/2017 stated that the companies that affected by forced delisting must still report the financial and operational

⁷ Rahmawati, Dhianti, Rachmaniar Dwiputri, *Price Cash Flow Ratio, Net Gearing Ratio, Current Ration, dan Return Saham Perusahaan Sub-Sektor Konstruksi*, Jurnal Ekonomi dan Industri, vol 26 .no1, 2025.

⁸ Bursa Efek Indonesia (BEI), Peraturan Bursa Efek Indonesia (BEI) No.I-H, tentang Pencatatan Saham dan Efek Bersifat Ekuitas Lainnya di Bursa

of their company to OJK and also delivered the company plan regarding the shares to the investors.⁹

Despite the existence of regulations, legal protection for investors affected by delisting remains inadequate. Investors often do not have the right to sue for such adverse decision. Investor often experience financial loses after the enactment of forced delisting to a company they hold shares for, this is due to the absence of an obligation for the company to give decent compensation to the investors after forced delisting.

Investor protection in the capital market is one the fundamental principles underlying the sustainability of a fair, orderly, and efficient securities trading system. This protection aims to ensure that every party participating in the capital market obtains legal certainty and a sense of security in making investment. However, when forced delisting occurs due to an listed company violation, the issue of the effectiveness of investor protection becomes crucial.

This because forced delisting not only affect the listed company position on the IDX, but also poses a significant risk of loss for investors who still hold the shares. Their shares become illiquid and difficult to trade.

Based on this background description, the author will conduct research on what are the right of investor as shareholders to this situation and also what causes forced delisting, the author takes the title “legal protection of investor on the enactment of forced delisting by the Indonesian Stock Exchange”.

⁹ Peraturan Otoritas Jasa Keuangan, POJK No. 57/POJK.04/2017, tentang Kewajiban Pelaporan dan Pemberitahuan bagi Emiten atau Perusahaan Publik

B. Problem Formulation

Based on the above background, the research will be carried out regarding:

1. What is the legal protection for investors who hold shares of companies subject to forced delisting?
2. what is the factor for a company to be forced delisted in the perspective of conventional capital market and sharia capital market?

C. Research Objectives

To examine the legal frameworks and regulation regarding investor protection in cases of forced delisting, with a specific focus on the rights and remedies available to shareholders or investor, and to analyze the sharia perspective on investment based on the Jakarta Islamic Index.

D. Originality of Research

Based on the searches conducted, the researcher discovered other studies that were related to this research, including:

No.	Writers	Problem Questions
1	Fikrun Khair, Perlindungan Hukum Bagi Investor Pasar Modal Terhadap Perusahaan Yang Delisting Akibat Diputuskan Pailit (Studi Kasus Putusan MA No.667K/Pdt.sus-Pailit/2021). Undergraduate Thesis, UIN, 2024	<ol style="list-style-type: none">1. How is the form of legal protection for capital market investor who are delisted due to bankruptcy in the Indonesian legal system?2. How is the legal responsibility for public investors who suffered losses due to the forced delisting of PT Hanson international TBK.

		*MYRX) by IDX?
2	Karina Amanda Savira, Tanggung Jawab Perusahaan Tercatat Pada Masa Pra Efektif Delisting dan Implikasinya Terhadap Perlindungan Investor (Studi Kasus Forced Delisting PT Inovisi Infracom Tbk). Undergraduate Thesis, UII	<ol style="list-style-type: none"> 1. How are listed companies responsible during the pre-effective period of delisting? 2. What are the implications for investor protection? (case study of forced delisting of PT Inovisi Infracom Tbk)

What makes this current research differ from prior studies, this research are focusing on the legal protection for investor regarding the forced delisting enacted by Indonesian Stock Exchange towards a company and other element that causes loss to the investor, and explaining about the implementation of Sharia Principle on the Sharia Capital Market. The differ element of case analysis, methodology, and approaches of the problem questions, thus assuring the originality of the research.

E. Literature Review

In this section, the author will include theories from experts related to matters that have a connection with this thesis, so that what is studied in this thesis remains relevant to existing theories.

1. Overview of Legal Protection

Protecting the interest of each individual in pursuing their interests which often conflict with the interests of other parties, is the objective of legal protection as a measure taken by the government to provide their citizen. Defined by the legal dictionary as compulsory regulation within

society and any violation of these regulations will result in enforcement action by the official authorities. For the protection to be considered as legal protection measure it must fulfill several elements¹⁰:

- a. Protection of the society by the government.
- b. Provision of legal certainty by the government.
- c. Relating to the rights of citizens.
- d. The existence of sanctions or penalties for violators.

There are 2 classifications of legal protection, according to hadjon legal protection divided into preventive and repressive:

- a. Preventive:

The aims of this legal protection is to prevent disputes, the people are given the opportunity to file an objection (*inspraak*) before the government's decision get a defensive form.

- b. Repressive

Different from preventive, the purpose of repressive protection is to resolve the disputes, to ensure all subject of law guarantee to be able to exercise their rights.¹¹

The definition of protection in KBBI means a place of safety, an action that protect¹². While the law itself in KBBI defined as rules or custom that are officially considered binding established by authorities, the government

¹⁰ <https://www.hukumonline.com/berita/a/perlindungan-hukum-lt61a8a59ce8062/>

¹¹ Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat di Indonesia*, Edisi Khusus, Surabaya, Peradaban, 2007, p.2-5.

¹² "Perlindungan" KBBI DARING, 2016. web. 29 July 2025

statutory regulations, etc. To regulate social interaction¹³. An action with the aim of protecting by referring to relevant laws or regulations could be define the “legal protection” based on the KBBI definition of “protection” and “law”.

2. Capital Market

The capital market is one of the economic instruments namely a forum for stocks, bonds, and other securities to be traded. The capital market's role as a platform for buying and selling these products which connects emiten or parties in need of funds with investors or parties as a source of funding for company and the government to obtain funding. Dr. Mas Rahmah define capital market as an additional source of capital financing for business, when the business actors need funds, the capital market is the right system to meet their capital needs, and it is also an alternative financing place for investors to buy and sell securities.¹⁴ As a part of financial system that has been one of the pillars of economic development for 48 years which by 2024 the average daily transaction value (RNTH) reach 11,9 trillion.¹⁵ As the growing of capital market, the regulations governing the capital market is also developed in line with the capital market itself. It began with Emergency Law No.13 Law 1951 Concerning Bursa, which was later amended to become Law No.15 of 1952,¹⁶ and the

¹³ “hukum”, KBBI Daring, 2016. Web. 29 July 2025

¹⁴ Rahmah, mas, *Hukum Pasar Modal*, Jakarta, Kencana, 2019, p.1

¹⁵ PR No: 050/BEI.SPR/08-2024

¹⁶ Rahmah, mas, 2019, *Op.Cit*, p.17

latest regulation that remains the regulatory framework governing the capital market to this day is Law No.8 of 1995 Concerning Pasar Modal.

Based on the definitions of capital market, it can be concluded that capital market have the financing function towards the listed companies. Besides being a field of investment for investors to invest their capital, the companies also obtain funding from the sale and purchase transaction in capital market. Instrument of capital market, the capital market offers products to be traded toward the investors to invest, there are several products or instrument that available in the capital market:

a. Stocks

As the main instrument in the capital market or the mainstay of investors who are already involved in the capital market, Stock is the sign of capital participation in a company, in this case, it can be interpreted that the party investing the capital or investors has claim on the income of the company in which the capital is invested through dividends that have been determined in the General Meeting of Shareholders (RUPS).

b. Bonds

Bond are transferable debt securities, where the buyer receiving interest payment from the issuer of the debt securities. Type of bonds listed on the Indonesian Stock Exchange (IDX) include government bonds, corporate sukuk, and Assets Backed Securities (ABS).

c. Derivatives

Commonly used as a means of hedging portfolios, in the form of financial instrument such as, currencies, stock indices, and interest rate indices which available in the Indonesian Stock Exchange (IDX).

3. Sharia Capital Market

As already known the capital market is one of the instruments or economic systems in Indonesia. the Sharia capital market is the part of Islamic economic concept, Islamic economy is not much different from other conventional economic concept, but Islamic economy has quite different in applications, where the Islamic value as the foundation and basis for every economic activity for Muslims as a guide.¹⁷ Also applies to the Islamic capital market, which implemented these values in the implementation of every economic activity that occurs in the Islamic capital market.

In terms of the regulations to the Islamic capital market, there are currently no specific regulations addressing the Islamic capital market, which still refers to Law No.8 Of 1995 concerning the Capital Market. However, to ensure that the Islamic capital market is in accordance with Islamic teachings, The Majelis Ulama Indonesia (MUI) plays a role in ensuring this by issuing *fatwa*.¹⁸ Although the fatwa from Majelis Ulama Indonesia (MUI) are not binding, they can be used as a reference for practice in the Sharia capital market. Despite there is no specific law on the

¹⁷ Setyagustina, Kurniasih, DKK., *Pasar Modal Syariah*, Bandung , Widina Bhakti Persada, 2023, p.1

¹⁸ Toha, M, DKK., *Perkembangan dan Problematika Pasar Modal Syariah di Indonesia*, Jurnal Al-Tsaman, 2020, p.144

Sharia capital market, Otoritas Jasa Keuangan (OJK) still has its own regulations related to the Sharia capital market, such as POJK No.15/POJK.04/2015 concerning Sharia principles in the capital market.

Sharia shares are certificates that show proof of ownership of a company issued by the issuer who business and management methods and managements methods that not conflicted with the sharia principles, the product of sharia capital market must carry out in companies that not violate shariah principles, such as gambling, usury, and producing prohibited goods. the equity of shares can be done based on musyarakah and mudharabah contracts.

- a. Musyarakah contracts are generally carried out in private companies.
- b. Mudharabah contract are generally carried out in public company shares.

In other definitions selling securities according to sharia investment such as sharia stocks, bonds and sharia mutual funds is a muamalah economic activity called the sharia capital market. This economic activity was developed with the aims of accommodating the need of muslim in Indonesia who wants to invest in capital market product Sutedi (2011).

4. Delisting & Forced Delisting

In company's efforts to obtain capital, it is not an unusual for the company to get funding from the public, to obtain the funding from the public the company need to issue an Initial Public Offering (IPO). Initial Public Offering (IPO) is a change in the status of a company in the capital

market from private to publicly held, which means the shares of the company are listed in capital market and are available for public to trade, this action usually carried out by young companies as a professional way to raise capital.¹⁹

The removal of the company shares on the stock exchange causes the company's shares are no longer be traded on the stock exchange, which referred as delisting. Delisting was done as a form of sanction by the Indonesia Stock Exchange together with Financial Services (OJK) authority, in order to protect the public interest and to create an orderly and efficient trading environment.²⁰ Before delisting the Indonesian Stock Exchange and the Financial Services Authority (OJK) will issue a warning letter as stipulated in the Indonesia Stock Exchange board of Directors Decree No. Kep-30/BEJ/07-2004 tentang regulation No. 1-H tentang sanksi. It is explained that the type of sanctions imposed by the Indonesian Stock Exchange (BEI) on listed companies that violate the regulations, begin with written warnings, fines, to suspensions.

There are two types of delisting, voluntary delisting and delisting by the Indonesian Stock Exchange (BEI) and Financial Services Authority (OJK), also known as forced delisting. The difference between these delisting is the reason why the company got delisted, in voluntary delisting

¹⁹ Mbhele, T Patmond, *Propensity Towards Financial and Growth Prospects: Initial Public Offerings (IPO)*, International Journal of Humanities and Social Science, Vol.3 No.10, 2013

²⁰ Bursa Efek Indonesia (BEI), Keputusan Direksi PT bursa Efek Jakarta Nomor: Kep-308/BEJ/07-2004, tentang Penghapusan Pencatatan (delisting) dan Pencatatan Kembali (relisting) Saham di Bursa

is based on the request by the listed company while forced delisting is carried out on the basis of violations committed by the listed company.²¹

In the removal of company shares on the stock exchange, there are two types of delisting as described in the theory above, which distinguishes voluntary and forced delisting:

a. Voluntary Delisting

A company's request for delisting usually due to mergers, high cost, and corporate restructuring. In order for a company to apply for delisting, the listed company must have been listed for at least 5 years and also pay the delisting fee equal to 5 times the last listing fee as mentioned in Surat Keputusan Direksi Bursa Efek Indonesia Kep-00054/BEI/052024. After the company submitting a delisting request to the Indonesia Stock Exchange (BEI) and the Financial Services Authority (OJK), the company will proceed to the next stage of the voluntary delisting procedure. The listed company must disclose information related to the company's condition and also provide information needed by the BEI and the shareholders, after which the BEI will suspend trading of the company's securities, as one of the requirement to voluntary delisting is to pay the delisting fee, company must provide proof of payment of the delisting fee to BEI, and lastly submit the result of the share buyback no later than two days after the buyback is completed. The Indonesian Stock Exchange (BEI) will

²¹ Ibid.

approve the company's delisting request if all procedures for voluntary delisting have been completed. Within 14 working days, the Indonesia Stock Exchange (BEI) will proceed with the delisting after receiving instructions from the Financial Services Authority (OJK).

b. Forced Delisting

According to Surat Keputusan Direksi Bursa Efek Indonesia Kep-00054/BEI/052024. The delisting of shares by decision of the exchange can occur for various reasons, namely, the listed company is in a condition that has a significant negative impact on the company's continuity, the listed company does not meet the listing requirement, and the company's shares are suspended. Stated in III.5.1. even if the listed company meet one of the three condition Indonesia Stock Exchange (BEI) have the authority to:

- 1) Demanding the explanation from the listed company regarding the violation that they occur.
- 2) Demand the listed company to do Public Expose incidental.
- 3) Demand for a recovery plan for listed companies that caused the suspension of securities.

F. Research Method

1. Type of Research

To obtain data in this research, the author uses normative research methods or also known as literature research methods according to Soerjono

Soekanto. Normative legal research is research method that focuses on reviewing literature or secondary data²². which means analyzing and explaining the legal provisions that apply to legal protection for investors in cases of forced delisting on the Indonesia Stock Exchange (IDX).

2. Research Approach

The method of approach in this research is by the statutory approach. Normative research must certainly use a statutory approach, the object that studied in normative research are various legal rules which are the focus as well as the central theme of study.

3. Sources of Data

The source of data in this writing is using secondary data, namely library materials that include official documents, book, journal, articles, regulations, and documents that relate to the research material:

a. Primary legal materials - the legally binding materials that are the focus of the research.²³ There are a few primary legal sources:

1. Law Dasar Republik Indonesia Of 1945
2. Law No.8 Of 1995 concerning pasar modal
3. Law No.25 Of 2007 concerningp enanaman modal
4. Regulation OJK No.17/POJK.04/2015
5. Regulation OJK No.30/POJK.04/2017
6. Regulation OJK No.57/POJK.04/2017
7. Regulation OJK No.3/POJK.04/20121

²² Soekanto, Soerjono, *Penelitian Hukum Normatif*, Jakarta, Rajawali Pers,2009

²³ Suteki and Galang Taufani, *Metodologi Penelitian Hukum (Filsafat, Teori dan Praktik)*, Depok, Rajawali Press, 2020, p.212.

8. Regulation Bursa Efek Indonesia (BEI) No.I-H, concerning the listing of shares and other equity securities on the exchange
 9. Decision of the Board of Directors of PT. Bursa Efek Jakarta No.Kep-308/BEJ/07-2004, concerning the delisting and relisting of shares on the exchange
 10. Other regulations related to this research
- b. Secondary legal materials - the legal materials that support the explanation of primary legal materials.²⁴ The researcher acquires the data from:
1. Explanation of the law and regulation used as primary legal materials.
 2. Literature books or readings related to the topic of writing.
 3. Research result related to the topic.
- c. Tertiary legal materials - the legal materials that explain the primary legal materials and secondary legal materials in a broader sense,²⁵ which are Black's Law Dictionary, Encyclopedia of Legal System, and Indonesia Dictionary (KBBI).

4. Data Collection Method

To gain the secondary data, sources are collected through:

- a. Library search, a mechanism to gain primary data and secondary data by exploring the collection of library sources.

²⁴ Suteki and Galang Taufani, *Op.Cit*, p.216.

²⁵ *Ibid*.

- b. Internet search, an approach to obtain primary data, secondary data, and tertiary data. It is suggested to search for information on the internet only from reliable sources such as Google Scholar to find the e-books and legal journals for forced delisting, investor protection and sharia capital market.

5. Data Analysis Methods

The data obtained in this study were analyzed by using descriptive-evaluative analysis. The researcher focuses on examine the implementation of the law applies in certain circumstances whether it has already been appropriate with the law or not then the researcher elaborate with an evaluative approach to provide appropriate implementation of law.

The descriptive-evaluative analysis is applied in this research study. The approach explains the correlation between legal events that are found in the field without altering any of the research variables.²⁶

G. Systematics of Writing

The systematics of the research writing is organized into four chapters.

Chapter I Introduction. This chapter presents the background of study, problem formulation, research objectives, literature review, research methodology, originality of research, and systematics of writing.

Chapter II Theoretical Review. This section discusses theories related to the topic - the general principles of Legal protection, delisting and forced

²⁶ Bagas Adisuharjo, “*Pengelolaan Sumber Daya Manusia Pada PT Mulyareksa Jayasakti Semarang*”, Undergraduate Thesis, Unika Soegijapranata, 2016, p.27

delisting capital market, sharia capital market. As the sources of analysis, the theoretical review guides the writing process to understand normative concepts of legal protection of investor.

Chapter III Findings & Discussions. This chapter discusses the legal analysis based on the problem formulations. The questions are concerned with the legal protection of investor and sharia perspective in the capital market. The theories and viewpoints presented in the previous chapter serve as tools for the discussion in this chapter.

Chapter IV Conclusions & Recommendations. This section presents a summary of the analysis of the findings and discussion of the problem formulations. It also presents recommendations for further research studies.