Harmoni Economics: International Journal of Economics and Accounting
Volume. 2 Nomor. 1 Tahun 2025
e-ISSN :3063-8712, dan p-ISSN :3063-6205, Page 44-64
DOI: https://doi.org/10.70062/harmonieconomics.v2i1.71
Available online at: https://economics.ifrel.org/index.php/HarmoniEconomics

People's Economic Bank to the Capital Market: Challenges and Innovations

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Abstract: *The expansion of the scope of People's Economic Bank (BPR)s to enter the capital market is new in Indonesia. The legal arrangements are not yet fully regulated. Several obstacles are experienced by BPRs towards the capital market. Therefore, innovations are needed that can make BPRs enter the capital market by applying some existing legal arrangements even though they are not specifically regulating BPRs. The purpose of this study is to determine the barriers and innovations in the framework of BPR towards the capital market. Normative legal method by taking a statutory and conceptual approach. There are several challenges BPR in heading to the capital market. The answer to these challenges is innovation. The existence of innovations that can be applied to BPR in order to go to the capital market can be seen from the legal arrangements that already exist in other fields but can be applied in the BPR. BPR experiences several obstacles, including (1) Changes from closed to public LLC must go through several processes before heading to the capital market, (2) Changes in share ownership that can determine company policy and (3) Capital fulfillment factors required by the capital market. The innovations made are (1) the fulfillment of corporate governance, (2) Share ownership arrangements that can still be held by families with (a) The form of holding companies and subsidiaries with certain ownership arrangements, and (b) Applying dual class shares, (3) BPRs that have not met the capital requirements can enter through the OTC market with reporting obligations in each securities transaction.*

Keywords: *People Economics Bank, capital markets, barriers, innovation, legal arrangements.*

1. BACKGROUND

In recent decades, both industrialized and developing countries have shown a growing interest in corporate governance. This interest was triggered by the major financial crises and failures that resulted in far-reaching consequences for financial systems around the world(1)Financial crises have long been recognized in the political economy literature as important catalysts for economic policy reform at the national and international levels. Over the years, many studies have theorized about how crises change the political economy in ways that enable economic reforms, e.g. crises can weaken strong opponents of regulation or provide opportunities for policy actors to push for regulatory change(2) .

Law No. 4 of 2023 on Financial Sector Development and Strengthening (hereinafter referred to as UUP2SK) is a regulation issued by the government to reform the financial industry in order to be able to face global dynamics. These regulations are issued with a function to keep the financial sector fair, sustainable, stable and inclusive. This is a manifestation of economic democracy which ultimately leads to the creation of social justice. The second part related to banking in article 1 point 4 of UUP2SK regulates the change of the name of the People's Credit Bank to the People's Economic Bank.

Received: Oktober 15, 2024; Revised: November 30, 2024; Accepted: December 19, 2024;
Available Online: December 22, 2024

The change provides an expansion of business for BPRs. The regulation to change the name of BPR was then followed by the issuance of POJK No. 7 of 2024 concerning People's Economic Banks and Sharia People's Economic Banks (hereinafter POJK BPR). Article 35 of the POJK BPR explains that BPR or BPR Syariah can conduct a public offering of securities through the capital market. To be eligible for the capital market, a BPR must have a minimum core capital of Rp 80 M. The regulation was issued when the BPR industry was hit by the issue of revocation of business licenses since the beginning of 2024(3). In reality, according to Mahendra, there are still 9 BPRs that have not fulfilled their core capital(4) before POJK BPR is released. The rules on how BPRs can enter the capital market have not been further regulated. BPR's initial steps in fulfilling core capital have also encountered various challenges.

The entry of BPRs in the capital market can provide greater access to capital in supporting operational and expansion activities. In addition, with a public offering, BPRs can obtain diversified funding sources. This diversification encourages BPR's resilience to economic fluctuations and liquidity risks. BPRs have an important role in supporting financial inclusion and local economic development. BPRs' entry into the capital market contributes to regional economic growth by providing wider access to credit and better financial services. On the other hand, this urgency is faced with various challenges given that BPRs have certain characteristics.

Knowledge of the challenges BPRs face in attempting to enter the capital market is crucial to ensuring success and stability in the process. This not only helps BPRs in reaping the benefits of access to the capital market, but also ensures that they can contribute more to the economy and improve services to customers.

2. RESEARCH METHOD

The method in this writing uses normative juridical research with statutory and conceptual approaches. Arrangements regarding BPR to the capital market will be studied with primary and secondary materials related to the above problems. This research will be studied descriptively analytically in answering the problems and future legal arrangements related to BPR to the capital market. Primary materials used in this research are (1) Law No. 40 of 2007 on Limited Liability Companies, (2) Law No. 4 of 2023 on Financial Sector Development and Strengthening, (3) POJK No. 31/POJK.04/2015 on Material Facts, (4) POJK No. 22/POJK.04/2017 on Securities Transaction Reporting. /2017 Regarding

Securities Transaction Reporting, (5) POJK No. 22/POJK.04/2021 Regarding the Application of Share Classification with Multiple Voting Rights by Issuers with Innovation and High Growth Rates Conducting Public Offerings of Equity Securities in the Form of Shares, (6) POJK No. 23/POJK.04/2021 Regarding Follow-up Supervision in the Capital Market Sector.

3. FINDINGS

BPR has changed its name. The name change has been followed by an increase in scope since the issuance of UUP2SK. This is one of the government's efforts to optimize the function and authority of BPRs to increase their role as the driving force of MSMEs(5). BPRs may carry out fund transfer activities, foreign exchange activities, cooperation with financial institutions, and public offerings on the stock exchange as well as BPR services towards digitalization.

One of the expansions of the scope of BPR is to allow it to participate in capital market activities. The capital market is an activity related to the public offering and trading of securities, public companies related to the securities issued, as well as institutions and professions related to securities. The expansion of BPR in UUP2SK indirectly makes BPR must be able to adapt to the conditions in the capital market. A number of requirements must be met.

The fulfillment of the entry of BPR in the capital market has experienced several obstacles because the UUP2SK is still relatively new. Legal arrangements have not been rigidly regulated. There are several legal rules that can answer obstacles and bring innovation for BPRs to enter the capital market.

4. DISCUSSIONS

A. Challenges Facing BPR Towards the Capital Market

BPRs in the POJK BPR rules are regulated to be incorporated in the form of limited liability companies and cooperatives(5). The legal form of a limited liability company according to Article 1 number 1 of Law No. 40 of 2007 concerning Limited Liability Companies, namely the definition of a limited liability company, as amended by Law No. 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law reads as follows

"Limited Liability Company, hereinafter referred to as the Company, is a legal entity which is a capital alliance, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares or an individual legal entity that meets the criteria of micro and small enterprises as stipulated in laws and regulations concerning micro and small enterprises".

The Limited Liability Company (LLC) referred to in this study is a LLC consisting of at least two persons, which is not an individual legal entity. A LLC established by two or more persons, its existence is an agreement between the founders. The basis for its establishment is an agreement that establishes the relationship of the founders as a contractual relationship. Contractual arrangements do not allow for a single shareholder. Law No. 40/2007 on Limited Liability Companies (hereinafter in this paper abbreviated as UUPT) only requires a minimum of two persons to establish a company and does not specify the amount of capital that must be paid up by each.

Cooperatives as in article 1 point 1 of the Indonesian Law No. 17 of 2012 (hereinafter referred to as the Cooperatives Law) are legal entities established by individuals or cooperative legal entities, by separating the assets of its members as capital to run a business, which fulfills aspirations and common needs in the economic, social, and cultural fields in accordance with cooperative values and principles. Article 4 of the Cooperatives Law says that cooperatives are established with th e aim of improving the welfare of members in particular and the community in general, as well as an integral part of a democratic and equitable national economic order. The consequence of cooperatives as legal entities is that contributions in cooperatives do not only come from cooperative members, but also from non-members, for example there is capital participation from banks. Therefore, the Cooperatives Law also requires cooperatives to have a deposit insurance agency for savings and loan cooperatives. The Deposit Insurance Corporation will not provide a guarantee if the cooperative is not a legal entity.

Referring to the previous paragraph, BPR can be in the form of PT and Cooperative. Related to BPR in the form of PT, there are several challenges faced in the framework of BPR towards the capital market, including the following.

1. Change from closed LLC to open LLC

   The variety of LLC from a regulatory perspective in Indonesia consists of closed companies and public companies(6). Closed LLC is a LLC whose shares can only be owned by certain people, usually limited to their own circles(7). The type of

shares of a Closed LLC are either bearer shares or nominee shares. The procedure for transferring investors using bearer shares is not easy to do. It requires a certain mechanism. The founder of a Closed LLC has certain objectives, one of which is to ensure the trust and survival of the company managed by the closest people, either family or relatives. The term closed is intended for share ownership. Shares of a closed company will not offer their shares to the public freely.

Open LLC, as seen from article 1 point 7 of the Company Law, is a Public Company or a Company that conducts a public offering of shares, in accordance with the provisions of laws and regulations in the field of capital markets. Meanwhile, it is explained in article 1 point 8 that a public company is a company that meets the criteria for the number of shareholders and paid-up capital in accordance with the provisions of laws and regulations in the capital market sector.

The company life cycle theory according to SzeKee Koh experiences 4 phases as follows(8)

“A firm‘s lifecycle consists of birth, growth, maturity and decline. We examine the strategies firms choose when facing financial distress and present evidence that these choices are influenced by the corporate lifecycle. This influence is most pronounced in the choice of financial restructuring strategies such as reducing dividends or changing capital structure.”

From the above statement, it can be concluded that the 4 phases of the company consist of birth, growth, maturity, and decline. Life cycle theory states that growth strategies and corresponding capital capacity vary at different stages of a company's life cycle. Each stage shows significant differences in terms of situation, organizational strategy, structure, and decision-making style.

Firms in the birth stage, for example, are owner-dominated (entrepreneurs), simple, informally structured, undifferentiated, and with highly centralized power systems and considerable focus on innovation. These firms face significant uncertainty over future growth, manifested in higher book-to-market ratios and greater firm-specific risk.

BPRs, when viewed from the company's life cycle, fall into the category of companies with a tendency to be in the birth stage. At this early stage, most of the funds come from relatives, close friends, or short-term financing. The legal form of BPR is the result of the transformation of Microfinance Institutions (MFIs) which

before the transformation had a cooperative legal entity, such as a Sharia Savings and Loan Cooperative (KSPPS), with a legal entity in the form of a closed LLC.

This shows that many BPRs in Indonesia are still categorized as Closed LLC. In the face of changing circumstances such as economics, technology and taxation, if companies want to realize sustainable development, they need to make early plans and ensure their successful implementation for issues such as corporate succession and transformation. Meanwhile, how to concentrate shares in the hands of family members to avoid losing the company due to ownership dispersion is also a major issue in family enterprise succession.

The characteristics of a Closed LLC in the financial statements when looking at the UUPT are reported to the shareholders through the GMS. This can be seen from article 66 paragraph (1) of the UUPT which stipulates that the board of directors submits an annual report to the GMS. The previous financial report is reviewed by the board of commissioners no later than 6 months after the company's financial year ends. Here there is no regulation to report to OJK. Closed LLCs have no obligation to report to the Financial Services Authority OJK because they are not bound by laws and regulations that require reporting OJK. Closed LLCs do not conduct a public offering of shares and are not listed on the stock exchange, so they are not eligible to report finances or changes in share ownership to the OJK. However, when referring to article 30 of POJK BPR, OJK is authorized to require BPR or BPR Syariah to submit annual financial reports prepared by the owner's legal entity. From this, it will be seen that the transformation that must be carried out by BPRs in fulfilling these regulations requires various adjustments to the latest norms specifically governing BPRs.

2. Changes in share ownership that can determine company policy

Corporations including financial institutions such as banks are legally formed entities. Its formation clearly demonstrates the entanglement of private interests with the power of public law. For publicly traded companies, ownership interest depends on the company's shareholding, and the degree of interest depends on the proportion of outstanding shares held by individual owners: holding more than 50% gives one majority ownership.

Ownership rights are traded on stock exchanges and include both financial rights (claims on residual income through dividends, or capital gains if there are retained earnings) and control rights (the ability to vote in company elections, help elect company directors, etc.). In an influential statement, Berle and Means(9) argued that companies widely traded on stock exchanges are a new type of property, where ownership and control have been separated from each other. The company's shareholders have formal ownership rights, but the actual control of the company is in the hands of the company's top management. Therefore, the role of commissioners as a filter in monitoring company management is very necessary.

Closed companies must adapt to such corporate governance. BPRs that want to enter the growth company cycle are learning to offer their shares for purchase by outsiders. The aim is to strengthen capital. Consequently, when referring to the principle of share ownership in companies recognizing the term one right one vote, there is a change in voting based on the number of shares owned. Majority shareholders have voting rights and influence in running the company.

BPRs, whose ownership is still in private companies, must transform to share ownership with outsiders in running the company. With the entry of public investors, founding shareholders no longer own the company with 100% ownership and must share votes in general meetings of shareholders.

3. Capital fulfillment

The capital requirement in POJK BPR requires a maximum of the net equity capital of the legal entity concerned and does not exceed the amount determined for legal entities in accordance with laws and regulations and is realized in the form of deposits. The capital requirement must be stated in the articles of association of the BPR. The requirement for BPRs to enter the capital market is set by POJK BPR at Rp. 80 billion.

According to Stiebe(10), microfinance institutions are required to do so because MFI issuers are regulated entities (i.e., subject to bank regulations in their country standards), the company must maintain a minimum level of reserve capital (also called “risk-weighted capital”) to support its loan portfolio. Some countries require MFI regulations to hold more risk-weighted capital than local banks, as microfinance loan portfolios are seen as more volatile.

The fulfillment of core capital is also intended to increase assets so that BPRs can be listed on the stock exchange. The organization of buying and selling on the stock exchange has a listing board mechanism. The listing market on the stock exchange consists of (a) Main Board; (b) Development Board or Acceleration Board of the Indonesia Stock Exchange. The accelerated board is a listing board provided to list shares of issuers with small-scale assets or issuers with medium-scale assets. The requirements to be included in the accelerated board must fulfill several things, including: (a) Operational period (booked business income) since its establishment; (b) Business profit is allowed to experience losses with a maximum projection of the 6th year to have a business profit; (c) Financial statements for at least the last 1 year or since its establishment have received a fair opinion without modification; (d) Does not require the amount of net tangible assets, but the amount of business profit and business income follows POJK no. 53 / POJK.04 / 2017; (e) The number of shares listed on the accelerated board must be at least 1 year. /2017; (f) The number of shares offered to the public is 20%; (g) The number of shareholders in the offering is more than or equal to 300 people; (h) The initial share price is more than or equal to Rp. 50; and (i) The form of guarantee is best effort.

Issuers with small and medium-sized assets can be listed if they meet the above requirements. The reality is that it is still difficult to get there. The government is still encouraging BPRs to merge and consolidate(11). The requirement to offer a minimum of 20% of shares to the public may increase capitalization, but it may also result in a decrease in share ownership in the BPR. The requirement for shareholders in the offering to be more than or equal to 300 people may also affect corporate governance. BPR/BPRS must have a good portfolio to be attractive to investors. This is very new for BPR/BPRS that are going public. The process of underwriting the shares to be offered by the guarantor uses best effort where if the shares are not sold, they will be returned to the issuer.

B. BPR Innovations Enter The Capital Market

The emergence of non-bank financial organizations as formidable rivals has increased competition among banks, forcing them to modify their strategies through innovations to stay ahead in the changing banking environment, including BPRs. These changes have led to the adoption of banking governance practices. One factor contributing to this need is financial liberalization(1).

Financial liberalization must be balanced with legal protection for parties vulnerable to such liberalization. Corporate governance is one approach to legal protection. The activities of business actors are regulated by the principles of corporate governance. This means balancing the position of weak parties against strong parties. Corporate governance is a set of rules, practices and processes used to direct and control an organization. The board of directors is the main force that determines corporate governance.

1) Improvement of corporate governance from Closed to Public LLC in BPRs

The change from a closed to a public company must go through several processes. The process from a closed to a public company requires several things that must be considered, including:

a. Select the entities to list

The company that will become a public company is indeed a strong entity or not before going forward in the capital market. This can be known from the fundamental value of the company. Company fundamentals are the internal state of the company or the state of financial performance that is very important in a company. Firm value is an understanding for investors to see how successful the company is in its financial performance(12). The fundamental value of the company in a legal context refers to the aspects underlying the existence and operation of the company, which are regulated by relevant laws and regulations. Corporate governance is measured through board size, directors, board independence, audit committee meetings, and CEO duality, while firm characteristics are measured through firm size, firm age, year of incorporation, and year of listing(13).

The transition from a closed to a public company requires asset, personnel, financial and institutional independence. This is done so that running the company can reduce cases of fraudulent transactions in the company and unnecessary horizontal competition so that the sustainability of the company is maintained. Strengthening related to finance must also be done. This is in addition to sustainable and stable profitability, the company must have strong internal control regulations. Related party transactions should be conducted fairly and correctly, and profit manipulation should be prohibited. Financial statements are the result of an accounting process that can be used by company management as a tool to

communicate with parties outside the company about the financial data or activities of the company during a certain period, it can also be called a picture of a company(14). Accounting information that has high integrity is reliable because it is an honest presentation that allows users of accounting information to rely on this information. The information has the ability to influence the decisions of users of financial statements to help make decisions(14).

b. Reorganization and legalization of financial statements

In the early stages when a new company is established, as a result of hiring an external accounting firm due to cost considerations and tax mitigation schemes, there is often a discrepancy between the publicly disclosed reports and the financial statements documenting actual operations, a practice called “double book keeping.” The internal book is also called the “financial book” which is created so that the company's management can understand the company's actual financial situation, while the external book is called the “tax book” which is created for tax filings with the purpose of keeping things legal.

From a regulatory point of view, the company will panic every time before being audited by the tax authorities, or in worse cases, the company will be subject to legal or administrative sanctions as the practice of keeping two sets of books comes to light. In addition, other potential investors may lose confidence due to the confusion caused by the two sets of books. All sorts of disadvantages mentioned above will definitely hinder the further development of the company.

The capital market adheres to the principle of full disclosure. Every activity of the company is disclosed including in the financial statements. Regulations related to the disclosure of material information or facts by issuers or public companies are regulated in POJK No. 31/POJK.04/2015. Material information or facts are important and relevant information or facts regarding events, occurrences, or facts that may affect the price of securities on the stock exchange and/or the decisions of investors, prospective investors, or other parties with an interest in such information or facts.

Article 3 of POJK Material Facts states that issuers are required to submit information reports or material facts to OJK and make announcements of information or material facts to the public. This rule must be fulfilled by every issuer. The existence of these requirements indirectly regulates that Closed to

Public PTs must prepare to fulfill these rules before entering the capital market. This is because if it does not meet these requirements, OJK will impose sanctions in the form of administrative sanctions and fines (article 9 POJK Material Facts).

The preparation of incorrect financial statements can also be subject to criminal sanctions. The regulation is regulated in the new Criminal Code (Law No. 1 of 2023). Article 508 of the new Criminal Code stipulates that entrepreneurs, managers, or commissioners of corporations who announce the balance sheet incorrectly can be sentenced to imprisonment of 1 year and 6 months or a maximum fine of category III.

c. Establishment of an internal control and management system

In the management process, through the design and implementation of the internal control system, enterprises can better manage and strengthen the security of corporate assets, improve the efficient utilization of resources, and ensure the reliability and completeness of financial information. Internal control can prevent corruption and increase benefits. The scope of internal control should not be limited to accounting and finance. The determination of the new position assignment requires a series of clear and detailed definitions of job content, authority and responsibility. In addition, an anonymous reporting channel should be established to reduce cases of abuse of power and improper violations in management, to ensure that the internal control system can involve all departments and employees, and has collective compliance and proper implementation.

d. Enhanced corporate governance institutions and introduced independent directors

The purpose of corporate governance is to help build the environment of trust, transparency and accountability necessary to encourage long-term investment, financial stability and business integrity, thereby supporting stronger growth and a more inclusive society. The principles of corporate governance can be found in the G20/OECD Principles of Corporate Governance. The OECD regulates 6 (six) principles namely (1) Ensuring the basis for an effective corporate governance framework; (2) Rights and fair treatment of shareholders and major ownership functions; (3) Institutional investors, stock markets, and other intermediaries; (4) Role of stakeholders; (5) Disclosure and transparency; and (6) Board responsibilities. Closed to Public PTs in their move to the capital market to

realize that the company is eligible to enter the capital market is to fulfill the requirements set by the OECD.

The characteristics of family-owned Closed LLCs and major shareholders in practice tend to take simultaneous control of several related companies. The majority of board members are dominated by the same family with no representation from non-family board members and small shareholders. Board decisions in such positions will tend to favor family or individual interests resulting in corporate governance dysfunction. The role of independent directors in such conditions is indispensable. However, the success of the independent director system cannot depend solely on the independent directors themselves. Both the chairman of the board of directors and the management team must open their hearts and abandon the adversarial mindset that only makes independent directors a conduit for unwanted and excessive disputes. They should be more willing to accept governance and oversight and listen to different opinions, so as to let other voices in.

2) Share ownership arrangements that still allow shareholders to be held by families

   Closed family-owned LLCs in realizing sustainable development need to make early plans and ensure their successful implementation for issues such as succession and corporate transformation. Meanwhile, how to concentrate shares in the hands of family members to avoid losing the company due to ownership dispersion is also a major issue in the succession of family companies. There are several ways in which such ownership can be retained and yet be included as a publicly listed company in the capital market. This can also be applied by BPRs. These solutions include

   a. Create holding companies and subsidiaries with certain ownership composition

      Holding companies and subsidiaries basically follow the UUPT and Permenkumham No. 21 of 2021. According to Munir Fuady in Renata Christy Aulia(15), a holding company is a company that aims to own shares in one or more other companies and/or manage one or more of these other companies. The definition of subsidiary cannot be found in the current law but can be seen in the old UUPT, namely Law No. 1 of 1995. According to Article 29 of the old UUPT, a subsidiary is a company that has a special relationship with another company that occurs because: a. more than 50% (fifty percent) of its shares are owned by its parent company; b. more than 50% (fifty percent) of the votes in the GMS are

controlled by its parent company; and or; c. control over the running of the company, appointment, and dismissal of Directors and Commissioners is strongly influenced by its parent company.

The relationship between parent companies and subsidiaries has a degree of control. According to Sulistiowati in Renata Christy Aulia(15), in general, the degree of control can be divided into two, namely domination and influence. The degree of control as an influence shows that the parent company influences the strategic policies of the subsidiary, so that the subsidiary has the independence to carry out the day-to-day management of the company. The degree of control as the parent's dominance over the subsidiary, is when the parent company gives instructions that must be carried out by the subsidiary, causing all management of the subsidiary to be aimed at the interests of the group company. In this condition, the subsidiary is less independent or even loses its independence when the parent company dominates the management of the subsidiary because it only becomes an instrument or shadow of the parent company. In theory, the degree of control gives the parent company a central position in the company's decision-making structure. Thus, the parent company has the right to supervise and give instructions to subsidiaries in carrying out work.

Closed LLCs in BPR that wish to keep ownership in the hands of the family can implement the establishment of a parent company and subsidiaries. The parent company with Closed LLC status has a subsidiary with Open LLC status. This type of shareholding can be used to organize shareholding in a more structured and controlled manner. The parent company (Closed LLC) holds most or all of the shares of the subsidiary (Open LLC). Closed PTs do not sell their shares to the public, therefore the owners or shareholders in Closed LLCs can directly control policy, management, and strategic decisions without interference from public shareholders. A Public LLC, i.e. a subsidiary, still has to comply with all the requirements of a public company regulated by the OJK, including public financial reporting, corporate governance, and information disclosure.

According to Karsten Engsig Sørensen(16), the parent company in its relationship with its subsidiaries should carry out information gathering and group supervision. The parent company must collect information about its subsidiaries. First, the preparation of consolidated financial statements requires the parent

company to know which subsidiaries to include and to obtain information on the financial performance of these subsidiaries. The consolidated management report should include certain non-financial information, including information on the key features of the internal control and risk management systems for the companies included in the consolidation as a whole.

Group supervision is done considering that subsidiaries are important to the parent company. A subsidiary that does not perform optimally impacts the value of the shareholding in the subsidiary and will ultimately also impact the parent company's profits. The articles of association will stipulate that the parent company's objective is to hold a controlling stake in the subsidiary. Acceptance of this group as a business model may indicate that management should oversee the subsidiary.

Controlling shareholders can be found in POJK No. 23 /POJK.04/2021. Article 1 point 24 of this POJK defines controlling shareholders (PSP) as legal entities, individuals, and/or business groups that own shares or are equivalent to shares of financial services institutions and have the ability to exercise control over financial services institutions.

b. Implementing double-share class procurement

Shares in article 52 of the Company Law give the owner the right to (a) attend and vote in the GMS, (b) receive dividend payments and the remaining assets from liquidation, and (c) exercise other rights under the Company Law. The classification of shares regulated in the Company Law can be seen in Article 53 paragraph (4) of the Company Law. The classifications of shares referred to are (1) Shares with voting rights or without voting rights; (2) Shares with special rights to nominate members of the board of directors and/or members of the board of commissioners; (3) Shares that after a certain period of time are withdrawn or exchanged for other classifications of shares; (4) Shares that give the holder the right to receive dividends in advance of other classifications of shareholders on the distribution of dividends cumulatively or non-cumulatively; (5) Shares that give the holder the right to receive in advance of other classifications of shareholders the distribution of the remaining assets of the company in liquidation.

Companies in maintaining their ownership can implement dual share class procurement. Multiple share classes in POJK No. 22 /POJK.04/2021 Regarding the

Application of Share Classification with Multiple Voting Rights by Issuers with Innovation and High Growth Rates Conducting Public Offerings of Equity Securities in the Form of Shares are also known as "Shares with Multiple Voting Rights". According to this POJK, shares with multiple voting rights are a share classification in which 1 (one) share grants more than 1 (one) voting rights to shareholders who meet the requirements.

According to Guera Martinez(17), the existence of dual class shares in the world is a controversial issue. The implementation of dual class shares is on the one hand beneficial and on the other hand detrimental. On the beneficial side, the company going public with dual class shares means that the entrepreneurs will not face the fear of losing control, the founders will have the opportunity to raise more funds not only because of the money raised at the IPO stage but also afterwards. Due to the funds raised at the IPO, they will be in a better position to expand their business, which in turn contributes to creating jobs and wealth. In addition, the use of dual class shares can protect the company from shareholder activists. This allows founders and directors to focus on their long-term projects. The hope is to encourage innovation, research and sustainable growth. On the other hand, the use of dual-class shares has the disadvantage that the existence of dual-class shares may increase agency costs between insiders (i.e., directors, managers, and controlling shareholders) and outsiders (especially minority investors). On the one hand, dual-class shares allow managers and controllers to move freely and hence be insulated from the market for corporate control but if the exercise of dual-class shares continues, there is disproportionate control after the IPO. As a result of the disproportionality, there were calls for the termination and conversion of dual class shares into single shares within a certain period of time(17).

The implementation of dual class shares has led some countries in their jurisdiction to adopt a regulatory approach to regulate. There are three main models to deal with dual-class share structures, namely (1) the traditional application of prohibition, (2) the permissive model that allows dual-class structures without significant restrictions, and (3) the restrictive approach(17). Countries that regulate the prohibition of dual-class shares in IPOs argue that the use of dual-class shares may give rise to moral hazard issues as a result of the existence of small minority controllers. In addition, the prohibition of dual-class shares in certain countries may

be based on the concept of equality among shareholders under the one-share, one-vote principle. Countries that apply the permissive method reason that the exercise of dual-class shares is permissible for three reasons: (a) legal reasons mainly related to the existence of more flexible corporate laws, (b) the influence of certain lobbies, and (c) some economic factors, including the benefits potentially created by the continued running of the company by the founders, the ability of the market to incentivize an optimal governance structure at the IPO stage, and the desire to attract IPOs in a competitive regulatory environment. Countries that follow this model are the United States, Sweden and the Netherlands. The third model is the restrictive approach. This approach is an intermediate approach. Companies can go public with dual class shares provided some conditions are met. The requirements generally imposed on companies wishing to go public with dual class shares can be classified into five main groups, namely (a) stricter corporate governance rules, (b) sunset clauses, (c) maximum differential voting rights, (d) types of companies allowed to go public with dual-class shares, and (e) approval by stock exchanges.

Indonesia in the POJK Implementation of share classification adopts a restrictive regulatory model. There are several articles that adopt sunset clauses and maximum differential voting rights, namely articles 5, 6 paragraph (3), 10, and article 14. Article 5 POJK Implementation of Share Classification stipulates that the application of shares with multiple voting rights can take place for a maximum period of 10 (ten) years from the effective date of the Registration Statement in the context of a Public Offering and an extension of another 10 years by obtaining approval from the GMS in advance. Article 6 paragraph (3) adopts an event-based sunset clause. Dual shares cannot apply if a person dies or is put under guardianship. Article 10 regulates the ratio of the voting rights of Multiple Voting Shares to the voting rights of ordinary shares. This article applies the principle of maximum differential voting rights. Article 14 POJK Implementation of Share Classification regulates the expiration of multiple voting shares into ordinary shares if they fulfill the event-based sunset clause, among others: (a) the holder of the Multiple Voting Shares dies or is placed under guardianship and within a maximum period of 6 (six) months is not transferred to another holder of the Multiple Voting Shares or a party that has been designated as a party that can own the Multiple Voting Shares, (b) the holder of the Multiple Voting Shares transfers

its shares to a party other than a party that has been designated as a party that can own the Multiple Voting Shares, as disclosed in the prospectus in the Public Offering, (c) the holders of Multiple Voting Shares, either individually or collectively, have voting rights of not more than 50% (fifty percent) of the total voting rights and such condition has lasted for at least 6 (six) months since the voting rights of the holders of Multiple Voting Shares are not more than 50% (fifty percent) of the total voting rights, (d) the expiration of the term of the Multiple Voting Shares, (e) the holder of the Multiple Voting Shares who is a legal entity no longer fulfills the requirements as referred to in Article 12 paragraph (6) or paragraph (7), and (f) the holder of the Multiple Voting Shares as referred to in Article 12 paragraph (5) letter b no longer serves as a member of the board of directors of the Issuer or can no longer perform his duties as a member of the board of directors of the Issuer based on the determination of the relevant agencies including the OJK. In addition, the implementation of dual-class shares also requires optimizing minority supervision through the media. According to Shouyu Yao(18), et.all. that under the rapid development of internet technology and the prosperity of social media, minority shareholders can exert pressure on corporate management through their influence on groups that have greater bargaining and monitoring power. Although their online voices are unlikely to directly influence corporate decisions, they can attract the attention of the media and analysts, who have significant influence power over corporate decisions and tend to respond favorably to the demands of minority investors.

3) BPR in the form of open LLC can trade shares on OTC before it is ready to enter the stock exchange listed on the capital market.

The fulfillment of capital that cannot be met by BPRs to enter the capital market can be done by trading in the Over The Counter (OTC) market. This market operates differently from a typical stock exchange. A large number of securities, including government, municipal and corporate bonds, asset-backed securities and various types of derivatives are traded in the OTC market(19). These markets are decentralized networks where financial instruments including stocks, bonds, and derivatives, are traded directly between two parties without the oversight of a formal exchange. They are particularly important for smaller companies that may not meet the requirements to be listed on a major exchange, as well as for trading certain types

of securities that are not listed on regular exchanges. The OTC market is considered part of the broader capital market structure, which specifically falls under the category of alternative trading systems. Unlike primary or secondary markets where securities are initially offered or traded on an organized exchange. OTC markets provide a more flexible environment for trading. These markets allow for customized transactions and can accommodate a wide variety of securities that may not fit the standard criteria of larger exchanges. Traditionally, in the search for theory, OTC markets have rationalized this as a consequence of random encounters and ex post bargaining among investors. Miroslav Gabrovski's research(19) shows that a feature of OTC is intermediation, where trades are brokered by dealers who buy from and sell to customers and other dealers.

OTC markets still exist in Indonesia. Some noteworthy characteristics of OTC markets are that they are less organized than official stock exchanges, which means there is less public information available about the companies or assets being traded. This can make it difficult for investors to conduct proper analysis before investing. According to Mariano Joaquin Palleja(20), the OTC mechanism is twofold: first by trading with customers using their own inventory, (doing principal trading) and second, by matching customers with offsetting liquidity needs, i.e. by doing agency trading. These two trading mechanisms, principal and agency, represent for customers a speed-cost tradeoff. Principal trading is straightforward but given the implied inventory costs, it is also costly.

Prevention of the weak points of the OTC market by the government is minimized through POJK No. 22 /POJK.04/2017 concerning securities reporting as a controller. Article 2 Securities Transaction Reporting regulates that each Party may conduct Securities Transactions in the secondary market, both on the Stock Exchange and outside the Stock Exchange. OTC is a trading place that is outside the stock exchange, so it must also comply with this. Article 7 Securities Transaction Reporting stipulates that every party conducting securities transaction is obliged to submit a report on every Securities Transaction conducted to the Financial Services Authority through the Securities Transaction Report Receiver (PLTE). If you do not comply with this, OJK will impose administrative sanctions.

Indirectly, although the OTC market is a little risky, it can still be used by private companies to carry out transactions in increasing their capital until they are

able to enter the listing of shares on the stock exchange gradually through the accelerated board.

5. CONCLUSION

BPRs that are still in a closed LLC experience several challenges in entering the capital market, including (1) Changes from a closed LLC to a public one. Various adjustments need to be made to transform the company from the number of shareholders to the preparation of financial statements; (2) Changes in share ownership that can determine company policy. BPR in this case must transform to share ownership with outsiders in running the company; and (3) Fulfillment of capital. BPR capital in entering the stock exchange must fulfill a large nominal. The innovations that can be done so that BPRs enter the capital market are: (1) Improving corporate governance from Closed to Open LLC, namely (a) Selecting the entity to be listed whether it is a strong entity or not by looking at the fundamental value of the company, (b) Reorganizing and legalizing financial statements, (c) Establishing an internal control and management system, (d) Improving corporate governance and introducing independent directors; (2) Share ownership arrangements that still open up opportunities for shareholders to be held by families can be carried out by BPRs by creating holding companies and subsidiaries with certain ownership positions and implementing dual share class procurement; and (3) BPRs that are not yet eligible to enter the stock exchange can enter the OTC market by carrying out reporting obligations for each securities transaction.

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