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Civil Liability of Open Companies that Participate in Tax Amnesty Program against the Investors

Anang Saifudin Junaidi^{1*}, Murry Darmoko Moersidin²
¹s.annanx@gmail.com, ²murry@ubhara.ac.id
Universitas Bhayangkara Surabaya

*Corresponding Author: Anang Saifudin Junaidi
Email: s.annanx@gmail.com

ABSTRACT

The number of online financial service platforms in Indonesia is increasing every year. However, many illegal platforms operate without registration under the Financial Services Authority. This rise is driven by several factors, including the ease of creating online loan service applications, uneven access to bank financing, and the rapid acceleration of digitalization—particularly in online loan platforms—without adequate public knowledge and literacy. Additionally, the administration of online loan services is often too easily accessible. Law enforcement and dispute resolution for illegal online financial services have yet to fully uphold the principles of legal protection and fairness for borrowers registered under Financial Services Authority regulations.

Keywords: *Capital Market, Public Company, Tax Amnesty*

INTRODUCTION

The stock market, or stock exchange, serves as a liaison between investors and companies or government agencies, holding a strategic and important position in national economic development. The stock exchange facilitates activities related to stock and securities trading. In this system, a publicly listed company (Tbk) issues stocks that can be freely traded and purchased by both individual and corporate investors. Many domestic and foreign investors invest their funds in the stock exchange because it is open, secure, and supervised by the Financial Services Authority (OJK), a government agency.

Activities related to the capital market in Indonesia are regulated in detail under Law No. 8/1995 concerning the capital market (UUPM). The stock market plays a crucial role in national economic development by serving as an alternative source of financing and investment for both businesses and society. The capital market aims to support national development by enhancing equity, growth, and economic stability, ultimately improving public welfare. Its role in the global economy is also significant, particularly in relation to capital flow and Indonesia's economic growth. Given the substantial funding and investment required for economic growth, Indonesia must compete in regional and global markets. The primary function of the capital market is to accommodate investment funds from local and foreign investors and channel them to issuers for business expansion in the real sector. Investment funds are obtained through capital market trading activities, involving investment instruments such as stocks, bonds, and derivatives (e.g., rights issues, warrants, options).¹

To achieve these objectives, the capital market serves as a strategic financing source for businesses, including small and medium enterprises, while also providing an investment platform for the community.² This dual function allows entrepreneurs and the public to collaborate in fostering economic stability.³ In principle, public funds collected in the stock market are mobilized and distributed productively, effectively, and efficiently. People are encouraged to invest in the stock market for long-term benefits, thereby strengthening Indonesia's economy alongside capital market growth. Consequently, the government encourages individuals with excess funds to invest through the stock market.

Companies listed on the Indonesian stock exchange are publicly owned and must adhere to principles of transparency and accountability in legal, taxation,

¹ Ang Swat Lin Lindawati and Tiffany Roselin, "The Risk Phenomenon of Investing in Capital Market (Individual Broker Perception)," *Journal of Economics, Business, and Accountancy / Ventura* 16, no. 2 (July 28, 2013): 237,

[https://journal.perbanas.ac.id/index.php?journal=jebav&page=article&op=view&path\[\]=182](https://journal.perbanas.ac.id/index.php?journal=jebav&page=article&op=view&path[]=182).

² C.S.T Kansil dan Christine S.T. Kansil, *Pokok-Pokok Hukum Pasar Modal* (Jakarta: Pustaka Sinar Harapan, 2002).

³ Farah Gitty Devianty, Widjajani, and E Dwipriyoko, "General Review on Crimes in the Capital Market Sector," 2021, <https://www.atlantis-press.com/article/125953788>.

financial, and managerial matters. Capital market law recognizes the principle of openness, which serves as the foundation for market participants to engage in rational capital market activities. This principle ensures investor protection by mandating that all information regarding the capital market be accurate and material.

Material information or facts can influence stock prices on the exchange, investor decisions, and market movements. According to Article 1, Number 7 of Law No. 8/1995, such information must be accurate and complete, reflecting the actual condition of the entity. A lack of credibility among issuers or securities companies that provide incorrect material information can lead to investor distrust.

In 2019, the Indonesian government issued Law No. 11/2016 regarding Tax Amnesty, enacted on June 28, 2016. This law abolished tax obligations that should have been paid and exempted taxpayers from administrative and criminal sanctions, provided they disclosed assets and paid the Redemption Money. The Tax Amnesty program lasted for ten months, from July 2016 to April 2017, across Indonesia. It aimed to increase state revenue by encouraging the declaration of previously undeclared assets.⁴

Tax Amnesty applies to individuals or entities that had not reported their assets, such as land, livestock, deposits, vehicles, and savings, in their annual tax returns. Even those without a Taxpayer Identification Number (TIN) could participate. The program offered benefits such as the elimination of principal taxes (e.g., Income Tax/PPH, VAT, and Luxury Goods Sales Tax/PPnBM) and the waiving of administrative and criminal sanctions. It also provided legal certainty by ensuring that taxpayers utilizing the program would not be subject to audits on previously unreported assets.

Subjects eligible for Tax Amnesty, including individuals and business entities, were those who had not reported their assets in the 2015 Annual Income Tax Return. Companies failing to disclose material facts in their accountability reports compromised transparency, deviating from capital market principles of openness, accuracy, and completeness. These principles are crucial for investors making transactions in the capital market.

Finance Minister Sri Mulyani revealed that 171 publicly listed companies participated in the Tax Amnesty program, as reported at the CEO Forum event at JCC Senayan Jakarta on November 24, 2016. The authors aim to analyze the impact of this program on stock investors in the capital market as shareholders. By recognizing additional hidden assets through Tax Amnesty, companies saw an increase in assets and equity. However, investors who had received dividends before the disclosure of these assets might have been underpaid. This research

⁴ Marko S Hermawan et al., "Understanding Tax Amnesty and Tax Compliance in Indonesia: An Institutional Approach," *Journal of Economics, Business, & Accountancy Ventura* 22, no. 3 (March 31, 2020), <https://journal.perbanas.ac.id/index.php/jebav/article/view/1810>.

seeks to examine the characteristics and legal framework governing public companies utilizing the Tax Amnesty program and assess their civil liability under this scheme.

RESEARCH METHODOLOGY

This research employs a normative legal research model, meaning it focuses solely on examining regulations and other legal materials. Normative legal research involves studying the law as an object while excluding any non-legal materials from its scope.⁵ This approach ensures a comprehensive analysis of the legal framework without external influences. In this study, the primary legal sources include the Tax Amnesty Act, the Limited Liability Company Law, the Capital Market Law, and their respective derivative regulations. These legal instruments will serve as the foundation for analyzing the relevant legal principles and their application.

RESULT AND DISCUSSION

Civil Liability of Public Companies Which Acquire the Benefit of Tax Amnesty Program

Article 1365 of the Civil Code states that "Every act that violates the law and causes harm to others obliges the person responsible for the loss to provide compensation." Regarding liability, the unlawful acts mentioned in this article are classified into three categories: acts against the law due to intentional misconduct, acts against the law due to negligence, and unlawful acts without fault.

In Indonesia, 171 public companies participated in the Tax Amnesty Program by disclosing previously unreported assets through an Asset Declaration Letter and paying the Redemption Money. The unreported company asset data indicates that liability reports presented by these companies are inaccurate and do not align with material facts. This is particularly relevant to capital market law, which upholds the principles of transparency, accuracy, and completeness in representing a company's true condition—an essential consideration for investors in capital market transactions.

Recognizing additional company assets through tax amnesty has implications for increasing company assets and equity, potentially leading to a rise in share prices. Consequently, investors who sell stocks before the disclosure of additional assets may miss out on potential price increases and stock dividends, which are based on a company's equity. If dividends are distributed before the disclosure, there is a risk of underpayment to shareholders.

⁵ Theresia Anita Christiani, "Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object," *Procedia - Social and Behavioral Sciences* 219 (May 2016): 201–207, <https://linkinghub.elsevier.com/retrieve/pii/S1877042816300660>.

The Tax Amnesty Law does not specifically address potential investor losses, focusing only on the rights and obligations between the government and the individuals or entities participating in the program. Ideally, regulations should minimize such risks. A study on liability is necessary to address these issues, ensuring accountability from public companies that utilize tax amnesty toward their investors. Given the legal relationship formed when investors purchase company shares, this research explores the forms of civil liability that public companies should uphold, considering aspects of limited liability law, capital markets, and consumer protection regulations.

The Responsibility of Persero Tbk Listed on Indonesia Stock Exchange in Legal Perspective of Limited Liability Companies and Capital Markets

Accountability originates from the concept of responsibility. According to the Big Indonesian Dictionary (KBBI), responsibility refers to the state of being obliged to bear the consequences of one's actions, including being subject to blame, legal claims, or other repercussions. Responsibility can also be interpreted as the outcome of actions taken by an individual, whether in relation to ethics, morals, or legal institutions.⁶ According to Titik Triwulan, accountability must have a basis or justification that grants a person the legal right to assume responsibility. Hans Kelsen further explains the concept of responsibility by stating that “a person is legally responsible for a certain act, or that they bear legal responsibility, meaning they are subject to sanctions in cases of contradictory actions.” More specifically, Martono categorizes responsibility into three forms: accountability, responsibility, and liability. Accountability refers to responsibility based on trust. For example, an employee must be accountable for their financial reports. Responsibility in the context of public law applies to obligations such as those of criminal offenders, who must be responsible for their actions. Liability refers to civil responsibility, commonly understood as accountability, which entails the obligation to compensate for losses suffered by a victim.⁷

Peter Mahmud Marzuki further elaborates on liability, defining it as accountability (*aansprakelijkheid*), which is a specific form of responsibility. Liability refers to the position of an individual or legal entity that is required to provide compensation following a legal event or action. Responsibility is also synonymous with liability in the realm of private law, typically arising when one party suffers harm due to the legal actions of another.⁸ Article 1365 of the Criminal Code reinforces this by stating that “any unlawful act that causes harm to another person obliges the perpetrator to compensate for the loss.” In the context of Limited Liability Company Law, if financial statements fail to reflect the actual financial condition, the Directors and Commissioners can be held

⁶ Hamzah. Andi, *Pemberantasan Korupsi Melalui Hukum Pidana Nasional Dan Internasional* (Jakarta: PT. Raja Grafindo Persada, 2005).

⁷ Martono, *Kamus Hukum Dan Regulasi Penerbangan* (Jakarta: Raja Grafindo Persada, 2007).

⁸ Peter Mahmud Marzuki, *Penelitian Hukum*, Cet 13. (Jakarta: Kencana, 2017).

jointly and severally responsible for any resulting losses. However, they may be exempted from responsibility if they can prove their innocence. Consequently, investors who suffer losses due to misleading financial statements in a public company have the right to file a civil lawsuit. If an error in the financial report is proven, the responsibility falls upon the Directors and Commissioners.

Capital Market Law No. 8/1995 explicitly provides legal sanctions in the form of administrative, criminal, and civil penalties for violations of the principle of transparency. However, when this issue is linked to Article 20 of the Tax Amnesty Law, which states that “data and information obtained from the Declaration Letter and its attachments, as managed by the Ministry of Finance or other relevant parties in the implementation of the Tax Amnesty Law, cannot be used as a basis for investigation, inspection, and/or criminal prosecution against taxpayers,” administrative and criminal sanctions become null and void. Consequently, stock investors can only file civil lawsuits in such cases.

The Responsibilities of Persero Tbk Listed on the Indonesia Stock Exchange from a Legal Perspective on Consumer Protection

Consumer protection has a very broad scope, as it includes protection against all losses resulting from the use of goods and services. Since consumers are considered the weaker party in Indonesia, regulations on consumer protection have been issued to safeguard their rights. Article 1, Paragraph (2) of Law No. 8/1999 concerning Consumer Protection states: "Consumers are every person who uses goods and/or services available in society, both for their own benefit, their families, other people, and other living beings, and not for trading purposes." The word "consumer" originates from the English term "consumer" or the Dutch term "consumer/consument." In Dutch, legal experts typically interpret "consumer" as the end user (*uiteindelijk gebruiker van goederen en diensten*) of goods and services provided by entrepreneurs (*ondernemer*). Literally, a consumer refers to any person who uses a commodity, as opposed to a producer. The purpose of using a product or service determines the type of consumer a user is.

An investor who buys shares of a Persero Tbk listed on the IDX can be categorized as a consumer who utilizes the goods provided by the company. This is because their relationship is based on a buying and selling transaction governed by the Civil Code and KUHD. To determine whether stock investors can be equated with consumers, it is necessary to compare consumer elements with the understanding of stock investors. Any user of goods and services can be an individual or a business entity. Since stocks can be categorized as goods, stock investors can be considered goods users. The Consumer Protection Law (UUPK) emphasizes that consumers are final consumers. This means that consumers do not necessarily have to pay money to acquire goods and services. In other words, the legal relationship between consumers and business actors does not need to be contractual. Stock investors are the final users of goods and services on the

Indonesia Stock Exchange, even though transactions are conducted online. Consumers use goods and services for themselves, their families, other people, or other living beings. This broadens the concept of interest, which extends beyond personal or family use to include others and even animals and plants. From this perspective, every human action is part of their interests. Goods and services offered to the public must exist in the market (see also Article 9(1)(e) of the Consumer Protection Act). However, in today's complex trade environment, this requirement is not always absolute. For example, a housing developer may sell units before construction begins, similar to shares that are already available on the Indonesia Stock Exchange. Therefore, the buying and selling of shares is a transaction that exists in society.

Based on the consumer elements outlined above, stock investors can be categorized as consumers. The government facilitates transactions through the Indonesia Stock Exchange, while the producer is Persero Tbk. The relationship between consumers and business actors in Indonesia is regulated by Law Number 8 of 1999 concerning Consumer Protection. Article 4 of the UUPK states that consumers have the following rights: the right to satisfaction, safety, and security in using goods or services; the right to obtain goods or services at a fair exchange rate, along with proper conditions and guarantees; the right to receive valid, clear, and honest information regarding the conditions and guarantees of goods and services; the right to provide feedback and complaints about used goods and services; the right to advocacy, protection, and appropriate measures to resolve consumer protection disputes; the right to consumer education; the right to receive proper, honest, and non-discriminatory treatment or service; the right to compensation or replacement when goods or services do not meet the agreed terms; and the right to other protections as determined by applicable laws and regulations.

If business actors commit violations in financial reporting when selling stocks, they are obligated to compensate for any losses incurred due to the use or acquisition of the traded goods and/or services, as regulated in Article 7 of Law No. 8/1999 concerning Consumer Protection. From the explanation above, investors can be classified as consumers, as they are the final consumers. This classification aligns with the protection objectives of the UUPK, ensuring that compensation follows existing laws and regulations, thereby holding business actors accountable for all losses claimed by consumers.

CONCLUSION AND SUGGESTION

Conclusion

The subject of the Tax Amnesty Act is every taxpayer. Taxpayers include individuals or entities with tax rights and obligations under taxation laws and regulations. There is no distinction in the rules between individuals and entities participating in tax amnesty programs.

Corporate taxpayers, especially public companies, face more complex issues since their shares are owned by the general public. When a public company participates in a tax amnesty program, it may be subject to civil liability. According to Article 1365 of the Criminal Code, any unlawful act that causes harm to another person obliges the responsible party to compensate for the loss.

This also applies to limited liability companies. If their financial statements are misleading, the directors and supervisory board bear joint responsibility for any resulting harm. Under the Capital Market Law and Legal Perspectives on Capital Market (SK No. 8/1995), violations of disclosure principles can lead to administrative, criminal, and civil sanctions. Additionally, violations of consumer protection laws by business actors require them to provide compensation. Article 7 of Law Number 8 on Consumer Protection mandates compensation for losses caused by the use of traded goods or services.

Suggestion

The Tax Amnesty Program aims to increase national revenue, but the government must draft laws carefully, prioritizing legal certainty to minimize conflicts between the Tax Amnesty Law, Capital Market Law, and Limited Liability Company Law.

The government should include special provisions in the Tax Amnesty Law for public company taxpayers participating in the program, as it involves three parties: the government, taxpayers, and stock investors. When issues arise that may cause losses to stock investors, the public should have clarity on the form of accountability. This ensures that the rights and obligations of all parties involved are well protected.

Public companies participating in the Tax Amnesty Program must calculate and reserve stock investors' rights for underpaid dividends resulting from unreported company assets in financial statements. Additionally, investors who own shares in public companies benefiting from the Tax Amnesty Program and believe their rights have been impaired due to underpaid dividends can file a civil lawsuit in district court.

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