



***INVESTORS' LEGAL PROTECTION AGAINST WINDOWS DRESSING
IS REVIEWED FROM CAPITAL MARKET LAWS AND GOOD
CORPORATE GOVERNANCE***

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ABSTRAK

The capital market is a source of corporate funds through initial public offerings to investors. Although it offers benefits, companies must comply with regulations and good governance. Some companies use "windows dressing" on financial statements for a positive image, but this is risky for investors and violates the principles of good corporate governance. The method used is normative juridical, which means that the research is carried out by examining various laws and regulations that are available and applicable in Indonesia. the result of this research is that it can be said that windows dressing is contrary to the capital market law and the principles of good corporate governance. in connection with this, it opens opportunities for those who experience losses as a result of windows dressing where the party can sue based on tort, and use Article 111 of the Capital Market Law. Windows dressing harms investors, companies, and the capital market. Legal protection is needed to prevent and tackle the falsification of financial statements. This involves strict rules, effective penalties, and grounds for claiming damages by the injured party. Enforcement of good corporate governance is key to maintaining transparency and accountability.

Keywords: *Legal Protection, Windows Dressing, Capital Markets, Good Corporate Governance*

INTRODUCTION

Economic development over time has an impact on various parties ranging from the government, and society to companies. With the development of the economy, these various parties, especially companies, have several choices to obtain funding to continue the business or business they are doing. Funding as described above itself in its implementation can be done in several ways, namely by utilizing the assistance of banking institutions and the second is to utilize other sources outside banking institutions. Funding assistance originating from banking institutions is generally carried out in the form of loans and later the company that makes the loan must return the borrowed funds.

Although in terms of the process of utilizing banking institutions, it tends to be easier to implement and also the disbursement of funds tends to be faster, in practice the use of banking institutions is not always used by companies. The reason for not using banking institutions is because in general, the use of banking institutions requires collateral before the banking institution assists in the form of a loan. In addition, the non-use of banking institutions can also be caused by the existence of interest on the loan. The existence of these reasons often results in companies using other means of funding.

One of the means of funding as described above is by utilizing the existence of the capital market. Utilization of the capital market by the company can be done by the company by selling

its shares to the public commonly known as the initial public offering. (Irsan Nasarudin, 2008: 13). When a company wants to make an initial offering, of course, the company must meet various requirements and must also go through various processes available in the capital market. In addition to having to carry out and fulfill various requirements and processes before selling its shares on the stock exchange, the company also must do certain things when the company's shares have been traded in the capital market.

The action that must be taken by the company when the company has sold its shares in the capital market or stock exchange is to comply with various regulations contained in the capital market as stated in Law Number 8 of 1995 concerning Capital Markets. In addition to complying with various policies as stated in the Capital Market Law, the company must also comply with or implement good corporate governance or in this case better known as the Principles of Good Corporate Governance. The implementation of the things as described itself is to protect the interests of various parties. With the implementation of these various things, the company can run its business effectively and efficiently, and with the implementation of these two things, parties who have helped the company in terms of funding, in this case, called investors, can have their interests protected.

Although in theory the existence of these two things can be said to be a must to do, in practice companies often do things that are contrary to these two things. One of the actions taken is that the company creates a false situation related to the condition of the company by beautifying various company reports, especially the company's financial statements. With the implementation of this, of course, it can cause losses to various parties starting from the company and parties who have an interest, in this case devoted to investors. The activity of beautifying the company's reports in practice is better known as windows dressing, when these activities are carried out, the effect is that the company is running with conditions that are not real so the company will find it very difficult to project the company's performance. (Astuti Chritina Dewi, 2019: 193).

Selain menimbulkan kerugian kepada perusahaan tersebut terjadinya windows dressing juga menimbulkan kerugian bagi investor dimana investor menjadi mengambil keputusan dengan tidak didasarkan kepada kondisi perusahaan yang sebenarnya. Salah satu bentuk nyata kerugian yang muncul sebagai akibat dari keberadaan windows dressing adalah kerugian pada kasus PT Tiga Pilar Sejahtera Tbk (AISA) di mana dalam kasus tersebut, PT AISA melakukan manipulasi laporan keuangan. Dalam hal ini, laporan keuangan disulap dengan tujuan agar para investor kemungkinan akan menganggap perusahaan tersebut memiliki kinerja yang baik. Dengan asumsi yang timbul dari praktik tersebut, investor kemudian melakukan kegiatan penanaman modal yang dimilikinya dan berakhir dengan kerugian karena harga saham PT AISA turun drastis sebagai akibat dari dilakukannya praktek windows dressing.

As explained above, it can be explained that the actual implementation of window dressing can cause quite crucial losses for various parties. In connection with this, the author wants to raise the existing problems by pouring the existing problems into the title "Legal Protection of Investors against Windows Dressing in Review of the Capital Market Law and Good Corporate Governance" in this study with the focus of discussion in the form of

discussion of the legal protection of investors against windows dressing practices in review of the Capital Market Law and also in review of the Principles of Good Corporate Governance.

RESEARCH METHODS

This research is included in the type of normative legal research or normative juridical. Normative legal research is research that according to Peter Mahmud Marzuki is research that uses legal rules, legal principles, and accepted legal doctrines to resolve legal issues that are being discussed in a legal study. The approaches used are statutory approaches and conceptual approaches. The statutory approach is used in this research, because legal issues are discussed using related laws and regulations, such as the Capital Market Law and other related laws and regulations. A conceptual approach is also used, because in this research concepts, theories, and legal doctrines are used to discuss problems, such as the principles of good governance and other concepts.

The sources of legal materials used consist of primary and secondary legal materials. The primary legal materials used are the Capital Market Law and OJK Regulation No. 29/POJK.04/2016. The secondary legal materials used consist of various books, journals, and other literature used in this research. The technique of collecting legal materials used was carried out a bibliography study which is an assessment of legal materials needed in normative law, starting from legal products in the form of laws and regulations, court products, and also legal literature used in normative research, namely by interpreting the materials that have been collected. The stages of data analysis are carried out by identifying legal facts, collecting the necessary legal materials, examining legal facts with legal materials, and then drawing conclusions on the legal issues analyzed earlier. Until finally compiling prescriptions from the conclusion.

RESULTS AND DISCUSSION

Legal Protection of Investors against Windows Dressing in Review of Capital Market Law.

The capital market has a crucial role in providing funds for companies. This itself can occur considering that it is in the capital market that is the meeting place for two groups, namely the peacock group that has excess funds (investors) and the group that needs funding (companies that have made initial public offerings). in the capital market itself, as explained above, because investors are parties who have excess funds that can later be utilized by the company, of course, the utilization of these funds cannot be used just like that. (Permata Citra Puspa, 2019: 53).

The distribution of funds through the capital market can only occur when investors choose to purchase shares of a company. Purchases made by investors themselves are generally made by investors based on various considerations ranging from seeing how much potential profit the company can provide, and how the company is performing to how the company can share the profits it gets with investors. The implementation of various investor considerations itself is carried out by investors by looking at the reports issued by the company to the general public.

Unfortunately, the implementation of report preparation by the company as described above does not always occur based on good corporate governance. Often companies in preparing reports deliberately manipulate the condition of the company through reports with the aim that the company seems to be in a healthy condition or has good performance so that later it can attract investors. The implementation of preparing reports that are not based on actual conditions to create the impression that the company is in good condition as described above is known as windows dressing. (Abiyoga Daffa, 2021: 3).

The existence of windows dressing when viewed from the implementation mechanism can certainly be considered as a corporate action. This is because the implementation of windows dressing is carried out by a company with full awareness and is deliberately done to attract investors' attention so that later investors choose to channel their funds into the company. In connection with this, of course, to protect investors, various legal instruments are needed to prevent companies from carrying out corporate actions that can harm investors or other parties.

When viewed from a legal perspective, several rules can indirectly be used as a means to prevent companies from doing windows dressing, the rules are as follows:

- a. OJK Regulation Number 8/POJK.04/2015 concerning the website of issuers or public companies, this Regulation regulates the various responsibilities of issuers or public companies, of which one of the responsibilities attached to the issuer itself is the responsibility to convey current and correct information to the public. Submission here also includes the submission of financial reports promptly and the content should not be misleading. (Septriani Yossi, 2022: 2)
- b. OJK Regulation Number 31/POJK.04/2015 regarding disclosure of information or material facts by Issuers or Public Companies. This regulation explains that public companies must submit reports on information or important facts to the Financial Services Authority and announce the information to the public. This aims to prevent window dressing practices that can mislead stakeholders.
- c. OJK Regulation No. 29/POJK.04/2016 concerning Annual Report of Issuers or Public Companies. This regulation regulates various matters ranging from requirements, and procedures for preparing, presenting, and disclosing financial reports of public companies. The existence of this regulation prevents window dressing because, with the existence of this regulation, companies are required to submit financial reports accurately, correctly, and also transparently to reflect the actual condition of the company.
- d. Article 10 of Law Number 8 Year 1995 on Capital Market. The existence of this article gives authority to the Financial Services Authority to be able to impose administrative sanctions on companies or corporations that commit violations contained in the capital market. With the existence of this authority and also with the fact that windows dressing is something that is prohibited, it can be interpreted that by doing windows dressing by a company or corporation, the company can be subject to punishment and the punishment can be in the form of fines to the most severe in the form of cancellation of registration.
- e. Article 90 letter b of Law No. 8 of 1995 as updated by Law No. 4 of 2003 on the Development and Strengthening of the Financial Services Sector. In the provisions of the

article, it is said that each party is prohibited from providing untrue information regarding important facts or concealing important facts to obtain profits or avoid losses, influencing other parties to purchase, sell, or store securities, and harming other parties to use their services in managing investments by providing funds to be managed. With the existence of this article, of course, corporate actions such as window dressing are wrong if done. (Sofiyani Cita Yustisia, 2017: 42)

- f. Article 93 of Law Number 8 of 1995 on the Capital Market as updated by Article 90 of Law Number 4 of 2023 on the Development and Strengthening of the Financial Services Sector. The existence of this article states that all parties are prohibited from submitting untrue or misleading statements to affect the price of securities. The existence of this article can certainly also be applied to the implementation of window dressing. This provision can be applied to the company's actions in the form of implementing windows dressing because the implementation of windows dressing is carried out by falsifying company reports. Whereas the company report is used in the context of investor decision-making, with incorrect information in the report and the information used by investors in making decisions, it is the same as the company or corporation here has conveyed an untrue or misleading statement and this affects the price of securities. (Mas Rahman, 2019: 40).

The existence of the regulations as described above is certainly presented to prevent the occurrence of window dressing practices considering that windows dressing can cause significant losses to the parties, both for investors and for companies. The losses that can be suffered by the parties as a result of the occurrence of window dressing are simply as follows:

a. Losses for investors

Windows dressing that occurs as a result of falsification of financial statements prepared by the company can certainly cause losses to investors. Investor losses, in this case, can arise because decision-making by investors is based on reports presented by issuers. Reports that are prepared incorrectly, can have an impact on investors where investors make decisions on an invalid basis or the basis used by investors does not describe the actual condition of the company.

b. Disadvantages of the capital market

In addition to causing losses to investors, the occurrence of window dressing also causes losses to the capital market as a whole. The occurrence of window dressing practices can result in a decrease in investor confidence in the effectiveness and implementation of trading in the capital market as a whole. If investors and the public do not believe in the condition of the capital market, it will certainly cause investors to be reluctant to invest in the capital market and this can have an impact on the development of corporate funding sourced from the capital market.

c. Losses for the company.

The occurrence of windows dressing can also cause losses to the company itself whereas with the occurrence of windows dressing, companies that do windows dressing can lose the trust of various parties including investors, creditors, or the public in general. In addition, if the company does windows dressing, the company can also damage the relationship it has with its business partners and also with financial reports that do not reflect the actual

conditions, of course the company will not be able to project the company's future condition correctly and this of course can also interfere with the company's operational performance.

Departing from the various explanations above, it can be explained that window dressing if implemented can cause various losses both to investors, companies, or to the capital market conditions as a whole. With these losses, it is appropriate to formulate legal regulations to prevent window dressing by companies. The existence of these various legal regulations can be used as the basis for determining penalties to provide a deterrent effect to companies that carry out window dressing and also with the existence of these legal regulations, later various parties who feel harmed will have a legal basis to claim compensation for those who commit violations in the form of window dressing.

Windows Dressing in Review of Good Corporate Governance

The company can run well if the company has good corporate governance. Good corporate governance better known as Good Corporate Governance is a principle that is present to ensure that companies are managed transparently, accountably, and responsibly. In simple terms, the principles of good corporate governance can be explained as follows:

- a. Principle of Transparency: The principle of transparency is a principle that places great importance on the availability of clear, accurate, and complete information so that later this information can be utilized by various parties who have an interest, especially in this case shareholders and the government. (Suwani Imam, 2019: 45)
- b. Accountability Principle: This principle requires parties who have the authority to make decisions in the company to be responsible for what they do also this principle emphasizes that those who decide something in the company must be prepared to accept the consequences of the actions or decisions they have taken.
- c. Fairness: the existence of this principle emphasizes fair treatment of all stakeholders, including shareholders, employees, or the general public.
- d. Principle of legal compliance: This principle of good corporate governance in its implementation emphasizes the importance of companies being able to implement and comply with various rules stipulated in laws and regulations. The existence of this principle means that all operational activities carried out by the company must not conflict with existing laws and regulations. (Njatrijani Rahmadana, 2019: 244).
- e. Risk management principle: the existence of this principle explains that the company in carrying out its operational activities must have and also be based on a good risk management system to identify, evaluate, and manage various risks that may occur and may be faced by the company in carrying out its operational activities.
- f. Principle of Independence of the Board of Directors (Board Independence): the existence of this principle explains that in the implementation of the company's operational activities, the Board of Directors must be independent in making decisions. What is meant by independent here is that decision-making by the board of directors must be carried out without any influence from external parties. (Maheswari Ayunda Gayatri, 2020: 4)

The existence of the principles of good corporate governance as explained above when connected with the implementation of window dressing, it can be said that the act of financial

falsification or what is known as "windows dressing" is an action that violates the principles of good corporate governance, namely violating the principles of transparency, accountability, the principle of legal compliance and the principle of fairness, which itself is a fairly crucial violation considering that these three principles are the core of good corporate governance.

Windows dressing actions can be said to violate the principle of transparency because by doing Windows dressing, the company or corporation does not provide accurate, clear, and correct information as required by the principle of transparency. Violation of this principle can cause significant losses because the clarity, accuracy, and correctness of the information issued by the company are the most crucial things in the implementation of good corporate governance. The second violation, namely violation of accountability, can be explained that the implementation of windows dressing is certain to occur with the approval of parties who have the authority to decide on a problem in a company. By doing windows dressing, it can be said that the party who has the authority is ready to accept all the consequences of the decisions he makes, including legal consequences.

Windows dressing actions can also be said to violate the principle of legal compliance because windows dressing when viewed from various laws and regulations, especially laws and regulations related to the capital market. This violation can occur because, when referring to the laws and regulations, windows dressing is something that is prohibited and some sanctions can be imposed on the parties who commit acts of falsifying financial statements or windows dressing.

In connection with the principles of good corporate governance with the existence of financial statements when referring to several studies that have been conducted, there is an explanation that falsification of financial statements or windows dressing is always contrary to the principles of good corporate governance. For example, a study that discusses corporate governance reform in Bangladesh says that companies that tend to embellish their financial statements to manage the impression of their shareholders tend to be exposed to future problems. This is because the reports used in the company are created not to increase the efficiency or productivity of the company but only to please certain parties.

Research related to window dressing and good corporate governance includes the study of the relationship between the accounting profession and corporate governance practices in Nigeria. (Nwanneka Chinedu, 2021: 32) In this context, research has highlighted the impact of the practice of falsifying financial statements known as windows dressing on the achievement and maintenance of good corporate governance. Nigeria as a research setting provides particular insight into the challenges faced in creating a transparent and accountable corporate environment. (Islam Md Tariqul, 2020: 650)

The study confirms that the falsification of financial statements can be a serious obstacle to achieving the goal of solid corporate governance. In this framework, the role of accountants in ensuring the accuracy and transparency of financial information becomes increasingly important. The conclusions of this study provide a deeper understanding of the dynamics between the accounting profession, windows dressing, and corporate governance practices. The implications can serve as a foundation for the development of more effective guidelines

and regulations to prevent these harmful practices and enhance the overall integrity of corporate governance.

Departing from these various explanations, it can be explained that the falsification of financial statements commonly known as windows dressing violates the principles of good corporate governance, in this case, the main principles violated are the principle of transparency, the principle of accountability, the principle of legal compliance and the principle of fairness. Departing from this explanation, it can also be explained that the act of falsifying financial statements can damage the integrity of the company, harm shareholders and other stakeholders, and violate the principles of good corporate governance. Therefore, the enforcement of good corporate governance is essential to prevent the practice of falsifying financial statements and ensuring transparency, accountability, and fairness in corporate financial reporting.

Legal Protection for Investors on the occurrence of windows dressing

In connection with the fact that in companies windows dressing often occurs, of course, a means is needed so that the aggrieved investors can get compensation for the losses they experience. When viewed from the applicable legal provisions, to obtain compensation, investors can use the basis of a lawsuit in the form of a tort and investors can also prosecute based on default. The lawsuit against the law can be carried out by investors because in the implementation of windows dressing the elements contained in the tort have been fulfilled. The elements contained in Article 1365 of the Civil Code regarding unlawful acts are as follows: (Ayu Gusti Diota, 2019: 73)

- a. There is an act, the act referred to in this case the act of falsifying financial statements better known as windows dressing actions carried out by companies to attract investors available in the laws and regulations.
- b. The action is contrary to and violates the applicable law, windows dressing is very clear that it violates the applicable law. The violation itself is regulated in the Capital Market Law and also various Financial Services Authority Regulations.
- c. There is an error on the part of the party who violates the act, what is meant by error here itself is fulfilled because, in its implementation, the implementation of windows dressing is deliberately carried out by the company even though the company in this case also understands that the act of falsification carried out is a mistake.
- d. The existence of losses from victims, the losses referred to in this case are losses experienced by investors because in this case, investors can experience losses because these investors can misanalyze market conditions as a result of the presence of false reports.
- e. There is a causal relationship between the act committed by the perpetrator and the loss suffered by the victim. This is certainly fulfilled in the case of windows dressing because the actual losses that may be experienced by investors are the result of fraudulent actions taken by the company using financial statements or in this case, the action is better known as windows dressing.
- f. In addition to being able to claim compensation based on unlawful acts, the injured parties, in this case investors, can also claim compensation based on a lawsuit under Article 111 of the Capital Market Law. The existence of this article can be used to claim compensation

because the article states that each party either individually or together with other parties can apply for compensation to the party responsible for violating laws and regulations.

- g. By departing from the explanation as explained above, the provision of legal protection to investors in terms of overcoming the problem of windows dressing in addition to being carried out in the form of prevention as stipulated in various Regulations of the Financial Services Authority and the Capital Market Law is also given in the form of prosecution actions based on unlawful acts, and also utilizing the articles contained in the capital market law itself, which in this case is utilizing Article 111 of the Capital Market Law which provides an opportunity for parties both individually and jointly to be able to apply for compensation.

CONCLUSION

Departing from the various explanations above, it can be explained that window dressing, if implemented, can cause various losses to investors, companies, and capital market conditions as a whole. These losses include negative impacts on company integrity, shareholder losses, and violations of the principles of good corporate governance. In this context, falsification of financial statements, commonly known as windows dressing, violates the principles of good corporate governance, especially the principles of transparency, accountability, legal compliance, and fairness. Therefore, it is necessary to formulate strict legal rules as a preventive measure to prevent the practice of window dressing by companies. The existence of this rule of law not only provides a basis for determining effective penalties as a deterrent effect against the perpetrators of windows dressing but also provides a legal basis for parties who feel harmed to claim compensation. The enforcement of good corporate governance is very important to prevent the practice of falsifying financial statements and maintaining transparency, accountability, and fairness in the company's financial reporting as a whole. In its implementation in Indonesia, in addition to protection in the form of prevention, there is also legal protection in the form of repression, namely providing an opportunity for the injured party to claim compensation based on unlawful acts.

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