International Journal of Social Science And Human Research

ISSN(print): 2644-0679, ISSN(online): 2644-0695

Volume 05 Issue 06 June 2022

DOI: 10.47191/ijsshr/v5-i6-76, Impact factor- 5.871

Page No: 2497-2502

Juridic Review of Share Buyback by Issuer in Market Fluctuation Conditions Due To Covid-19 Pandemic

Zaky Baswendra Wibhawa[1], Darminto Hartono Paulus[2]

[1,2] Master of Law, Universitas Diponegoro

ABSTRACT: This study aims to discuss issues regarding share buybacks by issuers in fluctuating conditions due to the Covid-19 pandemic in Indonesia. The problems caused by the spread of Covid-19 are very complex, including issues regarding share buybacks by issuers. This study uses a normative juridical research method, using secondary data. Based on the results of the study, it is known that the comparison of the implementation of buybacks in normal economic conditions and in critical economic conditions can be clearly shown by the author through the table in the discussion. However, basically there is a waiver of the implementation of the GMS and the need to determine certain conditions by the government and/or through the authorized regulator in the capital market sector. The position of OJK Circular Letter No. 3/SEOJK.04/2020 of 2020 regarding the implementation of stock buback is as a stipulation of other conditions as mandated in POJK No. 2/POJK.04/2013. Stock trading conditions on the Indonesia Stock Exchange since the beginning of 2020 until the issuance of this Financial Services Authority Circular Letter have experienced significant pressure as indicated by the decline in the Composite Stock Price Index (JCI) by 18.46% so that it needs attention from the government and regulators.

KEYWORDS: Buyback; Share; Issuer; Fluctuations; Covid-19 pandemic.

A. INTODUCTION

On March 11, 2020, WHO declared COVID-19 a pandemic. This condition clearly should not be underestimated because there have only been a few diseases throughout history that were classified as pandemics. An epidemic that occurs worldwide or over a very large area, that crosses the borders of several countries, and usually affects large numbers of people.[1] While the epidemic is a term used for a sudden increase in the number of cases of a disease in a population in a certain area. The term pandemic is not used to indicate the severity of a disease, but only the extent of its spread.

COVID-19 has had such a huge impact on the national economy by weakening economic growth which is quite significant. The impact on the economy with the Covid-19 is that Indonesia's annual Gross Domestic Product (GDP) will decrease by 1% if a regional quarantine or large-scale regional restriction (lockdown) lasts for a month. The discourse of lockdown which is carried out with holidays from schools and workplaces, religious restrictions, restrictions on activities in public places or facilities can reduce economic growth, because there are actions to stop the activities of most workers. Thus, although it is currently possible to do some work virtually, 80% of work activities still require human traffic and meetings. The Jakarta economy accounts for around 25% of the national GDP and determines more than 60% of the national economy. This decline in GDP has only been calculated based on activities in the real sector and has not taken into account the financial impact, as well as the psychological effects of the lockdown. If these two things are taken into account, he estimates that Indonesia's economic growth could be even worse.[2]

If we take into account the distributional impact of this action, it will certainly be borne by the lower middle class, by those who still need a lot of direct and face-to-face economic activity. Without a lockdown, the Indonesian economy still has to face the weakening global economic situation. This is estimated to reduce the Indonesian economy to 1% of GDP. In short, the lockdown and activity restrictions will have no small economic consequences. Not only for the Jakarta area, but also for the national economy.

Basic health services according to medical needs, food needs, and other daily needs are the government's obligation in the event of a lockdown.[3] Food handling If not prepared properly, food prices will increase by market mechanism. According to him, this will lead to a shortage of goods in various markets, which ultimately triggers social unrest that will only lead to confusion and

[1] Pedoman Interim WHO, Pencegahan dan pengendalian infeksi saluran pernapasan akut (ISPA) yang cenderung menjadi epidemi dan pandemi di fasilitas pelayanan kesehatan, 2007, hal. 7

[2] Artikel ini telah tayang di Katadata.co.id dengan judul "CSIS: Lockdown Buruk Bagi Ekonomi dan Tak Efektif Cegah Sebaran Corona" https://katadata.co.id/berita/2020/03/19/csis-lockdown-buruk-bagi-ekonomi-dan-tak-efektif-cegah-sebaran-corona Penulis: Dimas Jarot Bayu Editor: Agung Jatmiko

[3] Pasal 8 Undang-undang Nomor 6 Tahun 2018 tentang Karantina Kesehatan.

unrest in the community. For some people, such as the middle class, scarcity might not be too much of a problem, because most of them have been preparing for the lockdown for a long time. However, this policy will actually burden the lower middle class, who are more dependent on buying food on a daily basis.

Lockdown is also said to affect the economy of a country. The economic impact will depend on what activities are restricted and how extensive and how long the lockdown period is in place. One of the economic consequences that will be experienced by the state is a reduction in consumer spending. If it is prolonged, it will cause business failure and layoffs which will exacerbate the economic downturn.

The decline in the national economy will have a direct impact on capital market prices on the Indonesia Stock Exchange. According to Hartono, the capital market is a means for companies to increase their long-term funding needs by selling shares or issuing bonds.[4] At the close of Monday, March 9, 2020, the JCI closed down -6.57%, sinking to the level of 5136.8. This formed a new lowest price ever reached this year at the level of 5288. The decline in share prices to this year's lowest level made the Indonesian Stock Exchange Authority to closely monitor the movement of the index. Stock trading conditions on the Indonesia Stock Exchange from early 2020 to March experienced significant pressure as indicated by the decline in the Jakarta Composite Index (JCI) by 18.46%.

One of the appropriate efforts or corporate actions to take is to buy back shares or buyback shares. A company that carries out a stock buyback will invest its funds to buy its own company's shares from the public. That way, the number of public shareholdings in the company will be smaller and the company's liquidity will be maintained. The buyback of shares through a tender offer is preceded by the company's offer to shareholders that it will buy a number of shares with a certain price range.

Interested shareholders will register themselves by including the number of shares to be sold. If the number of shares offered by the public in the tender offer is greater than the amount to be bought back, the company will eliminate it based on the cheapest price. at the prevailing market price. The stock buyback action in this way will generally be able to push the stock price higher. That way, the stock will not be listed in the calculation of earnings per share so that it will leave the impression that the earnings per share from the shares outstanding in the public will be larger. This impression will attract investors to invest in the company concerned.

OJK as the capital market regulator issued Circular No. 3/SEOJK.04/2020 concerning Other Conditions as Market Conditions that Fluctuate Significantly in the Implementation of Shares Buyback Issued by Issuers or Public Companies. The regulation provides a statement about the conditions currently being experienced nationally. The general provisions regarding the usefulness and leniency of the buyback rules with the Circular will be explained further in this journal. This study will focus on discussing the problem of how to compare the implementation of buybacks in normal economic conditions and in critical economic conditions? And what is the position of OJK Circular Letter No. 3/SEOJK.04/2020 of 2020 regarding the implementation of share buybacks?

B. RESEARCH METHODE

In this study, the research method used is the juridical-normative method. Data analysis was carried out qualitatively to draw conclusions, which aimed to reveal how far the provisions of the legislation governing outsourcing workers/laborers protect them. Primary legal materials: regulations Secondary legal materials: scientific papers, research Tertiary legal materials: dictionaries, encyclopedias. Editing, classification, application

C. RESULT AND DISCUSSION

1. Comparison of Buyback Implementation in Normal Economic Conditions and in Critical Economic Conditions

Data from the Indonesia Stock Exchange (IDX) as of March 23, 2020, shows that as many as 60 companies whose shares are listed on the Indonesian stock exchange are ready to enliven the market by buying back shares in the secondary market with a value of more than Rp. 20.03 trillion. This buyback policy is carried out by the issuer in accordance with the directions and decisions issued by the Financial Services Authority (OJK) which allows all issuers or public companies to buy back shares without the General Meeting of Shareholders (GMS) as an effort to provide economic stimulus and reduce the impact of a market that fluctuates significantly. . The Composite Stock Price Index (JCI) fell by 30% in the last month and year-to-date the IDX's main reference index was corrected by 35.44%. Referring to the information disclosure data of each issuer, it is recorded that two issuers have budgeted the largest buyback funds of the many issuers who are ready to buy their shares back in the market.[5]

Some of the reasons that become the basis for issuers to buy back their shares that are in the public are as follows[6]; To maintain the fairness of the share price. In the capital market, the stock price of a company can be used as a measure of whether or not the company's financial performance is good, so that it can be said to be in a reasonable and normal condition. The better the financial

---

[4] Hartono, J. 2014. Teori Porto Folio dan Analisis Investasi, Edisi Kedelapan. Yogyakarta : BPFE. Hal 29

[5] Fajar Sugiarto, *Economic Analiysis of Law (Seri Analisis Ke-Ekonomian Tentang Hukum)*, 1st edn (Jakarta: Kencana Prenada Media Group, 2013).

[6] Sally Putri, Tinjauan Yuridis Mengenai Pembelian Kembali (buyback) Saham Perusahaan Publik Setelah Terbentuknya Otoritas Jasa Keuangan, (Jakarta: 2014).

performance of a company, the stock price is also getting better/increasing. Share buybacks can be used as an alternative that can be used by issuers to increase their stock prices that have fallen in the market.[7] With the buyback of shares, it will result in an increase in earnings per share (EPS) and Return on Equity / ROE on an ongoing basis which can result in increasing stock prices in the market. In addition, with the buyback of shares, the shares owned by the public will decrease (supply decreases), as a result, the share price will increase (assuming the number of requests for these shares remains). However, it should be noted that the issuer's reason for buying back shares is to increase the company's Earnings per Share, because the increase in earnings per share is not caused by an increase in company income or profits, but rather due to the decreasing number of outstanding shares so that the profit ratio is reduced. per share or Earning per Share to increase. Or in other words, the increase in the share price of issuers that carry out stock buybacks is not the result of an increase in fundamental performance, but only from a changing market supply and demand mechanism[8].

Psychological signals to the market. The announcement of the share buyback is expected to be able to transmit a positive signal to the market that the stock price may be undervalued, thus investors or the market are expected to react positively to make a purchase on the stock so that in turn the stock price returns to the level expected by the issuer. When there was a crash in the American stock market in 1987, many large companies announced they were going to buy back shares. This is done with the motivation that the market will receive a positive signal and immediately act positively so that stock prices will be relatively maintained.

Purchasing shares for resale. Issuers that have repurchased shares may resell their shares on the Exchange. If the shares that have been repurchased can be resold at a price higher than the acquisition price, then the difference between the selling price and the repurchase price of the shares is added as Additional Paid-in Capital. This will improve the capital structure of the issuer.

To repurchase shares to be distributed to employees (ESOP). Some companies buy back shares with the aim that the shares that have been repurchased will be distributed to employees as an incentive so that employees can continue to work at the company. Incentives like this are commonly called the Employee Stock Option Plan, which is a kind of incentive program for employees to own shares of the company where the employee works. Many things can be obtained from this ESOP program, including employees will feel more comfortable for a long time (reducing the turnover rate or the entry and exit of employees in the company).

To avoid acquisition by other companies because they have abundant cash funds. Companies that have good prospects in the future, especially companies that currently have abundant cash funds are one of the companies that are often targeted for acquisition. As a way of self-defense from being acquired, the company can use its cash funds to buy back its shares. In developed stock exchanges, such as the New York Stock Exchange (NYSE), buybacks are often used as a defense strategy to thwart takeover attempts or takeovers from other companies that the issuer does not like. Usually issuers who have large cash balances on the balance sheet are often attractive targets for acquisitions. Thus, the targeted issuers use cash to buy back their own shares to make them less attractive for acquisition targets.

Tax considerations. The implementation of share buybacks based on tax considerations often occurs, especially in developed countries, because when an investor receives a dividend distribution, the investor will be subject to a number of taxes on the income from the dividend. This means that the return given by the issuer to the holder is reduced because of the tax on dividends. This becomes even more crucial when the tax rate imposed on dividend income is relatively large. For this reason, the issuer chooses to buy back (buyback) shares so that shareholders are given the option to sell shares when investors feel that the choice will provide a more real return or return that is expected by investors. Investors will certainly be willing to buy at a higher price than the market price.

Flexibility factor for issuers The decision to distribute dividends to shareholders is a carefully planned decision regarding timing, available funds, and other considerations of the company's financial condition. This is different from the dividend decision, because the issuer's management has the discretion to regulate when and how large the transaction will be in the buyback of shares. As an effort to save dividends, repurchase (buyback) of shares can reduce the number of shares outstanding in the community, so that companies can save a lot on dividend distribution if they distribute stock dividends, because shares bought back do not get the right to receive dividends.

A company has several important reasons to buy back shares. Here is a summary of why stock buybacks have become popular in the stock world.

a. Increase financial ratios

The main reason companies do stock buybacks is to increase financial ratios. This is related to the number of outstanding shares which decreased after the stock buyback action. The fewer shares outstanding, the ratio of earnings per share (EPR)

[7] Christoph Weiss Thomas Herzfeld, 'Corruption and Legal (in)Effectiveness: An Empirical Investigation', *European Journal of Political Economy*, 19.1 (2003), 621 – 632.

[8] Fransisca Claudya Mewoh, Harry J Sumampouw, and Lucky F Tamengkel, 'Analisis Kredit Macet', *Jurnal Administrasi Bisnis*, 2016 <https://doi.org/https://doi.org/10.35797/jab.4.1.2016.11322.%25p>.

will increase. Just so you know, EPR is one of the indicators of a fundamental assessment of whether a company is healthy or not.

b. Avoid falling stock prices

Common stock buybacks are carried out by companies when the company's stock price is experiencing a downward trend. So that prices do not fall further, the company buys shares. This is done to affect the psychology of investors. The reason is, if a stock moves in a downward trend and suddenly there are parties who buy in large quantities, the stock price will automatically increase and investors become interested in collecting these shares.

c. Prepare capital reservesAlasan

The next step in implementing the share buyback is to prepare the company's capital reserves. It was said earlier that the shares from the buyback will become treasury shares that will be kept by the company and can be resold when the share price experiences an upward trend. That way, the company has the potential to get capital gains.

The purpose of the repurchase of shares by the company as an effort to provide economic stimulus and reduce the impact of a market that fluctuates significantly. Moreover, the stock market has fallen by -18.46% when measured from the highest price ever reached by the JCI at the beginning of trading Thursday, January 02, 2020 until the close of March 9, 2020. This happened in line with the slowdown and economic pressures both globally, regionally and nationally. The COVID-19 pandemic outbreak which has started to spread globally and has 19 positive cases in Indonesia. In addition, Saudi Arabia and Russia fought a slamming war on oil prices after the cancellation of the OPEC production quota agreement.

Buyback actions can also have a positive impact because usually the stock price is bought back when the price is below book value. To prevent stock price declines from going too deep. So companies that do buybacks during difficult times like today will provide encouragement, support, and confidence to investors that the shares they buy are already relatively cheap. So that it is the right timing to execute or buy the cheap stock again for long-term investment.

Shares that have been repurchased are listed as capital/Treasury Stock which one day when the shares rise again can be released and the company will get Capital Gain from the transaction or shares that have been bought back by the issuers can be resold to employees or simply given away. to employees as a Management Employee Stock Option Plan (MESOP) program.

The implementation of Buyback according to Law No. 7 of 2004 concerning Limited Liability Companies in the following manner: Characteristics: GMS is not required in market conditions with significant fluctuations, in normal market conditions, GMS must still be used; Requirements Maximum share repurchase is 20%; Disclosure of information on the IDX and OJK must still be carried out after significant fluctuations; Purchase limit Buyback period 3 months after the Disclosure of Information; Mastery limit, How to sell the buyback results.

The implementation of Buyback according to OJK Regulation No. 2/POJK.04/2013 concerning Buyback of Shares Issued by Issuers or Public Companies in Significantly Fluctuating Market Conditions is carried out in a manner that can be explained as follows: Its nature is that it is carried out voluntarily by the company; GMS In market conditions with significant fluctuations, without GMS; The terms of purchase is a maximum of 20% of the issued shares; Disclosure of information on the IDX and OJK after significant fluctuations which includes: Estimated schedule, cost and nominal value of share repurchase; Estimated decline in the company's revenue as a result of the implementation of the share buyback; Proforma earnings per share of the company after the plan to repurchase the shares, including the decline in the company's revenue; Restrictions on share prices for share repurchases; Limitation of the period of repurchase of shares; The method to be used to repurchase the shares; and Management analysis regarding the effect of share repurchase on business activities and future growth of the company. Purchase limit Buyback period 3 months after KI Control limit. How to sell buyback results.

2. Position of OJK Circular Letter No. 3/SEOJK.04/2020 of 2020 regarding the implementation of stock buback

Financial Services Authority ("OJK") Regulation No. 2/POJK.04/2013 concerning Buyback of Shares Issued by Issuers or Public Companies in Significantly Fluctuating Market Conditions ("POJK 2/2013") states that issuers and public companies can buy back their shares without violating the provisions regarding insider trading stipulated in Articles 91, 92, 95 and 96 of Law No. 8 of 1995 concerning the Capital Market if market conditions are fluctuating significantly. Significantly fluctuating market conditions consist of: Significant pressure on the Composite Stock Price Index ("IHSG") on the Indonesian Stock Exchange ("IDX") of up to 15% or more in three consecutive trading days; or other conditions, as determined by OJK.

Indonesia is currently experiencing significant economic disruption and fluctuating market conditions as a result of the COVID-19 pandemic. As a result, in order to provide economic stimulus and reduce the effect of a significantly fluctuating market, OJK hopes to alleviate the problems experienced by issuers and public companies by allowing them to buy back shares, as stipulated in Circular No. 3/SEOJK/04/2020 concerning Other Conditions as Market Conditions that Fluctuate Significantly in the Implementation of Shares Buyback Issued by Issuers or Public Companies ("SEOJK 3/2020"). SEOJK 3/2020 stipulates other conditions for the market to fluctuate significantly ("Other Conditions") as described in point (2) above.

In addition to stipulating Other Conditions, SEOJK 3/2020 also outlines the repurchase mechanism that can be carried out by issuers and public companies during the period of Other Conditions. Through the issuance of SEOJK 3/3030, OJK has now determined the following conditions as Other Conditions, which were originally regulated in POJK 2/2013: Stock trading conditions on the IDX are experiencing significant pressure, as indicated by the decline in JCI by 18.46% at the beginning 2020 until the issuance of SEOJK 3/2020; and Deteriorating regional and global economic conditions due to the COVID-19 outbreak. It should be noted that OJK is responsible for setting Other Conditions officially starting and ending. The conditions mentioned above have been valid as Other Conditions since March 9, 2020 and will apply until SEOJK 3/2020 is officially revoked.

Comparison in table

No	Criteria	Normal State	Critical
1	Legal Basis	POJK No 3 Tahun 2013	SE OJK No 35 tahun 2020
2	Nature	Vouluntary	Vouluntary
3	Condition	Maks 20 %	Min 7,5 %, Maks 20 %
4	GMS	Required	Not mandatory
5	Penalty	Criminal, administrative, fine	Adjust pojk No. 3 years 2013
6	Purchase limit	3 months after KI	adjust pojk No. 3 years 2013
7	Mastery limit	3 years	adjust pojk No. 3 years 2013
8	How to sell after mastery	a. sold both on the Stock Exchange and outside the Stock Exchange; b. withdrawn by way of capital reduction; c. implementation of the Employee Stock Option Plan or Employee Stock Purchase Plan; d. implementation of debt conversion into Company shares; and/or e. exercise of warrants.	adjust pojk No. 3 years 2013

In accordance with Article 1 number 1 of OJK Regulation Number 2/POJK.04/2013 concerning Shares Buyback issued by Issuers or Public Companies in Market Conditions that Fluctuate Significantly. The purpose of this OJK regulation essentially says that stock trading conditions on the Indonesia Stock Exchange since the last 5 (five) months (February-July 2015) have been under pressure and economic conditions are experiencing a slowdown and pressure both regionally and nationally. If the stock market condition is in a crisis situation, then each issuer has an obligation to take action as anticipatory or preventive measures so that the value of the company's share price does not decrease significantly.[9]

D. CONCLUSION

From the discussion of the problems above, the writer can draw the following conclusions:

Comparison of the implementation of buybacks in normal economic conditions and in critical economic conditions can be clearly shown by the author through the table in the discussion. However, basically there is a waiver of the implementation of the GMS and the need to determine certain conditions by the government and/or through the authorized regulator in the capital market sector.

The position of OJK Circular Letter No. 3/SEOJK.04/2020 of 2020 regarding the implementation of stock buback is as a stipulation of other conditions as mandated in POJK No. 2/POJK.04/2013. Stock trading conditions on the Indonesia Stock Exchange since the beginning of 2020 until the issuance of this Financial Services Authority Circular Letter have experienced significant pressure as indicated by the decline in the Composite Stock Price Index (JCI) by 18.46% so that it needs attention from the government and regulators.

BIBLIOGRAPHY

Journals and Books

1) Dzakky Husein, Tinjauan Yuridis Pembelian Kembali (Buyback) Saham yang dikeluarkan oleh Emiten dalam Kondisi Pasar yang Berfluktuasi secara Signifikan- Studi Kasus PT. MNC Investama Tbk. Diponegoro Law Review, Volume 5, Nomor 2, Tahun 2016

[9] Dzakky Husein, Tinjauan Yuridis Pembelian Kembali (Buyback) Saham yang dikeluarkan oleh Emiten dalam Kondisi Pasar yang Berfluktuasi secara Signifikan- Studi Kasus PT. MNC Investama Tbk. Diponegoro Law Review, Volume 5, Nomor 2, Tahun 2016

2) Fajar Sugiarto, Economic Analiysis of Law (Seri Analisis Ke-Ekonomian Tentang Hukum), 1st edn (Jakarta: Kencana Prenada Media Group, 2013)
3) Hartono, J. 2014. Teori Porto Folio dan Analisis Investasi, Edisi Kedelapan. Yogyakarta : BPFE. Hal 29
4) Mewoh, Fransisca Claudya, Harry J Sumampouw, and Lucky F Tamengkel, 'Analisis Kredit Macet', Jurnal Administrasi Bisnis, 2016 <https://doi.org/https://doi.org/10.35797/jab.4.1.2016.11322.%25p>
5) Sally Putri, Tinjauan Yuridis Mengenai Pembelian Kembali (buyback) Saham Perusahaan Publik Setelah Terbentuknya Otoritas Jasa Keuangan, (Jakarta: 2014).
6) Thomas Herzfeld, Christoph Weiss, 'Corruption and Legal (in)Effectiveness: An Empirical Investigation', European Journal of Political Economy, 19.1 (2003), 621 – 632
7) Weston, Mitchel, dan Mulherin, Takeovers, Restructuring, and Corporate Governance, 4th Edition, 2004, hal. 484.

Legislation

1) Pedoman Interim WHO, Pencegahan dan pengendalian infeksi saluran pernapasan akut (ISPA) yang cenderung menjadi epidemi dan pandemi di fasilitas pelayanan kesehatan, 2007, hal. 7
2) Undang-undang Nomor 6 Tahun 2018 tentang Karantina Kesehatan
3) Undang-Undang Nomor 8 tahun 1995 tentang Pasar Modal

Internet Source

1) Artikel ini telah tayang di Katadata.co.id dengan judul "CSIS: Lockdown Buruk Bagi Ekonomi dan Tak Efektif Cegah Sebaran Corona" https://katadata.co.id/berita/2020/03/19/csis-lockdown-buruk-bagi-ekonomi-dan-tak-efektif-cegah-sebaran-corona Penulis: Dimas Jarot Bayu
Editor: Agung Jatmiko