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THE BOARD OF DIRECTORS' RESPONSIBILITY FOR SHAREHOLDER LOSSES IN BUYBACK POLICIES: AN ANALYSIS OF COURT DECISIONS AND CORPORATE PRACTICES

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Abstract

This study aims to analyze the fiduciary duty of directors in buyback policies, the consistency of their application in court decisions, and the effectiveness of OJK supervision in protecting shareholders. The method used is normative legal research with statutory, conceptual, case, and comparative approaches. Primary legal materials include the Company Law (UUPT), the Capital Market Law, the POJK (OJK Regulation), and court decisions; secondary legal materials include academic literature; and tertiary legal materials include legal dictionaries and encyclopedias. The analysis was conducted qualitatively and normatively by examining the consistency between legal norms, doctrine, and judicial practice. The results indicate that a gap remains between norms and practice. Some issuers implement buybacks in accordance with regulations, but others exploit regulatory relaxations to circumvent the GMS mechanism, thereby weakening the position of minority shareholders. Court decisions, such as Supreme Court No. 280 K/Pdt/2012 and Supreme Court No. 2826 K/Pdt/2021, demonstrate inconsistencies in the application of fiduciary duty and the business judgment rule. The phenomenon of nominee directors further strengthens the potential for conflicts of interest in buyback implementation. Meanwhile, OJK supervision is still considered weak because the sanctions imposed have not had a deterrent effect.

Keywords: ***Directors' Accountability, Share Buy Back, Fiduciary Duty, Capital Market, Investor Protection.***

INTRODUCTION

A share buyback policy is a corporate action frequently undertaken by public companies for various strategic purposes. This action is typically intended to stabilize share prices on the secondary market, signal to investors that the company's shares are undervalued, and return excess cash to shareholders. In Indonesia, the buyback policy lies at the intersection of two legal regimes: corporate law and capital market law. This intersection creates legal liability consequences for directors, particularly when the buyback policy results in shareholder losses due to procedural flaws or negligence in decision-making. From a corporate law perspective, provisions regarding buybacks are regulated in Law Number 40 of 2007 concerning Limited Liability Companies (UUPT). Articles 37 to 40 of the UUPT explain the requirements for share buybacks, including: (i) the buyback must not cause the company's net assets to fall below the amount of issued capital and mandatory reserves, (ii) the nominal value of shares repurchased is a maximum of 10% of the issued capital, (iii) basically requires the approval of the GMS unless capital market regulations stipulate otherwise, and (iv) treasury shares do not have voting rights or dividend rights (Republic of Indonesia, 2007). If these requirements are not met, the buyback action can be considered null and void, and the directors could potentially be held personally or jointly liable if losses occur to shareholders acting in good faith.

From a capital market legal perspective, buyback regulations are more technically outlined in the Financial Services Authority Regulation (POJK). POJK Number 30/POJK.04/2017 regulates procedures for share repurchases and the transfer of treasury shares. Meanwhile, POJK Number 2/POJK.04/2013 provides relaxation for share repurchases in conditions of significant market fluctuations, where companies can buy back up to 20% of paid-up capital without the approval of a GMS (Financial Services Authority [OJK], 2013; OJK, 2017). In 2020, the OJK reissued SEOJK Number 3/SEOJK.04/2020, which expanded the definition of significant market fluctuations in response to the impact of the Covid-19 pandemic, allowing companies to more quickly conduct buybacks without administrative obstacles (OJK, 2020). Most recently, in 2025, the OJK reaffirmed the importance of the buyback policy as a market stabilization instrument in conditions of high volatility (OJK, 2025). However, the implementation of this policy in corporate practice still faces several obstacles. Empirical studies have found that buybacks do not always have a positive impact on stock performance or provide tangible benefits to investors. Lestari (2020), in her research on banking issuers during the pandemic, found that buybacks did not significantly impact stock returns or abnormal returns. Santoso (2021) also emphasized that while buybacks can signal undervaluation, their effectiveness for minority shareholders is often minimal. This suggests that buybacks do not automatically provide the promised benefits and can actually lead to losses if the decision is made without adequate analysis.

The issue becomes even more complex when linked to the accountability of directors. Article 97 of the Company Law states that members of the board of directors are fully and personally liable for the company's losses if they are at fault or negligent in carrying out their duties (Republic of Indonesia, 2007). This responsibility is even joint and several if there is more than one board of directors. In the context of buybacks, negligence can include repurchases without authorization from the GMS (when required), exceeding percentage limits, violating the net worth test, or ignoring the transparency principle required by the POJK. Fuady (2014) emphasized that any abuse of board authority in corporate policy, including buybacks, must be qualified as a breach of fiduciary duty. However, in practice, the parameter of "negligence" remains difficult to prove in court, resulting in many shareholder lawsuits that do not result in significant decisions. Indonesian jurisprudence remains limited in adjudicating buyback cases. However, several court decisions have emphasized the importance of authorization from corporate bodies (GMS) and the legal consequences if directors exceed their authority. Inconsistencies in the courts' application of the fiduciary duty doctrine often make it difficult for minority shareholders to sue directors for losses incurred. This aligns with Rahardjo's (2019) findings, which state that the weak application of good corporate governance (GCG) principles in Indonesia contributes to the ambiguity of court decisions regarding directors' accountability. Furthermore, the phenomenon of nominee directors also weakens the application of fiduciary duty.

Yulianti (2022) found that directors appointed by the majority shareholder are more loyal to the interests of the appointing party than to the interests of the company as a whole. This creates a serious conflict of interest in decision-making, including buyback policies. Sugondo (2020) also emphasized that although nominee directors legally have the same fiduciary obligations, the reality shows that control over their loyalty remains very weak. As a result, buyback decisions often reflect the interests of the majority shareholder rather than protecting minority shareholders. Normatively, both the Limited Liability Company Law (UUPT) and OJK regulations already provide protection mechanisms. However, the fragmented regulations between the UUPT and the Capital Markets Law create room for differing interpretations. On the one hand, the UUPT emphasizes protecting a company's capital structure and net worth, while the POJK places greater emphasis on information disclosure and technical procedures. This gap creates legal uncertainty in practice, particularly when buyback policies result in losses for shareholders.

LITERATURE REVIEW

1. Fiduciary Duties and Business Judgment Rule

The concept of fiduciary duties is the foundation of modern corporate law. It encompasses two primary obligations: the duty of care and the duty of loyalty. The duty of care requires directors to make decisions with due care, based on adequate information, and through due process. The duty of loyalty requires directors to prioritize the interests of the company over personal or specific party interests. Davies and Worthington (2016) emphasize that these two obligations must be implemented simultaneously to prevent conflicts of interest in corporate management. However, the law also recognizes the business judgment rule (BJR) doctrine, which protects directors from being held liable simply because their business decisions cause losses. Bainbridge (2004) refers to the BJR as the doctrine of judicial abstention: courts may not evaluate the substance of business decisions, as long as directors can demonstrate that the decision-making process was conducted in good faith, free from conflict, and based on adequate information. Therefore, in the context of buyback policies, the boundary between breach of fiduciary duties and BJR protection is key to determining directors' liability.

2. Corporate Governance Theory and Corporate Objectives

Kraakman et al. (2017) explain that modern corporate law is built on the principle of asset partitioning, namely the separation of company assets from shareholders' personal assets, and the delegation of management authority to the board of directors. Because of this delegation of authority, board accountability is crucial. This accountability mechanism is manifested in fiduciary duty standards, the principle of transparency, and oversight of other organs such as the board of commissioners and the General Meeting of Shareholders.

Meanwhile, Keay (2007; 2013) stated that when a company approaches the risk of financial distress, directors are not only obligated to shareholders but also must consider the interests of creditors. Buybacks that reduce capital reserves or weaken the company's financial structure can create a legal dilemma for directors: on the one hand, they want to provide short-term value to shareholders, but on the other hand, they have the potential to sacrifice business continuity and violate the principle of creditor protection.

3. Economic Motives and the Risk of Opportunism in Buy Backs

Economically, buybacks are viewed as a capital distribution mechanism. Easterbrook and Fischel (1991) described repurchases as an efficient instrument when a company lacks profitable investment projects. Returning excess cash to shareholders through buybacks is considered more optimal than hoarding it without a clear purpose. However, the literature also highlights the risk of opportunism. Bebchuk and Fried (2004) assert that managers often use buybacks for short-term gains, such as increasing earnings per share (EPS) for bonuses or compensation, without considering the company's long-term value. Lazonick (2014) even argues that massive repurchases are detrimental because they divert resources from productive investments to distributions to shareholders. Therefore, the economic motives of buybacks must be examined not only for capital efficiency but also for potential opportunism that could harm minority shareholders.

4. Empirical Evidence of the Impact of Buy Backs on the Stock Market

International empirical evidence shows mixed results regarding the impact of buybacks on stock prices. Ikenberry, Lakonishok, and Vermaelen (1995) found that the market tends to underreact to buyback announcements, so that repurchasing firms often enjoy positive abnormal returns in the medium term. However, Stephens and Weisbach (1998) showed that buyback realization is usually partial, meaning that not all announced shares are repurchased. Chan, Ikenberry, and Lee (2004) added that companies tend to engage in market timing, purchasing shares when they are undervalued, but this motive does not always impact long-term performance. Peyer and Vermaelen (2009) also found that the benefits of buybacks vary widely, depending on market conditions and company characteristics. This means that buybacks do not always provide universal benefits to all shareholders.

METHOD

This research employs doctrinal legal research, which, according to Soerjono Soekanto (1986), is defined as legal research conducted through library research or secondary data. This research not only examines the law as written in the law (law in books) but also examines how that law is interpreted and applied in practice. Therefore, this approach is appropriate for examining the accountability of directors in the buyback policy stipulated in the Limited Liability Company Law and capital market regulations. According to Peter Mahmud Marzuki (2014), normative legal research is conducted by examining primary, secondary, and tertiary legal materials through statutory, conceptual, and case studies. In this study, the statutory approach is carried out by examining the Limited Liability Company Law (UUPT), the Capital Market Law, and OJK regulations governing share buyback procedures. The conceptual approach is used to examine the doctrine of fiduciary duty, the business judgment rule, and the principles of good corporate governance in corporate law literature. Meanwhile, the case study approach is applied by analyzing court decisions relating to the accountability of directors in corporate actions.

In addition, this study also utilizes a comparative approach. According to Johnny Ibrahim (2006), a comparative approach in legal research is important to enrich perspectives and provide alternative solutions to legal problems in Indonesia. Therefore, this study also examines the practice of buyback regulations in the United States, which is regulated through SEC Rule 10b-18, as a comparison to practices in Indonesia. The legal sources used in this study include: (1) primary legal materials in the form of laws, OJK regulations, and court decisions; (2) secondary legal materials in the form of textbooks, journal articles, and previous research results; and (3) tertiary legal materials such as legal dictionaries and encyclopedias. According to Zainuddin Ali (2010), this classification of legal materials is necessary to maintain the systematicity of the research and clarify the hierarchy of the legal sources used. The legal material collection technique was conducted through library research, in accordance with Soemitro's (1990) view that normative legal research is essentially based on the inventory and analysis of legal materials obtained from the literature. The analysis was conducted using a normative qualitative method, namely describing, interpreting, and constructing legal norms to answer the research problem.

RESULTS AND DISCUSSION

This study found that the implementation of buyback policies in Indonesia still faces various challenges, both normatively and practically. Normatively, Law Number 40 of 2007 concerning Limited Liability Companies (UUPT) has provided clear limitations regarding buyback requirements, such as the obligation to maintain net assets, restrictions on the maximum percentage of shares that can be repurchased, and the requirement for GMS approval except under conditions stipulated by capital market regulations. These provisions are reinforced by Financial Services Authority Regulation (POJK) Number 30/POJK.04/2017 and POJK Number 2/POJK.04/2013, which regulate buyback mechanisms in conditions of significant market fluctuation. However, practice in the field demonstrates irregularities. Some issuers exploit the relaxation of the POJK (OJK Regulation) to circumvent the GMS mechanism, thereby losing minority shareholders control over decisions that directly affect their economic interests. Empirical findings also indicate that the benefits of buybacks on stock returns are insignificant (Lestari, 2020; Santoso, 2021). This reinforces the argument that buybacks are not always an instrument for investor protection and can even lead to losses if directors make decisions without adequate analytical basis.

An analysis of court decisions reveals inconsistencies in the application of the fiduciary duty doctrine. For example, in Supreme Court Decision No. 280 K/Pdt/2012, the panel of judges emphasized that directors can be held personally liable when they take legal actions that exceed their authority without the approval of a legitimate corporate body. While this case does not specifically address buybacks, it does emphasize the important principle that directors must comply with corporate procedures, and that exceeding their authority can result in personal liability. Another example is Supreme Court Decision No. 2826 K/Pdt/2021, in which the court ruled that an invalid summons for a GMS invalidated corporate decisions. This decision is relevant in the buyback context because it demonstrates that negligence in GMS procedures can lead to the cancellation of corporate action decisions, including share repurchases. This means that if directors undertake a buyback without meeting procedural requirements, the action is potentially null and void and could result in personal liability. Furthermore, in the cases of PT Asuransi Jiwasraya and PT Asabri, although the focus of the cases was more on investments that violated the principle of prudence, the court emphasized that directors are required to act in good faith and with due care. This ruling underscores the relevance of fiduciary duty in asset management, which can be applied analogously to buyback policies. Directors who fail to demonstrate that they acted in good faith and with due care in implementing buybacks are potentially subject to legal liability.

1. Normative Compliance with UUPT and POJK in Buy Back Policy

The research findings show that although the Company Law and the Financial Services Authority Regulation (POJK) provide a clear legal framework for buybacks, practice still exhibits deviations. Articles 37–40 of the Company Law explicitly regulate material requirements, such as a net worth test and a maximum 10% limit on issued shares, while POJK No. 30/2017 and POJK No. 2/2013 provide procedural guidelines and relaxations. However, a number of issuers prefer to utilize relaxations without GMS approval, which actually weakens the control rights of minority shareholders. This demonstrates a gap between the legal framework and business practices. Rahardjo's (2019) research found that the weak implementation of good corporate governance (GCG) principles in Indonesia increases the potential for fiduciary duty violations in corporate decisions. This finding aligns with the situation in buybacks, where regulatory relaxation is often used as a justification by directors to avoid shareholder involvement in material decisions. As a result, buybacks have the potential to benefit certain groups more than all shareholders.

2. Inconsistency in the Application of Fiduciary Duty in Court Decisions

An analysis of court decisions reveals inconsistencies in assessing the actions of directors. In Supreme Court Decision No. 280 K/Pdt/2012, the court emphasized that directors can be held personally liable when they exceed their authority without authorization from a corporate body. This principle emphasizes the importance of the duty of loyalty to comply with internal procedures. However, in other cases, such as Supreme Court Decision No. 2826 K/Pdt/2021, the court emphasized the formal aspects of the validity of the GMS and annulled the decision due to invalid summons procedures. This decision demonstrates that procedural aspects are crucial to the validity of corporate decisions, including buybacks. This lack of uniformity in decisions highlights weaknesses in the standards for enforcing fiduciary duty in Indonesia. Research by Cesaria (2025) confirms that fiduciary duty in Indonesia is still understood solely normatively, lacking the flexibility of the common law system, which is largely guided by jurisprudence. This explains why Indonesian courts often differ in assessing whether a director's actions constitute negligence or a business decision protected by the business judgment rule.

3. Buy Back as a Potential Conflict of Interest

Research shows that buyback practices are often not solely based on the company's interests, but are also influenced by the interests of the majority shareholder. The phenomenon of nominee directors further exacerbates the potential for conflicts of interest. Yulianti (2022) found that nominee directors are more loyal to their appointing party than to the company's interests, potentially biasing strategic decisions. Sugondo (2020) also emphasized the weakness of control mechanisms over director loyalty in this case. This condition is consistent with the argument of Bebchuk and Fried (2004), who highlighted the risk of managerial opportunism in capital distribution policies such as buybacks. The decision to repurchase shares can be motivated by short-term interests, for example, to increase EPS or appease majority shareholders, even though it fundamentally does not provide significant benefits to the company or minority shareholders.

4. Weaknesses in OJK Supervision and Their Implications for Investor Protection

Research results show that although the Financial Services Authority (OJK) has been active in regulating and supervising, effective law enforcement remains weak. Administrative sanctions often fail to have a deterrent effect. Coffee (1981) emphasized that weak enforcement of fiduciary duty in the capital market will erode market confidence. This is relevant to Indonesia, where investors still view buybacks with suspicion due to perceived inconsistent oversight. Rahardjo (2019) emphasized that weak oversight is also influenced by Indonesia's formalistic compliance culture, where companies tend to adhere to minimal procedural aspects without internalizing the substance of GCG. Consequently, despite clear formal regulations, buyback practices still pose a risk of loss for investors.

CONCLUSION

This research shows that the share buyback policy in Indonesia has a fairly comprehensive legal framework, established under Law No. 40 of 2007 concerning Limited Liability Companies and various regulations from the Financial Services Authority (OJK). However, its implementation in corporate practice still faces various issues that result in losses for shareholders, particularly minority shareholders.

1. Normatively, directors are bound by the principle of fiduciary duty, which encompasses the duty of care and the duty of loyalty. However, research shows that this principle has not been consistently applied, either in buyback decisions or in court judgments. Jurisprudential inconsistencies, as evident in Supreme Court Decisions No. 280 K/Pdt/2012 and No. 2826 K/Pdt/2021, demonstrate that the standard for directors' accountability remains unclear, between negligence that gives rise to liability and business decisions protected by the business judgment rule.
2. Buyback practices often reflect the interests of majority shareholders rather than the interests of the company as a whole. The phenomenon of nominee directors further increases the potential for conflicts of interest, making buyback implementation often biased and not fully protecting minority shareholders.
3. While the Financial Services Authority (OJK) has issued various technical regulations, the effectiveness of oversight and law enforcement remains limited. Administrative sanctions imposed have not yet had a deterrent effect, resulting in frequent misuse of material information and procedural violations in buybacks. This weakens investor protection and undermines market confidence.

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