

Analisis hukum terhadap peraturan-peraturan dan perlindungan terhadap pemegang saham terkait pembelian kembali saham buyback dari bank terbuka Tbk di pasar modal Indonesia = Juridical review on regulations and shareholders protection in relation to the share buyback conducted by a public bank in Indonesian capital market

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Abstrak

[Tesis ini membahas mengenai pengaturan tentang pembelian kembali saham atau yang sering disebut dengan buyback di pasar modal Indonesia yang dilakukan oleh Bank Tbk. yang secara khusus diatur dalam Peraturan Bapepam Nomor XI.B.2, namun dalam kondisi krisis global yang terjadi akhir-akhir ini, Bapepam mengeluarkan peraturan baru yang mengatur mengenai buyback pada kondisi pasar yang berfluktuasi secara signifikan, yaitu Peraturan Otoritas Jasa Keuangan Nomor 2/POJK.04/2013. Peraturan baru tersebut memberi sejumlah kelonggaran dalam pelaksanaan buyback, terutama batas pembelian kembali saham yang dinaikkan menjadi 20% serta tidak perlu meminta persetujuan Rapat Umum Pemegang Saham (“RUPS”) terlebih dahulu. Digunakan metode penelitian kepustakaan yang bertujuan untuk menemukan masalah (problem finding) untuk kemudian menuju pada suatu penelitian untuk mengatasi masalah (problem solution). Permasalahan kemudian timbul dikarenakan adanya kelonggaran tentang kewajiban dilaksanakannya RUPS dalam pelaksanaan buyback saham yang mengakibatkan tersinggungannya / berkurangnya perlindungan terhadap pemegang saham perusahaan karena beralihnya kewenangan RUPS menjadi kewenangan Direksi perusahaan. Selanjutnya, bagaimana apabila setelah melakukan buyback, perseroan tetap mengalami kerugian, sehingga dalam hal ini direksi dapat saja dimintakan pertanggungjawabannya, namun untuk itu harus terlebih dahulu dibuktikan bahwa direksi telah melanggar fiduciary duty-nya. Penelitian ini membahas mengenai tata cara dan persyaratan dalam pelaksanaan buyback oleh Bank sebagai emiten atau perusahaan publik berdasarkan Peraturan Bapepam Nomor XI.B.2 dan Peraturan Otoritas Jasa Keuangan Nomor 2/POJK.04/2013, perlindungan pemegang saham dan tanggung jawab Direksi terhadap buyback yang dilakukan oleh perusahaan.;

This thesis discusses on regulations related to share buyback by a Public Bank in Indonesian capital market that is specifically regulated in Bapepam Regulation Number XI.B.2, however in the current global crisis conditions, Bapepam has issued new regulations regulating on share buyback in the market conditions which fluctuating significantly, namely Financial Service Authority Regulations (“POJK”) Number 2/POJK.04/2013. Such new regulation gives some flexibilities in the buy back execution, particularly the limit of shares buy back increased to be 20% and it is not necessary to get prior approval from the General Meeting of Shareholders. In this thesis is used literature research methodology with the aims to find out the problem (problem finding) and then to go to a research to overcome the problem (problem solution). The problem arises when the regulation causes a loose on the company’s obligation in conducting a Shareholders’ Meeting (related to share buyback), thus giving the Borad of Director of the company, on their sole discretion, to conduct share buyback. This

action gives an impact to the shareholders' rights, in the meaning that the shareholders in this case do not have the right to participate nor give votes in the company's corporate actions (in this case, share buyback). Furthermore, if the share buyback costs losses to the company, the Board of Directors of the company should be asked for its accountability, but to do so, it must be previously proved that the Board of Directors has violated its fiduciary duty, in which it also corresponds to a doctrine namely the doctrine of business judgment rule. This study discusses the procedures and requirements in the implementation of the share buyback by the Issuer or public company based on Bapepam Regulations Number XI.B.2 and POJK Number 2/POJK.04/2013, the protection towards the company's shareholders and the responsibility of the Board of Directors toward the share buyback in relation to the doctrine of business judgment rule; This thesis discusses on regulations related to share buyback by a Public Bank in Indonesian capital market that is specifically regulated in Bapepam Regulation Number XI.B.2, however in the current global crisis conditions, Bapepam has issued new regulations regulating on share buyback in the market conditions which fluctuating significantly, namely Financial Service Authority Regulations ("POJK") Number 2/POJK.04/2013. Such new regulation gives some flexibilities in the buy back execution, particularly the limit of shares buy back increased to be 20% and it is not necessary to get prior approval from the General Meeting of Shareholders. In this thesis is used literature research methodology with the aims to find out the problem (problem finding) and then to go to a research to overcome the problem (problem solution). The problem arises when the regulation causes a loose on the company's obligation in conducting a Shareholders' Meeting (related to share buyback), thus giving the Board of Director of the company, on their sole discretion, to conduct share buyback. This action gives an impact to the shareholders' rights, in the meaning that the shareholders in this case do not have the right to participate nor give votes in the company's corporate actions (in this case, share buyback). Furthermore, if the share buyback costs losses to the company, the Board of Directors of the company should be asked for its accountability, but to do so, it must be previously proved that the Board of Directors has violated its fiduciary duty, in which it also corresponds to a doctrine namely the doctrine of business judgment rule. This study discusses the procedures and requirements in the implementation of the share buyback by the Issuer or public company based on Bapepam Regulations Number XI.B.2 and POJK Number 2/POJK.04/2013, the protection towards the company's shareholders and the responsibility of the Board of Directors toward the share buyback in relation to the doctrine of business judgment rule, This thesis discusses on regulations related to share buyback by a Public Bank in Indonesian capital market that is specifically regulated in Bapepam Regulation Number XI.B.2, however in the current global crisis conditions, Bapepam has issued new regulations regulating on share buyback in the market conditions which fluctuating significantly, namely Financial Service Authority Regulations ("POJK") Number 2/POJK.04/2013. Such new regulation gives some

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