SHARE BUY BACKS - THE SECOND OJK REGULATION

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Following its first regulation on Consumer Protection, the OJK issued its second regulation, Regulation of the Head of OJK Number 2/POJK.04/2013. This regulation mainly regulates share buybacks by public companies which are allowed in certain circumstances. From the elucidation of the regulation, it aims to reduce the impact of a significantly fluctuating market which creates pressure on stocks and therefore, issuers or public companies need to be able to repurchase stocks without violating any law while still maintaining an orderly, fair, and efficient trading of securities. Buybacks are only allowed in ‘significantly fluctuating market conditions’ defined as (i) when the Jakarta Composite Index (JCI) falls by 15% cumulatively over 3 Exchange days, or (ii) other conditions determined by the OJK. Under the regulation, such buybacks are limited to 20% of the company’s capital and require GMS approval.

The regulation allows buyback shares to be kept by the company for up to 3 years after the completion of the buyback. The shares are then required to be transferred to other parties within 2 years, with a possible one year extension. However, this seems to create tension with the provision regarding buybacks in the Company Law, where such shares can only be kept for 3 years at the most and during that period, the company must decide whether the shares are going to be transferred or be deemed a capital decrease. Even though the Company Law provides for the prevailing capital market laws to regulate otherwise, it is understood that the provisions regulating the capital market sector should be promulgated as a law, not an OJK regulation.